

ANDERSON'S
2007
OHIO
JUVENILE LAW
HANDBOOK

FIFTH ANNUAL EDITION

Containing annotated Chapter 2151: Juvenile Court, Chapter 2152: Delinquent Children; Juvenile Traffic Offenders and Chapter 2153: Cuyahoga County Juvenile Court as amended by the Ohio General Assembly through March 6, 2007

Also including:

Ohio Rules of Juvenile Procedure through July 15, 2007

Miscellaneous Related Statutes and Rules through
March 6, 2007

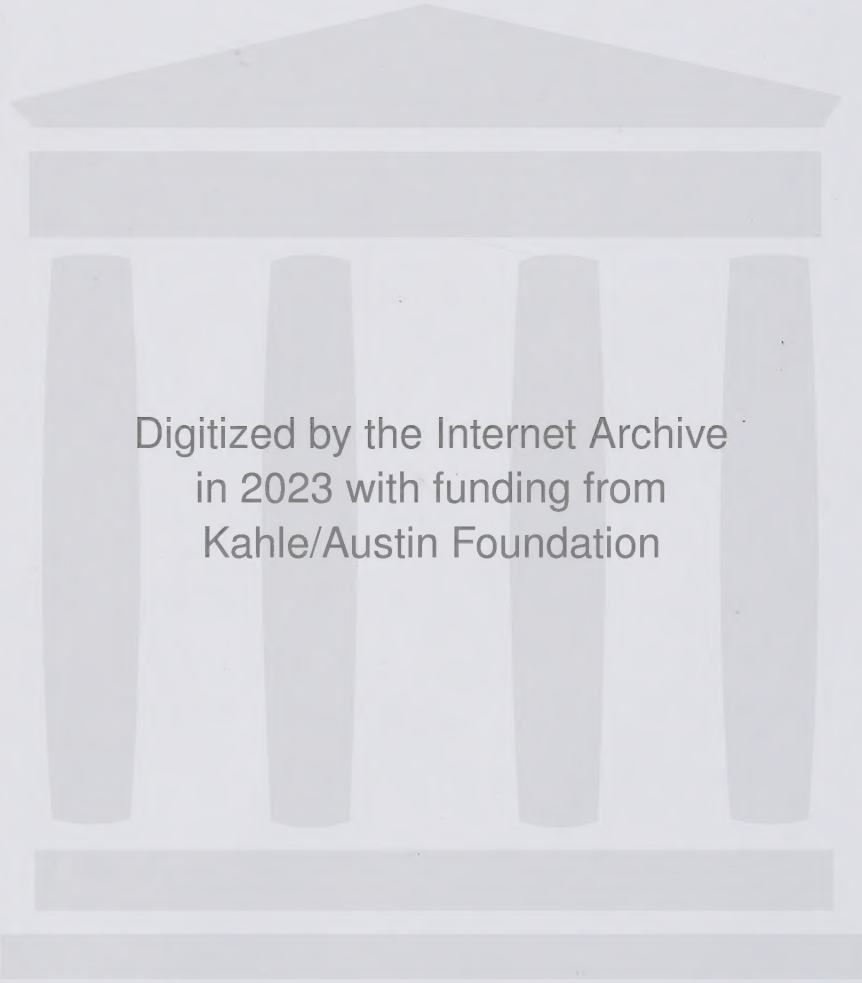
Selected Ohio Administrative Code Sections through
July 9, 2007



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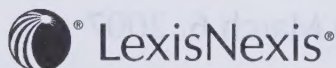
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ABBREVIATIONS

- AkronLRev—Akron Law Review
 ALR—American Law Reports
 ALRFed—American Law Reports, Federal
 AmLRec—American Law Record

 AmLReg—American Law Register

 App—Ohio Appellate Court; Appellate Reports
 AppR—Ohio Rules of Appellate Procedure
 BTA—Board of Tax Appeals
 Bull—Weekly Law Bulletin
 CapitalULRev—Capital University Law Review
 CaseWResLRev—Case Western Reserve Law Review,
 formerly WestResLRev
 CC—Ohio Circuit Court Reports
 CC(NS)—Ohio Circuit Court Reports, New Series
 CCR—Rules of the Court of Claims of Ohio
 CD—Ohio Circuit Decisions
 CinLRev—University of Cincinnati Law Review
 CivR—Ohio Rules of Civil Procedure
 ClevBJ—Cleveland Bar Journal
 ClevMarLRev—Cleveland Marshall Law Review, see
 now ClevStLRev
 ClevStLRev—Cleveland State Law Review, formerly
 ClevMarLRev
 CoC—County Court
 CP—Common Pleas Court
 CSCR—Cincinnati Superior Court Reports
 Const—Constitution of Ohio
 CrimR—Ohio Rules of Criminal Procedure
 CtC—Court of Claims
 D—Disney's Reports
 Dayton—Dayton (Lanang)
 DaytonTermRep—Dayton Term Report (Iddings)
 DecRep—Ohio Decisions, Reprint
 EBR—Environmental Board of Review
 (Ed.)—Editorial Note or Discussion
 Eff—Effective
 EvR—Ohio Rules of Evidence
 Fed—Federal Reporter
 F2d—Federal Reporter, Second Series
 F3d—Federal Reporter, Third Series

 Fsupp—Federal Supplement
 GC—General Code
 Gaz—Weekly Law Gazette
 Goebel—Goebel's Probate Reports
 GovBarR—Rules for the Government of the Bar
 GovJudR—Rules for the Government of the Judiciary
 H—Handy's Reports or House Bill
 Hosea—Hosea's Reports

 JC—Juvenile Court
 JuvR—Ohio Rules of Juvenile Procedure

 LCCR—Local Rules of the Court of Claims of Ohio
 Led—Lawyers' Edition, U.S. Reports
 LRA—Lawyers Reports Annotated
 LRA(NS)—Lawyers Reports Annotated, New Series

 MayR—Mayor's Court Education and Procedure Rules
 MC—Municipal Court
 NE—North Eastern Reporter
 NoKyLRev—Northern Kentucky Law Review,
 formerly NoKyStLF
 NoKyStLF—Northern Kentucky State Law Forum
 (vols. 1-3), see now NoKyLRev
 NP—Ohio Nisi Prius Reports
 O—Ohio Reports
 OAC—Ohio Administrative Code
 OAG—Opinions of the Attorney General
 Oapp—Ohio Appellate Reports
 Obar—Ohio State Bar Association Reports (articles)

 OBR—Ohio Bar Reports
 OCA—Ohio Court of Appeals Report
 Oconst—Constitution of Ohio
 OD—Ohio Decisions
 OFD—Ohio Federal Decisions
 OL—Ohio Laws
 OLA—Ohio Law Abstract
 OLJ—Ohio Law Journal

 OLR—Ohio Law Reporter

 Omisc—Ohio Miscellaneous Reports
 OnorthLRev—Ohio Northern University Law Review
 OO—Ohio Opinions
 OS—Ohio State Reports
 OSLJ—Ohio State Law Journal
 OSU—Ohio Supreme Court Decision, Unreported
 Osupp—Ohio Supplement
 P&A—Page and Adams' Code (1912)
 PC—Probate Court
 RC—Revised Code
 RS—Revised Statutes
 S—Senate Bill
 Sct—Supreme Court Reporter
 SctPracR—Rules of Practice of the Supreme Court
 S&C—Swan and Critchfield's Statutes
 S&S—Swan and Saylor's Statutes
 SupR—Rules of Superintendence for the Courts of
 Ohio
 T—Tappan's Reports
 TrafR—Traffic Rules
 ToledoLRev—University of Toledo Law Review
 UdayLRev—University of Dayton Law Review
 US—United States Supreme Court Reports
 USC—United States Code
 V—Volume, Ohio Laws
 VCCR—Rules for the Court of Claims, Victims of
 Crime Compensation Section
 W—Wright's Reports
 WestResLRev—Western Reserve Law Review, see now
 CaseWResLRev
 WLJ—Western Law Journal
 WLM—Western Law Monthly

CLOSING DATE

Ohio Revised Code	August 31, 2006
ANNOTATIONS THROUGH	VOLUME
Ohio State Reports (3d Series)	April 1, 2006
Ohio Appellate Reports (3d Series)	April 1, 2006
Ohio Miscellaneous Reports (2d Series)	April 1, 2006
Unreported Appellate Cases	April 1, 2006
United States Supreme Court Decisions	April 1, 2006
Lawyers' Edition (2d Series)	April 1, 2006
Federal Reporter (3d Series)	April 1, 2006
Federal Supplement (2d Series)	April 1, 2006
Attorney General's Opinions	April 1, 2006
Ohio Ethics Commission Opinions	April 1, 2006
Selected Law Review Articles	April 1, 2006
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REFERENCES TO OTHER PUBLICATIONS

ALR	American Law Reports
Am-Jur	American Jurisprudence
Anderson Fam. L.	Anderson's Ohio Family Law
Close Corp	The Ohio Close Corporation
Couse	Couse's Ohio Form Book
Dom Rel Prac	Domestic Relations Practice in Ohio
Elder Law	Financial and Health Care Planning For the Elderly
Estate Plan.	Estate Planning Forms & Clauses
Kuntz	Kuntz, Law of Oil and Gas
McCormac	McCormac, Ohio Civil Rules Practice
Ohio Civ. Prac.	Anderson's Ohio Civil Practice
Ohio Cons Law	Ohio Consumer Law Practice Manual
Ohio Corp Law	Ohio Corporation Law
Ohio Crim. Prac. & Pro.	Anderson's Ohio Criminal Practice & Procedure
OEPA	Ohio Environmental Protection Agency Rules
Ohio Inj & TRO	Injunctions and Restraining Orders in Ohio
OJI	Ohio Jury Instructions
O-Jur	Ohio Jurisprudence
Ohio Prob. Prac.	Anderson's Ohio Probate Practice and Procedure
Ohio Prof. Resp.	The Law of Professional Responsibility in Ohio
Ohio Real Estate	Ohio Real Estate Transactions
Ohio Sch. Fin.	Ohio School Finance
Ohio Sch. Law	Ohio School Law Guide
Ohio Workers' Comp.	Fulton's Ohio Workers' Compensation Law
OWCH	Ohio Workers' Compensation Handbook
Page on Wills	Page on the Law of Wills (Bowe-Parker Revision)
Premises Liability	Page, The Law of Premises Liability
Pretrial Litig	Ohio Pretrial Litigation
Prod Liab	Ohio Products Liability Manual
Rep. Term. Employee	Representing the Terminated Employee
Simple Will	The Simple Will in Ohio
van der Smissen	Legal Liability and Risk Management for Public and Private Entities
Weissenberger	Weissenberger's Ohio Evidence
Widiss	Uninsured and Underinsured Motorist Insurance

TABLE OF SECTIONS AFFECTED

NOTE: In addition to the sections listed below, users of this edition should be aware that additional section and case note annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised annotations do not appear in this listing.

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2151.357	Amended	7-1-07	10	SB 10	1
2151.362	Amended	9-29-07	15	HB 119	101.01
2151.99	Amended	3-30-07	164	SB 137	1
2152.02	Amended	1-1-08	10	SB 10	1
2152.19	Amended	1-1-08	10	SB 10	1
2152.191	Amended	1-1-08	10	SB 10	1
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2152.20	Amended	7-1-07	12	HB 120	1
2152.22	Amended	1-1-08	10	SB 10	1
2152.811	Amended	1-1-08	10	SB 10	1
2152.82	Amended	1-1-08	10	SB 10	1
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2907.05	Amended	1-1-08	10	SB 10	1

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2909.32	Amended	4-4-07	173	HB 461	1
2909.33	Amended	4-4-07	173	HB 461	1
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5139.43	Amended	9-29-07	15	HB 119	101.01

TITLE 21: COURTS — PROBATE — JUVENILE

CHAPTER 2151: JUVENILE COURT

Section

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§ 2151.01 Construction; purpose.

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;

(B) To provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

HISTORY: 133 v H 320 (Eff 11-19-69); 148 v S 179, § 3. Eff 1-1-2002.

Not analogous to former RC § 2151.01 (GC § 1639-1; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53), repealed, 133 v H 320. For an analogous provision to former RC § 2151.01, see now RC § 2151.01.1.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

- Children in need of public care or protective services; duties of public children services agency, RC § 5153.16.
- Courts inferior to common pleas, practice and procedure in criminal cases uniform, exception, RC § 2938.02.
- Curfew for minors—
County, RC § 307.71.
Township, RC § 505.89.
- Deception to obtain matter harmful to juveniles, RC § 2907.33
- Definitions, RC § 2151.01.1.
- Abused child, RC § 2151.03.1.
- Child without proper prenatal care, RC § 2151.05.
- Delinquent child, RC § 2152.02.
- Dependent child, RC § 2151.04.
- Juvenile traffic offender, RC § 2152.02.
- Neglected child, RC § 2151.03.
- Residence or legal settlement of child, RC § 2151.06.
- Unruly child, RC § 2151.02.2.
- Disqualification of common pleas judge; proceedings after affidavit filed against common pleas or appellate judge, RC § 2701.03.
- Employment of minors, RC § 4109.08.
- Guardianship of mentally retarded minors, RC § 5123.93.
- Judges of court of domestic relations, juvenile court responsibilities, RC § 2301.03.
- Jurisdiction of Cuyahoga County Juvenile Court, RC § 2153.16.
- Juvenile traffic offender; driver's license suspension law, RC § 4507.02.1.
- Protection of children by removal from control of parents or persons having charges of them, RC § 1717.14.
- Seriousness of offense and recidivism factors, RC § 2929.12.
- Supervision of children released from institutions, RC § 5139.18.

- Transfer of child to foster care facility, RC § 5139.39.
- Youth services department, placement and treatment of child in accordance with purposes of this chapter, RC § 5139.04.
- Permanent commitment of child, RC § 5139.05.
- Disposition of child, RC § 5139.06.

Ohio Constitution

Common pleas court, juvenile division, OConst art IV, § 4.

Ohio Rules

- Avoiding court action, JuvR 9.
- Definitions, JuvR 2.
- Exceptions to applicability, CrimR 1(C).
- Procedure not otherwise specified, JuvR 45.
- Scope of rules, CivR 1; JuvR 1.

Ohio Administrative Code

- Department of job and family services, division of social services—
Child care agencies. OAC ch. 5101:2-5.
Childrens residential facilities. OAC ch. 5101:2-9
Foster care. OAC ch. 5101:2-7.
Public children services agency (PCSA)—
Operations and procedures. OAC ch. 5101:2-33.
Reviews and monitoring. OAC ch. 5101:2-57.
Substitute care. OAC ch. 5101:2-42.
"Agreement for Temporary Custody of Child," form 1645; procedures. OAC 5101:2-42-06 et seq.
Interstate placements of children into or from Ohio. OAC 5101:2-42-20 et seq.
"Permanent Surrender of Child," form 1666; procedures. OAC 5101:2-42-09.
Responsibilities for children affected by the Indian Child Welfare Act. OAC 5101:2-42-48 et seq.
Unaccompanied refugee minor program. OAC 5101:2-42-80 et seq.
Supportive services. OAC ch. 5101:2-39.

Comparative Legislation

- Juvenile courts:
CA—Cal Wel & Inst Code § 245 et seq
FL—Fla. Stat. § 985.201
IL—705 ILCS § 405/1-1 et seq
IN—Burns Ind. Code Ann. § 31-30-1-1
KY—KRS § 600.010 et seq
MI—MCL § 712A.1 et seq
NY—NY CLS Family Ct Act § 111 et seq
PA—42 P.S. § 6301 et seq

Practice Manuals and Treatises

- Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings
Ohio Transaction Guide: Family Law & Forms § 4.21 Parent-Child Relationship
Ohio Transaction Guide: Family Law & Forms § 20.01 Statutory Duty to Support Children
Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings
Ohio Transaction Guide: Family Law & Forms § 5.24 Consent to Adoption of Minor

Practice Checklists

- Consents Required for Adoption of Minor, Ohio Transaction Guide: Family Law & Forms § 5.110

CASE NOTES AND OAG

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- Generally
Termination of parental rights

Generally

- A juvenile court proceeding is a civil action: In re Anderson, 92 Ohio St. 3d 63, 748 N.E.2d 67, 2001 Ohio 131, (2001).

Termination of parental rights

RC § 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to RC § 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time: *In re C.F.*, 113 Ohio St. 3d 73, 862 N.E.2d 816, 2007 Ohio 1104, (2007).

[§ 2151.01.1] § 2151.011 Definitions.

(A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 [2101.02.2] or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) "Juvenile judge" means a judge of a court having jurisdiction under this chapter.

(3) "Private child placing agency" means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(4) "Private noncustodial agency" means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

(a) Receives and cares for children for two or more consecutive weeks;

(b) Participates in the placement of children in certified foster homes;

(c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Agreement for temporary custody" means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(4) "Certified foster home" means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.

(5) "Child" means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a "child" until the person attains twenty-one years of age.

(6) "Child day camp," "child care," "child day-care center," "part-time child day-care center," "type A family day-care home," "certified type B family day-care home," "type B home," "administrator of a child day-care center," "administrator of a type A family day-care home," "in-home aide," and "authorized provider" have the same meanings as in section 5104.01 of the Revised Code.

(7) "Child care provider" means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of mental retardation and developmental disabilities, or the early childhood programs of the department of education.

(8) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.

(9) "Commit" means to vest custody as ordered by the court.

(10) "Counseling" includes both of the following:

(a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.

(11) "Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.

(12) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(13) "Detention" means the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.

(14) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

(15) "Foster caregiver" has the same meaning as in section 5103.02 of the Revised Code.

(16) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(17) "Habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(18) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

(19) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(20) A "legitimate excuse for absence from the public school the child is supposed to attend" includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(21) "Mental illness" and "mentally ill person subject to hospitalization by court order" have the same meanings as in section 5122.01 of the Revised Code.

(22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

(23) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(24) "Nonsecure care, supervision, or training" means care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(25) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(26) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

(27) "Out-of-home care" means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, child care provided by type B family day-care home providers and by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are

responsible for the care, physical custody, or control of children.

(28) "Out-of-home care child abuse" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Engaging in sexual activity with a child in the person's care;

(b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;

(c) Use of restraint procedures on a child that cause injury or pain;

(d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;

(e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(29) "Out-of-home care child neglect" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;

(b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;

(c) Failure to develop a process for all of the following:

(i) Administration of prescription drugs or psychotropic drugs for the child;

(ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;

(iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.

(d) Failure to provide proper or necessary subsistence, education, medical care, or other individualized care necessary for the health or well-being of the child;

(e) Confinement of the child to a locked room without monitoring by staff;

(f) Failure to provide ongoing security for all prescription and nonprescription medication;

(g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(30) "Permanent custody" means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(31) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children services agency or a private child placing agency.

(32) "Person" means an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(33) "Person responsible for a child's care in out-of-home care" means any of the following:

(a) Any foster caregiver, in-home aide, or provider;

(b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; certified type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered non-public school; educational service center; hospital; or medical clinic;

(c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;

(d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(34) "Physically impaired" means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

(a) A substantial impairment of vision, speech, or hearing;

(b) A congenital orthopedic impairment;

(c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(35) "Placement for adoption" means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody.

(36) "Placement in foster care" means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

(37) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

(b) The order permits the agency to make an appropriate placement of the child and to enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed.

(38) "Practice of social work" and "practice of professional counseling" have the same meanings as in section 4757.01 of the Revised Code.

(39) "Sanction, service, or condition" means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(40) "Protective supervision" means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(41) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(42) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(43) "Residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(44) "Residential care facility" means an institution, residence, or facility that is licensed by the department of mental health under section 5119.22 of the Revised Code and that provides care for a child.

(45) "Residential facility" means a home or facility that is licensed by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code and in which a child with a developmental disability resides.

(46) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(47) "School day" means the school day established by the state board of education pursuant to section 3313.48 of the Revised Code.

(48) "School month" and "school year" have the same meanings as in section 3313.62 of the Revised Code.

(49) "Secure correctional facility" means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.

(50) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(51) "Shelter" means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(52) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

(53) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

HISTORY: 142 v H 403 (Eff 1-1-89); 143 v H 257 (Eff 8-3-89); 143 v H 38 (Eff 7-10-90); 144 v H 155 (Eff 7-22-91); 144 v H 356 (Eff 3-15-93); 145 v H 152 (Eff 7-1-93); 145 v S 21 (Eff 10-29-93); 145 v H 715 (Eff 7-22-94); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 146 v H 274, §§ 1, 4 (Eff 8-8-96); 146 v H 265 (Eff 3-3-97); 146 v S 223 (Eff 3-18-97); 146 v H 124 (Eff 3-31-97); 147 v H 408 (Eff 10-1-97); 147 v S 212 (Eff 9-30-98); 147 v H 484 (Eff 3-18-99); 148 v H 470 (Eff 7-1-2000); 148 v S 181 (Eff 9-4-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003; 150 v H 106, § 1, eff. 9-16-04; 150 v H 11, § 1, eff. 5-18-05; 151 v S 238, § 1, eff. 9-21-06.

The provisions of § 7 of 151 v S 238 read as follows:

SECTION 7. Section 2151.011 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. ° ° ° The General Assembly, applying the principle

stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting version of the sections in effect prior to the effective dates of the sections as presented in this act.

Analagous to former RC § 2151.01.1 (133 v H 320; 138 v H 695; 139 v H 440; 140 v S 210; 141 v H 428; 142 v H 399; 142 v S 89), repealed, 142 v H 403, § 2, eff 1-1-89.

Effect of Amendments

151 v S 238, effective September 21, 2006, in (B)(27), inserted "certified children's crisis care facilities"; inserted (B)(32) and redesignated the remaining subdivisions accordingly; and, in (B)(33)(b), inserted "certified children's crisis care facility".

150 v H 11, effective May 18, 2005, in (B)(6), (7), and (27), substituted "child care" for "child day-care".

150 v H 106, effective September 16, 2004, in (B)(27), inserted "public schools, chartered nonpublic schools, educational service centers"; in (B)(32)(b), inserted "school district; community school; chartered nonpublic school; educational service center"; and inserted (B)(32)(c) and redesignated former (B)(32)(c) as (d).

Publisher's Note:

The amendment of (B)(47) and (48) of RC § 2151.011 by 151 v S 311 was disapproved by the Governor.

Cross-References to Related Sections

Custodian defined in relation to the department of health, RC § 3701.50.3.

Ohio Rules

Definitions, JuvR 2.

Detention and shelter care, JuvR 7.

Dispositional hearing, JuvR 34.

Ohio Administrative Code

Department of job and family services, division of social services

Children services definition of terms. OAC ch. 5101:2-1.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Ohio Transaction Guide: Family Law & Forms § 5.21 Placement of Children for Foster Care

Ohio Transaction Guide: Family Law & Forms § 5.22 Placement of Children for Adoption

CASE NOTES AND OAG

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Abandoned child

Agency's motion for permanent court commitment under RC § 2151.414 was properly granted as the mother had abandoned the child, as defined in RC § 2151.011(C), in that she had no

contact with the child for more than ninety days. The fact that the mother later resumed contact with the child after the period of abandonment was immaterial, and the mother's attempt to justify the abandonment with her contention that she was working on her sobriety was insufficient justification for maintaining no contact with the child. In re D.P., 2007 Ohio App. LEXIS 1550, 2007 Ohio 1703, (2007).

Situations may exist in which abandonment, for permanent custody determinations can be established without the passage of 90 days. However, before a department of children's services initiates a motion for permanent custody on the grounds of presumed abandonment, 90 days must have passed without visit or contact before such motion can be initiated. In re Scullion Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 888, 2007 Ohio 929, (Mar. 2, 2007).

Although the trial court's finding of abandonment was against the manifest weight of the evidence, since 90 days had not passed without visit or contact by the mother before the motion was filed, the determination of permanent custody of the children with the agency did not require reversal because the trial court found an alternate, independent ground for terminating parental rights in that the children could not, or should not, be placed with either parent. In re Scullion Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 888, 2007 Ohio 929, (Mar. 2, 2007).

Termination of a father's parental rights was proper on the ground that the father's son had been in the permanent custody of the agency for 12 months out of a consecutive 22-month period. Thus, the fact that the evidence did not support a finding of abandonment under RC § 2151.011(C), in that the caseworker and the foster mother testified that the father made one telephone call to the son during his three-month absence, did not require reversal of the permanent custody order. In re J. N., 2006 Ohio App. LEXIS 2410, 2006 Ohio 2557, (2006).

There was clear and convincing evidence to support the trial court's determination that a father's child was neglected and dependent pursuant to RC §§ 2151.03 and 2151.04, as his evidence did not establish that he had maintained contact with the child or that he had provided support for her, and testimony from multiple other witnesses indicated that he in fact did not provide support and had failed to maintain regular visitation or communication with the child. The child was presumed abandoned under RC § 2151.011(C) where the father failed to maintain contact or visit the child for more than 90 days. In re Miajanigue W, 2006 Ohio App. LEXIS 6271, 2006 Ohio 6295, (2006).

Mother waived her claim that RC § 2151.011(C) was unconstitutional on its face and as applied as she raised the claim for the first time on appeal. In re Maxwell, 2006 Ohio App. LEXIS 472, 2006 Ohio 527, (2006).

Termination of a mother's parental rights was warranted since the mother had abandoned her daughter under RC § 2151.011(C), in that she failed to maintain contact with her for more than 90 days. In re M. R., 2006 Ohio App. LEXIS 2406, 2006 Ohio 2558, (2006).

Mother had abandoned her children where she failed to visit them for a period lasting over six months. In re Donell F., 2005 Ohio App. LEXIS 3806, 2005 Ohio 4175, (2005).

Because both prongs of the permanent custody test were satisfied, the trial court properly terminated the mother's parental rights and placed the child in the permanent custody of the agency, pursuant to RC § 2151.414. The fact that the mother had not visited the child for more than eight months was sufficient to support a presumptive finding of abandonment, under RC § 2151.011(C), and the evidence demonstrated that the mother kept moving and did not inform the agency of her whereabouts. In re B. C. M., 2005 Ohio App. LEXIS 1735, 2005 Ohio 1818, (2005).

Trial court's determination that parents' rights in their minor son should be terminated, pursuant to RC § 2151.414(E), was supported by the evidence that the parents continuously and repeatedly failed to substantially remedy the conditions that caused their son to be placed outside of the home, that the parents showed a lack of commitment toward the child, and that the father abandoned him by failing to see him for more than a year and a half, pursuant to RC § 2151.011(C); only one of the factors of RC § 2151.414(E) was necessary for the determination

that the child could not and should not be placed with his parents. In re B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Trial court properly found that three children were abandoned and could not be placed with their mother within a reasonable time where the mother had not had contact with the children for a nine-month period, which was well beyond the statutory 90-day period, and the mother failed to rebut the presumption of abandonment; the trial court was not required to show that the children were in a child services board's custody for 12 or more months of a consecutive 22-month period. In re Phillips, 2005 Ohio App. LEXIS 3453, 2005 Ohio 3774, (2005).

Children were presumed abandoned as their mother did not attempt to have any contact with them from April 9, 2002 until March 4, 2003. In re Culp, 2005 Ohio App. LEXIS 3469, 2005 Ohio 3764, (2005).

Trial court was within its discretion in finding under RC §§ 2151.011(C) and 2151.414(B)(1)(b) that the child was abandoned due to the lack of visitation during the father's period of incarceration; the father conceded in his brief that he did not have contact with the child for more than 90 days. In re Wright, 2004 Ohio App. LEXIS 960, 2004 Ohio 1094, (2004).

Trial court did not err in finding that a child was abandoned where the parents had not visited with or sent cards or gifts to the child for the 15 months he had been in the agency's temporary care, where the agency mailed calendars to the parents listing the dates available for visitation, but the parents did not respond and where the father stopped by the agency once during this period and called by telephone three times, but did not inquire or arrange any visits. In re L.D., 2004 Ohio App. LEXIS 3655, 2004 Ohio 4000, (2004).

As a father failed to visit or communicate with his child for 90 days, and the trial court found that a family services agency did not interfere with his attempts at visitation, the father failed to present any evidence which would rebut the presumption of abandonment, as contained in RC § 2151.011(C); therefore, the trial court properly found he had abandoned the child. In re Cravens, 2004 Ohio App. LEXIS 2109, 2004 Ohio 2356, (2004).

Termination of a mother's parental right was proper where the child was with child services for 12 or more months; the record showed the mother had abandoned the child and the mother's parental rights to a son been previously terminated. In re Cornell, 2003 Ohio App. LEXIS 4504, 2003 Ohio 5007, (2003).

The children were presumptively abandoned where the mother did not visit them for more than ninety days while they were in foster care. Thus the agency was not required to prove that it made sufficient reunification efforts: In re Starkey, 150 Ohio App. 3d 612, 782 N.E.2d 665, 2002 Ohio 6892, (2002).

Adequate parental care

There was insufficient evidence to support a juvenile court's findings that children were neglected or dependent based on an incident where their mother had appeared intoxicated as a chaperone for a school field trip taken by one of the children. The mother had made arrangements for the children to have been cared for by their grandmother, and the appellate court found that the family services department failed to present clear and convincing proof that the children lacked adequate parental care, as there was no showing that either child was ever deprived of adequate food or clothing, the children were never subjected to the mother's sole parental supervision on the day of the field trip, and there was no showing that the mother's problems with substance abuse were such that it deprived her children of adequate or proper parental care. In re C.M., 2004 Ohio App. LEXIS 2041, 2004 Ohio 2294, (2004).

Where a home had no electricity, the children lacked food and/or supervision, and where the mother refused to accept help or follow advice, the children were neglected pursuant to RC §§ 2151.03(A)(2), 2151.011(B)(1), and 2151.05; therefore, the RC § 2151.35(A) determination of neglect was proper. In re Browne Children, 2003 Ohio App. LEXIS 3293, 2003 Ohio 3637, (2003).

Adoption

Where permanent custody had already been granted to an agency, the juvenile court's grant of legal custody to parties who

were ineligible to adopt thwarted the children's right to an expeditious adoption: In re Hitchcock, 120 Ohio App. 3d 88, 696 N.E.2d 1090 (1996).

Revised Code § 2151.01.1(B)(12) provides that the grant of permanent custody divests the parents of all rights, including residual rights: In re Palmer, 12 Ohio St. 3d 194, 12 Ohio B. 259, 465 N.E.2d 1312 (1984).

Child, prior law

Under former RC § 2151.01.1, a child could have reached eighteen at the time of disposition, but still be deemed a child: In re Hennessey, 146 Ohio App. 3d 743, 768 N.E.2d 663, 2001 Ohio 2267, (2001).

Child support

Where a divorced and remarried custodial parent leaves a child in the actual custody of the stepparent, the child support obligor may be required to make support payments directly to the stepparent: *Palmer v. Harrold*, 101 Ohio App. 3d 732, 656 N.E.2d 708 (1995).

Revised Code §§ 2151.01.1 and 2151.36 authorize an order requiring the parents to pay the costs of the child's support up to age twenty-one: In re Hinko, 84 Ohio App. 3d 89, 616 N.E.2d 515 (1992).

County child services board

When a county children services board has temporary care and custody of a child who resides in a residential care facility operated by the board, that board has legal custody of the child and, pursuant to RC § 2151.01.1(B)(9), has the right and duty to provide the child with education, subject to any residual parental rights, privileges, and responsibilities; the board cannot, however, select for the child a school district other than the district in which the residential care facility is located: OAG No. 94-070 (1994).

Criminal law time for trial

The time limits provided in RC § 2945.71 et seq. do not apply to juvenile court proceedings: In re Washburn, 70 Ohio App. 3d 178, 590 N.E.2d 855 (1990).

Custody award to nonparent

Trial court's grant of legal custody pursuant to RC § 2151.011(B)(19) to grandparents was supported by the evidence and was in the best interests of the parents' children, as the children were flourishing and happy while living with their grandparents and the parents had failed to make progress in their reunification plans. In re Hill Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1574, 2007 Ohio 1727, (Apr. 11, 2007).

Award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities. Juvenile court adjudication of abuse, neglect, or dependency is a determination about the care and condition of a child and implicitly involves a determination of the unsuitability of the child's custodial and/or noncustodial parents. When a juvenile court adjudicates a child to be abused, neglected, or dependent, it has no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding legal custody to a nonparent: In re C.R., 108 Ohio St. 3d 369, 843 N.E.2d 1188, 2006 Ohio 1191, (2006).

Award of legal custody to the maternal grandparents did not divest the mother of her residual parental rights. The evidence supported the court's finding that awarding custody to the mother would be detrimental to the children: In re Sean T., 164 Ohio App. 3d 218 (2005).

Awarding custody of the child to the grandmother was proper because both parents were low-functioning and the mother had anger control problems and lacked parenting skills. In re Haywood, 2003 Ohio App. LEXIS 3217, 2003 Ohio 3518, (2003).

Where a child's best interests under R.C. § 2151.42 were served by granting legal custody under R.C. § 2151.011(B)(19) to the child's relatives due to the mother's mental and/or physical condition pursuant to R.C. § 2151.04(B), the mother's unsuitability was implicit and a separate finding was not required; reasonable efforts to promote a reunification plan were made. In re Reeher, 2003 Ohio App. LEXIS 3152, 2003 Ohio 3470, (2003).

Detention

The breaking of detention as prohibited by RC § 2921.34(A) is the termination of the status of being in legal custody, either with or without the use of force, and when it is done purposely the offense of escape has been committed. For purposes of RC § 2921.34, the controlling definition of "detention" is found in RC § 2921.01(E) not RC § 2151.01.1(R)(3). "Probation" or "protective supervision" includes legal custody: *State v. Smith*, 29 Ohio App. 3d 194, 29 Ohio B. 237, 504 N.E.2d 1121 (1985).

Foster home, parents

Juvenile court's decision to award permanent legal custody of a nephew to his foster parents was not against the weight of the evidence, even though his aunt and uncle (relatives) sought placement of him the day that he was removed from his parents and would provide a caring, suitable home, as the nephew had a strong bond with his foster parents who had cared for him since he was 10 weeks old; the relatives had spent 18 hours with the nephew and a transition to their family could not reasonably be achieved without potentially serious emotional harm to the nephew. In re Halstead, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

A foster home is not an educational facility within the meaning of RC § 2151.35.7, and the section has no application to a foster home: OAG No. 70-166 (1970).

Jurisdiction

Juvenile court's subject matter jurisdiction in a juvenile delinquency case was established under RC §§ 2151.23(A)(1), 2151.011(B)(5), and 2152.02(F)(1) because the complaint alleged appellant was a delinquent child. In re C.W., 2005 Ohio App. LEXIS 3579, 2005 Ohio 3905, (2005).

Once defendant was properly bound over, the court of common pleas had jurisdiction over the proceedings against defendant; moreover, following the bindover, defendant was no longer a "child" within the meaning of the statutes conferring jurisdiction on the juvenile court over cases involving children, former RC §§ 2151.23(A) and 2151.011(B)(5)(e). *State v. Burrell*, 2005 Ohio App. LEXIS 50, 2005 Ohio 34, (2005).

Where the 1997 amendments to RC §§ 2151.23(I) and 2151.011 made defendant's age upon apprehension the touchstone for determining jurisdiction, there were no constitutional violations in trying defendant as an adult for an offense committed while defendant was a juvenile. *State v. Schaar*, 2004 Ohio App. LEXIS 1459, 2004 Ohio 1631, (2004).

A juvenile court retains jurisdiction over a person who was under the age of eighteen years at the time that he allegedly committed delinquency offenses, and over the age of twenty-one years before the adjudicatory and dispositional hearings were conducted on the delinquency complaints: In re J.B., 71 Ohio Misc. 2d 63, 654 N.E.2d 216 (CP 1995).

A juvenile reaches eighteen at 12:01 a.m. on his or her birthday, not at the actual hour of birth: *State v. Clark*, 84 Ohio App. 3d 789, 618 N.E.2d 257 (1993).

A juvenile court does not have jurisdiction over a delinquency complaint where the alleged offender has reached the age of 21 before the charge was brought and the acts occurred before the offender reached 15: In re C., 61 Ohio Misc. 2d 610, 580 N.E.2d 1182 (CP 1991).

Revised Code § 2151.01.1(B)(1) provides for a statutory definition of a "child" which includes any person who violates any law whether federal, state or municipal ordinance prior to attaining eighteen years of age irrespective of his age at the time the complaint is filed or hearing had thereon: In re Cox, 36 Ohio App. 2d 65, 65 Ohio Op. 2d 51, 301 N.E.2d 907 (1973).

Where a child, as defined by RC § 2151.01.1(B)(1), who has been adjudicated a delinquent, leaves the jurisdiction of the juvenile court so that such court can not dispose of his case until he is over twenty-one years of age, he is an adult within the meaning of RC § 2151.01.1: In re Cox, 36 Ohio App. 2d 65, 65 Ohio Op. 2d 51, 301 N.E.2d 907 (1973).

A child of kindergarten age is included within the meaning of the word "child" as it is used in RC § 2151.35.7: OAG No. 72-099 (1972).

Permanent custody

The meaning of the term "permanent custody" as used in RC § 2151.16(B) is the same as defined in RC § 2151.01.1(B)(12)

(now (30)), and thus legal transfer of permanent custody of a child to a board or county department that has assumed the administration of child welfare is contingent upon consent to the transfer by the Juvenile Court: *Angle v. Children's Services Div.*, 63 Ohio St. 2d 227, 17 Ohio Op. 3d 140, 407 N.E.2d 524 (1980).

When a court places an abused, neglected or dependent child in the permanent custody of a children's services board thereby divesting the natural parents of all parental rights and privileges, the board has no duty to involve the natural parents in decisions concerning the provision or assistance in the acquisition of family planning information or contraceptive devices for the child: OAG No. 83-088 (1983).

School district

For purposes of RC § 3313.64, "legal or permanent custody" may be established by a court order, or by evidence of the transfer of temporary custody without a court order in accordance with RC § 5103.15. The temporary placement of a child with persons related by blood or marriage in accordance with RC § 5103.16(A) does not affect the legal custody of the child for purposes of RC § 3313.64(B)(2)(a). A notarized statement that is prepared by the court-designated custodial parent and purports to grant temporary custody of a child to a relative is not an "agreement for temporary custody," as that term is defined in RC § 2151.01.1(B)(17), and does not operate to transfer legal custody for purposes of RC § 3313.64(B)(2)(a). (1994 OAG No. 94-033 (syllabus, paragraph 2), overruled in part): OAG No. 95-032 (1995).

Temporary custody

When, after children were removed from the custody of their mother, who had been their residential parent, and placed with their fathers, an agency retained temporary legal custody of the children, the statutory framework pursuant to which this occurred did not violate the fathers' rights to substantive due process because (1) the fathers were not permanently divested of the right to raise the children, so the standard applicable to an award of permanent custody, under RC § 2151.011(B)(30), did not apply to this award of temporary custody, under RC § 2151.011(B)(19), (2) the state had a compelling interest in removing abused, neglected, and dependent children from their homes, and (3) the procedure employed to determine the temporary custody of these children was narrowly tailored to serve that interest. In re B. C., 2006 Ohio App. LEXIS 3197, 2006 Ohio 3286, (2006).

Zoning

Pursuant to RC § 2151.41.8, a home that constitutes a "foster home" or "family foster home," as those terms are defined in RC § 2151.01.1(B), is a permitted use in all zoning districts in which residential uses are permitted, and no township zoning regulation may require a conditional permit or any other special exception certification for any such home: OAG No. 96-009 (1996).

§ 2151.02 Repealed, 148 v S 179, § 4 [GC § 1639-2; 117 v 520; Bureau of Code Revision, 10-1-53; 127 v 547; 133 v H 320; 146 v H 4; 147 v H 25; 148 v S 181; 148 v S 218]. Eff 1-1-2002.

This section concerned delinquent child defined.

The effective date is set by section 5 of SB 179.

[§ 2151.02.1] § 2151.021 Repealed, 148 v S 179, § 4 [127 v 547; 133 v H 320; 139 v H 707]. Eff 1-1-2002.

This section concerned juvenile traffic offender defined.

The effective date is set by section 5 of SB 179.

[§ 2151.02.2] § 2151.022 Unruly child defined.

As used in this chapter, "unruly child" includes any of the following:

(A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;

(C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;

(D) Any child who violates a law, other than division (C) of section 2907.39, division (A) of section 2923.211 [2923.21.1], division (C)(1) or (D) of section 2925.55, or section 2151.87 of the Revised Code, that is applicable only to a child.

HISTORY: 133 v H 320 (Eff 11-19-69); 146 v H 4 (Eff 11-9-95); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 179, § 3. Eff 1-1-2002; 151 v S 53, § 1, eff. 5-17-06; 151 v H 23, § 1, eff. 8-17-06.

The provisions of § 4 of 151 v H 23 read as follows:

SECTION 4. Section 303.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 411 and Am. Sub. S.B. 18 of the 125th General Assembly. Section 519.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 411 and Am. Sub. S.B. 18 of the 125th General Assembly. Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3 of 151 v S 53 read as follows:

SECTION 3. Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 5 of SB 179.

Effect of Amendments

151 v H 23, effective August 17, 2006, in (D), inserted "division (C) of section 2907.39".

151 v S 53, effective May 17, 2006, in (D), inserted "division (C)(1) or (D) of section 2925.55".

Comment, Legislative Service Commission

Section 2151.022 of the Revised Code is amended by Am. Sub. H.B. 23 and Am. Sub. S.B. 53 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Sections * * * and 2151.36 of the Revised Code are amended by this act [Am. Sub. S.B. 179] and also by Am. Sub. S.B. 180, both of the 123rd General Assembly. Sections 2151.022, 2151.27, and 2151.28 of the Revised Code are amended by this act [Am. Sub. S.B. 179] and also by Sub. S.B. 218, both of the 123rd General Assembly. Section 2151.35 (versions effective April 9, 2001 and January 1, 2002) of the Revised Code is amended by this act [Am. Sub. S.B. 179] and also by Sub. S.B. 218, both of the 123rd General Assembly. Section 2151.141 of the Revised Code is amended by this act [Am. Sub. S.B. 179] and also by Sub. H.B. 412, both of the 123rd General Assembly. Section 2151.23 (effective January 1, 2001) of the Revised Code is amended by this act [Am. Sub. S.B. 179] and also by Am. Sub. S.B. 180 and

Sub. S.B. 218, all of the 123rd General Assembly. * * * Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Contributing to unruliness of a child, RC § 2919.24.

Juvenile court proceedings on truancy, RC § 3321.22.

Single-county and joint-county juvenile facilities, RC § 2151.65.

State assistance for facilities, RC § 2151.65.1.

Ohio Rules

Definitions, JuvR 2.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: unruly child. OAC 5101.2-1-01.

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Constitutionality

Revised Code §§ 2151.02.2 and 2919.24 are not unconstitutional vague or overbroad: In re Popovich, 1993 Ohio App. LEXIS 498 (7th Dist. 1993).

Generally

The definition of unruly child does not include a teenager who engages in one isolated act of premarital sex, denied harm, and acknowledged consent: In re Preston, 1993 Ohio App. LEXIS 272 (5th Dist. 1993).

The court abused its discretion by amending a complaint charging a violation of RC § 4301.63.2 at the end of trial and finding the juvenile to be "unruly" instead. A juvenile's mere presence at a party where other juveniles are consuming alcohol is not proof of unruliness: State v. Aller, 82 Ohio App. 3d 9, 610 N.E.2d 1170 (1992).

Strip poker, at least to the extent of a player being required to strip naked, is an unruly activity among three children aged fourteen to sixteen: State v. Ellis, 64 Ohio App. 3d 158, 580 N.E.2d 1112 (1989).

Although a sixteen-year-old boy having carnal knowledge of a female under sixteen years of age cannot be held delinquent for violating former RC § 2905.03, since the statute specifically identifies the class of persons who are criminally liable for statutory rape as being eighteen years of age or over, the court may find said juvenile to be an unruly boy by "deporting himself so as to injure or endanger the health or morals of himself or others": In re J. P., 32 Ohio Misc. 5, 61 Ohio Op. 2d 24, 287 N.E.2d 926 (CP 1972).

Children services agencies

A county children services agency to which an unruly child is committed has no right of appeal because it is not a "party" to the proceeding, as defined in JuvR 2(16): In re Blakey, 65 Ohio App. 3d 341, 583 N.E.2d 1343 (1989).

Contributing to unruliness

Evidence was sufficient to support defendant's conviction of contributing to the unruliness of a child, including the required

mental state of recklessness, where: (1) defendant made sexual contact with the minor female child, (2) he observed her enter the living room, (3) when he awoke from sleeping in a chair, he lay down next to the couch, (4) before long, he approached the female on the couch and engaged in sexual contact with her for 15 to 20 minutes, and (5) voluntary intoxication was not a defense. *State v. Fusillo*, — Ohio App. 3d —, — N.E. 2d —, 2005 Ohio App. LEXIS 5635, 2005 Ohio 6289, (Nov. 25, 2005).

Delinquency charge

Where a juvenile was charged with delinquency, the court did not err by finding that unruliness was a lesser included offense and then amending the complaint accordingly: *In re Felton*, 124 Ohio App. 3d 500, 706 N.E.2d 809 (1997).

Dismissal of complaint

In a father's action alleging that his daughter was an unruly child under RC § 2151.022, the juvenile court's dismissal of the complaint on the ground that it was improvidently filed, in that the complaint was filed as the result of pending litigation between the father and the mother regarding a change of custody of the daughter, was an exercise of the juvenile court's discretion under Ohio R. Juv. P. 9(A) to decide whether to commence juvenile court proceedings. *In re Brant*, — Ohio App. 3d —, — N.E. 2d —, 2005 Ohio App. LEXIS 5889, 2005 Ohio 6577, (Dec. 9, 2005).

Runaway juveniles

In accordance with RC § 5119.64, et seq., juvenile runaways who are apprehended by law enforcement officials may not be placed in juvenile detention facilities even though suitable shelter is unavailable. However, if such a youth is determined to be a delinquent child as defined in RC § 2151.02, an unruly child as defined in RC § 2151.02.2, or a juvenile traffic offender as defined in RC § 2151.02.1, he may be processed through the juvenile justice system and placed in a juvenile detention facility. A law enforcement official may hold a runaway juvenile against his will, provided his detention or care is required to protect the person or property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court, or because he has no parents, guardian or custodian or other person able to provide supervision and care for him: OAG No. 77-063 (1977).

§ 2151.03 Neglected child defined; failure to provide medical care for religious reasons; duty to report child abuse.

(A) As used in this chapter, "neglected child" includes any child:

- (1) Who is abandoned by the child's parents, guardian, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
- (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- (5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;
- (6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
- (7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 [2151.42.1] of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

HISTORY: GC § 1639-3; 117 v 520; Bureau of Code Revision, 10-1-53; 133 v H 320 (Eff 11-19-69); 143 v H 257 (Eff 8-3-89); 146 v H 274. Eff 8-8-96; 151 v S 17, § 1, eff. 8-3-06.

Effect of Amendments

151 v S 17, effective August 3, 2006, rewrote (B).

Cross-References to Related Sections

Apprehension, custody, and detention of neglected child, RC § 2151.31.
Disposition, RC § 2151.35.3.
Hearing on motion for permanent custody, RC § 2151.41.4.
Contributing to nonsupport of dependents, RC § 2919.21.
Duty of parent to support child, RC § 3103.03.
Making or causing false report of child abuse or neglect, RC § 2921.14.

Ohio Rules

Definitions, JuvR 2.

Ohio Administrative Code

Department of job and family services—

Division of public assistance—

Early and periodic screening, diagnosis, and treatment (EPSDT); objectives of the HEALTHCHEK program. OAC 5101:1-38-05.

Division of social services—

Central registry reports on child abuse and neglect; referral procedures for children's protective services. OAC ch. 5101:2-35.

Procedures for intervening in cases involving alleged withholding of appropriate nutrition, hydration, medication, or medically indicated treatment from disabled infants with life-threatening conditions. OAC 5101:2-35-77.

Children services definition of terms: neglected child. OAC 5101:2-1-01.

Reports of alleged child abuse and neglect. OAC ch. 5101:2-34.

Assessments and investigations by public children services agency (PCSA). OAC 5101:2-34-32 et seq.

Supportive services. OAC ch. 5101:2-39.

Case records for children services. OAC 5101:2-39-02.

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Constitutionality

Children, through their father, had standing to challenge the constitutionality of the spiritual/religious exemption of RC § 2919.22 where the threatened injury was real (several children had already died who were denied appropriate medical care due to their parent's religious beliefs), that absent the exemption the statute would protect them, and the threatened injury would cease if the statute were found unconstitutional: *Children's Healthcare is a Legal Duty v. Deters*, 894 F. Supp. 1129 (1995).

The Eleventh Amendment does not bar a suit to have RC § 2919.22 found unconstitutional because the suit sought to prospective declaratory relief: *Children's Healthcare is a Legal Duty v. Deters*, 894 F. Supp. 1129 (1995).

Generally

Where a home had no electricity, the children lacked food and/or supervision, and where the mother refused to accept help or follow advice, the children were neglected pursuant to RC §§ 2151.03(A)(2), 2151.011(B)(1), and 2151.05; therefore, the RC § 2151.35(A) determination of neglect was proper. In re *Browne Children*, 2003 Ohio App. LEXIS 3293, 2003 Ohio 3637, (2003).

Trial court's neglect finding was affirmed, where the mother was at fault for failing to provide an adequate and sanitary home and food for the child, she failed to comply with medical orders and recommendations concerning the child's hip dislocation, neither the child's mother or grandmother did anything to remedy the lack of care the child received but instead was resistant to the services offered, the child was underweight and failed to thrive, and once the child was removed from the home and placed into foster care, the child immediately began to gain weight and thrive. In re *Goff*, 2003 Ohio App. LEXIS 1663, 2003 Ohio 1744, (2003).

In actions brought pursuant to RC §§ 2151.27 and 2151.03, the state's primary objective is not to decide conflicting claims to custody; its objective is to determine if a child is receiving proper parental care, and if that care is being provided by a relative pursuant to an agreement initiated by the child's parent, then the child is not a neglected child: In re *Reese*, 4 Ohio App. 3d 59, 4 Ohio B. 109, 446 N.E.2d 482 (1982).

Unlike a finding of neglect under RC § 2151.03, which requires proof that the parents were willfully at fault in abandoning or neglecting the children or refusing to perform their parental duties, a finding of dependency under RC § 2151.04 must be grounded on whether the children are receiving proper care and support. The focus is on the condition of the children, not the fault of the parents: In re *Bibb*, 70 Ohio App. 2d 117, 24 Ohio Op. 3d 159, 435 N.E.2d 96 (1980).

The crux of a neglect action is the commission of culpable acts by the parents of the child: In re *Infant East*, 32 Ohio Misc. 65, 61 Ohio Op. 2d 38, 288 N.E.2d 343 (CP 1972).

Before the court may consider what disposition should be made of children for their best interest and welfare, there must first be an adjudication that said children are neglected or dependent: In

re *Burkhart*, 15 Ohio Misc. 170, 44 Ohio Op. 2d 329, 239 N.E.2d 772 (JC 1968).

In determining whether the condition or environment of a child is such as to warrant the state, in the interests of the child, in assuming his guardianship, the primary consideration should be the welfare of the child: In re *Douglas*, 82 Ohio L. Ab. 170, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (JC 1959).

To constitute "abandonment" of a child, under subdivision (A) of this section, there must be a willful leaving of a child by his parent, with an intention of causing perpetual separation; and to constitute "neglect," under subdivision (C) of said section, there must be a willful or indifferent disregard of the duty owed by a parent to his child: In re *Kronjaeger*, 166 Ohio St. 172, 1 Ohio Op. 2d 459, 140 N.E.2d 773 (1957).

The determination of the lack of proper parental care because of the faults or habits of a parent as a basis for a finding that a child is neglected under subdivision (B) of this section, must be made as of the time of the hearing on the charge of neglect: In re *Kronjaeger*, 166 Ohio St. 172, 1 Ohio Op. 2d 459, 140 N.E.2d 773 (1957).

Under the provisions of GC § 1639-3 (RC § 2151.03), a "neglected child" is a child "who lacks proper parental care by reason of the faults or habits of its parents," and, under the provisions of GC § 1639-4 (RC § 2151.04), a "dependent child" is a child "whose condition or environment is such as to warrant the state, in the interests of the child, in assuming its guardianship": *State v. Griffin*, 93 Ohio App. 299, 51 Ohio Op. 47, 106 N.E.2d 668 (1952).

Abandonment

The mere placing of minor children in a children's home by a parent does not, of itself, constitute evidence of relinquishment of the right to custody or abandonment of such minor children: *Gallagher v. Gallagher*, 115 Ohio App. 453, 21 Ohio Op. 2d 74, 185 N.E.2d 571 (1962).

Adoption, placement for

The fact that the mother initially gave up her child for the purpose of adoption does not constitute such rejection of the child as to warrant a finding that the child is a neglected child: In re *Robert O.*, 95 Ohio L. Ab. 101, 28 Ohio Op. 2d 165, 199 N.E.2d 765 (JC 1964).

Where the evidence shows that the mother gave her illegitimate child good care while he was with her prior to his placement in the prospective adoption home, and that the placement was prompted by considerations other than the mother's desire to be relieved of the child's care, the child is not a neglected child: In re *Robert O.*, 95 Ohio L. Ab. 101, 28 Ohio Op. 2d 165, 199 N.E.2d 765 (JC 1964).

Appeal

An order of the juvenile court made pursuant to a finding that children are "neglected" children within the meaning of this section, and committing said children to the permanent custody of a child welfare board for the purpose of placing them for adoption is a final appealable order under OConst art IV, § 6: In re *Masters*, 165 Ohio St. 503, 60 Ohio Op. 474, 137 N.E.2d 752 (1956).

Burden of proof

Findings of neglect and dependency were not supported by clear and convincing evidence. The testimony concerning domestic violence between the parents was conflicting: In re *Alexander C.*, 164 Ohio App. 3d 540, 843 N.E.2d 211, 2005 Ohio 6134, (2005).

The burden of persuasion on a county children services board in a "neglected child" proceeding pursuant to RC § 2151.03(B) is to show by clear and convincing evidence that the child is neglected. If the county children services board fails to meet that burden, the complaint must be dismissed: In re *Wall*, 60 Ohio App. 3d 6, 572 N.E.2d 248 (1989).

Confinement of parent

Evidence of the confinement of a mother of minor children in a state hospital by reason of mental illness, during which confinement she had no funds with which to support the children and during which she was unaware of their whereabouts, is not

sufficient evidence to support a finding by the juvenile court that such children are "neglected" within the meaning of this section: In re Masters, 165 Ohio St. 503, 60 Ohio Op. 474, 137 N.E.2d 752 (1956).

Dismissal of complaint

Trial court properly dismissed a husband's complaint, pursuant to Ohio R. Civ. P. 12, alleging neglect and dependency on behalf of his children because the complaint alleged prospective and conclusory allegations, which were insufficient to support a claim under RC § 2151.27; it was noted that a claim that the children were not performing at appropriate age levels did not fall within the definition of dependency, pursuant to RC § 2151.04, neglect, pursuant to RC § 2151.03, or abuse, pursuant to RC § 2151.031. Louck v. Louck, 2003 Ohio App. LEXIS 5328, 2003 Ohio 5999, (2003).

Evidence insufficient

There was insufficient evidence to support a juvenile court's findings that children were neglected or dependent based on an incident where their mother had appeared intoxicated as a chaperone for a school field trip taken by one of the children. The mother had made arrangements for the children to have been cared for by their grandmother, and the appellate court found that the family services department failed to present clear and convincing proof that the children lacked adequate parental care, as there was no showing that either child was ever deprived of adequate food or clothing, the children were never subjected to the mother's sole parental supervision on the day of the field trip, and there was no showing that the mother's problems with substance abuse were such that it deprived her children of adequate or proper parental care. In re C.M., 2004 Ohio App. LEXIS 2041, 2004 Ohio 2294, (2004).

Evidence sufficient

Neglect finding was supported by sufficient evidence as it was premised on a lack of parental supervision appropriate for infants and toddlers, as observed by hospital and agency personnel over a period of five to six weeks. The parents seemed unable to recognize the problem, which indicated that, without intervention, the problem was likely to continue. In re Corey, 2006 Ohio App. LEXIS 1837, 2006 Ohio 2013, (2006).

There was clear and convincing evidence to support the trial court's determination that a father's child was neglected and dependent pursuant to RC §§ 2151.03 and 2151.04, as his evidence did not establish that he had maintained contact with the child or that he had provided support for her, and testimony from multiple other witnesses indicated that he in fact did not provide support and had failed to maintain regular visitation or communication with the child. The child was presumed abandoned under RC § 2151.011(C) where the father failed to maintain contact or visit the child for more than 90 days. In re Miajanique W, 2006 Ohio App. LEXIS 6271, 2006 Ohio 6295, (2006).

Trial court's finding that children were neglected, pursuant to RC § 2151.03(A)(2), and dependent, pursuant to RC § 2151.04(C), was supported by clear and convincing evidence and was not against the manifest weight of the evidence by virtue of the testimony of the patrons and employees of a library, along with the testimony of a neighbor and a police officer regarding the discipline of the mother's four minor children. In re Lloyd, 2005 Ohio App. LEXIS 2272, 2005 Ohio 2379, (2005).

Evidence supported the finding that the children were neglected, as defined by RC § 2151.03, because there was testimony that the father provided no support and refused to participate in services, the mother lacked adequate parenting skills, and the mother insisted on continuing in a physically abusive relationship. In re Malaya H., 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Evidence that the residence in which the subject children lived had a strong odor of urine and feces, that several piles of animal feces were observed on the floor of the residence, and that the fathers of two of the children provided clear and convincing evidence that the children were neglected, under RC § 2151.03(A)(2). In re Lloyd, 2005 Ohio App. LEXIS 2273, 2005 Ohio 2380, (2005).

Finding under RC § 2151.414(E)(3), that the mother committed abuse as described in RC § 2151.03, was supported by clear and convincing evidence because, after one of her 11-month-old twins had been abused by violent shaking, the mother did not seek medical help for the children until the agency intervened and because the child had suffered previous physical abuse. In re Mark B., 2005 Ohio App. LEXIS 1209, 2005 Ohio 1220, (2005).

Record contained sufficient, competent and credible evidence to demonstrate the mother's children were left in the care of an unsuitable babysitter, which resulted in her two-year-old daughter wandering naked through the streets and her six week old son not receiving his medication. That was sufficient to permit the trial court to conclude the children were neglected. In re Bierley, 2005 Ohio App. LEXIS 301, 2005 Ohio 331, (2005).

The children were clearly "neglected" where they and their home were continually filthy and they lacked appropriate supervision: In re Meyer, 98 Ohio App. 3d 189, 648 N.E.2d 52 (1994).

Jurisdiction

Where a neglected-child proceeding is instituted in the juvenile court, pursuant to this section by a parent of such child, and a divorce action is later instituted by such parent, the juvenile court has exclusive original jurisdiction to determine whether the child is neglected, the power to determine his custody and the authority to place the child with a relative: In re Small, 114 Ohio App. 248, 19 Ohio Op. 2d 128, 181 N.E.2d 503 (1960).

Lack of adequate care

Revised Code § 2151.03(A)(2) requires some showing that parents, a guardian or a custodian is at fault before a finding of a lack of adequate care can be made: In re Riddle, 79 Ohio St. 3d 259, 680 N.E.2d 1227, 1997 Ohio 391, (1997).

Leaving children basically unattended with a loaded, unsecured gun is sufficient to support a finding of neglect and dependency: Skeen v. Gullett, 1994 Ohio App. LEXIS 2746 (1994).

Lack of proper parental care

In a proceeding in the juvenile court, instituted by the filing of a complaint under the provisions of RC § 2151.27, a finding by the court that a child is "neglected," in that it "lacked proper parental care because of the faults and habits of his parents" (RC § 2151.03[B]), and "dependent," in that its "condition and environment... is such as to warrant the court... in assuming his guardianship" (RC § 2151.04[C]), must be based on evidence with respect to whether the child was receiving proper parental care in a proper environment in its home at the time of the hearing: In re Minton, 112 Ohio App. 361, 16 Ohio Op. 2d 283, 176 N.E.2d 252 (1960).

Every child is entitled, as a minimum, to have two parents living together in reasonable harmony with the child and with each other, and parents who are selfish and childish far beyond any reasonable limits, and whose ideas of proper upbringing are to tell their children how vile the other parent has been, are "neglecting" or refusing to provide the children with the care necessary for their morals or well-being: In re Douglas, 82 Ohio L. Ab. 170, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (JC 1959).

Moot actions

Dependency and neglect action was rendered moot when the child died: In re L.W., 168 Ohio App. 3d 613, 861 N.E.2d 546, 2006 Ohio 644, (2006).

Neglect caused by third party

Because infant plaintiffs were not denied their right to "necessary subsistence" by department store's ban on breast-feeding in public areas, store did not cause them to become neglected children: Derungs v. Wal-Mart Stores, 162 F. Supp. 2d 861 (2001).

Neglect per se

It constitutes neglect per se to allow a six-year-old child to be left alone for two entire days per week on a regular basis and to be regularly left at other times under the supervision of an eight-year-old sibling: In re Zeiser, 133 Ohio App. 3d 338, 728 N.E.2d 10 (1999).

Parent's relationship with another adult

A child is not necessarily neglected or dependent merely because the child's mother lives with a man who is not her legal

spouse. In the absence of evidence showing a detrimental impact upon the child, the relationship does not warrant the state in removing the child from parental custody in the best interest of that child: *In re Burrell*, 58 Ohio St. 2d 37, 12 Ohio Op. 3d 43, 388 N.E.2d 738 (1979).

Pleadings

An allegation in a motion filed in juvenile court seeking to have that court “determine and award the future care and custody” of a child, that “neither parent is a suitable person to have the care and custody of said child,” does not constitute a charge that such child is “neglected” (RC § 2151.03) or “dependent” (RC § 2151.04) and is not sufficiently definite to constitute the “complaint” necessitated by RC § 2151.27: *Welfare Board v. Parker*, 7 Ohio App. 2d 79, 36 Ohio Op. 2d 162, 218 N.E.2d 757 (1964).

Prosecution for contributing to neglect

In a prosecution for contributing to the neglect or dependency of a minor child, the record of a separate proceeding adjudicating the child to be a neglected and dependent child, and the testimony of the child’s mother that she and the defendant engaged in acts of illicit sexual relations in the presence of the child, is sufficient competent evidence to prove the child to be a neglected or dependent child within the meaning of GC § 1639-45 (now RC §§ 2151.03 and 2151.04): *State v. Griffin*, 93 Ohio App. 299, 51 Ohio Op. 47, 106 N.E.2d 668 (1952).

Race

The interracial marriage of the mother of an illegitimate child to a black man in no way affects her right to custody of the child and does not support the putative father’s neglect complaint brought under RC § 2151.03: *In re Brenda H.*, 37 Ohio Misc. 123, 66 Ohio Op. 2d 178, 305 N.E.2d 815 (CP 1973).

Stale evidence

Where neglect and dependency existed at the time of the filing of the complaint, but said cause was not prosecuted further until more than four years afterwards and the conditions of the parents had changed sufficiently that evidence was lacking to establish neglect or dependency at the time of the hearing, said complaint must be dismissed: *In re Burkhart*, 15 Ohio Misc. 170, 44 Ohio Op. 2d 329, 239 N.E.2d 772 (JC 1968).

Stepparents

Where a county children services board alleges that a child is a “neglected child” pursuant to RC § 2151.03(B) because of the alleged faults or habits of the child’s stepmother, the court need not determine if the phrase “parents, guardian, or custodian” includes stepmothers where the stepmother was never a party to the action: *In re Wall*, 60 Ohio App. 3d 6, 572 N.E.2d 248 (1989).

Vaccination

Where the father of a minor child endeavors to send such child to a proper public school but, pursuant to a valid regulation of the board of education, such child is excluded from the public school because he has not been vaccinated, and where there is no showing that the father had done anything to prevent the vaccination of such child, such child is not a neglected child within the meaning of this section: *State v. Dunham*, 154 Ohio St. 63, 42 Ohio Op. 133, 93 N.E.2d 286 (1950).

Voluntary placement with relatives

Children were not dependent or neglected where the parent with custody voluntarily placed them with relatives, pursuant to an informal agreement, prior to the involvement of DJFS, and the children were receiving proper care from the relatives: *In re Stoll*, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

Trial court erred when it found the children neglected, pursuant to RC § 2151.03(A)(2), because the mother had voluntarily relinquished custody of her children to her parents before going into drug rehabilitation and thus, an informal agreement could have been inferred regarding care for the children. *In re Stoll*, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

[§ 2151.03.1] § 2151.031 Abused child defined.

As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907, of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.

(E) Is subjected to out-of-home care child abuse.

HISTORY: 136 v H 85 (Eff 11-28-75); 142 v S 89 (Eff 1-1-89); 143 v H 257. Eff 8-3-89.

Cross-References to Related Sections.

Apprehension, custody and detention of child, RC § 2151.31.

Disposition, RC § 2151.35.3.

Hearing on motion for permanent custody, RC § 2151.41.4.

Domestic violence definitions, RC § 3113.31.

Making or causing false report of child abuse or neglect, RC § 2921.14.

Methods of enforcing obligations of presumed father, RC § 3111.78.

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Children services definition of terms: abused child. OAC 5101:2-1-01.

Reports of alleged child abuse and neglect. OAC ch. 5101:2-34.

Assessments and investigations by public children services agency (PCSA). OAC 5101:2-34-32 et seq.

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Physical or mental harm

Generally

During the adjudicatory phase of the proceedings to determine whether a child is an "abused child," the trial court does not have to find any fault on the part of a parent, guardian or custodian in order to conclude that the child is "abused" pursuant to RC § 2151.03.1. All that is necessary is that the child be a victim, regardless of who is responsible for the abuse: *In re Pitts*, 38 Ohio App. 3d 1, 525 N.E.2d 814 (1987).

Battered child syndrome

Expert testimony on battered child syndrome is admissible when it is relevant and meets the requirements of *EvR* 702: *State v. Nemeth*, 82 Ohio St. 3d 202, 694 N.E.2d 1332, 1998 Ohio 376, (1998).

Child no longer living with abuser

Child who was found abused under RC § 2151.031(D) was not to be found not abused just because the child no longer lived with the stepfather, who was abusive person. *In re Youngerman*, 2003 Ohio App. LEXIS 4866, 2003 Ohio 5397, (2003).

Corporal punishment

Based on the testimony of one of the children's teachers that the child had claimed that the mother had hit her with a clothes hanger, the trial court's finding that the child was an abused child, under RC § 2151.031(D), was supported by the evidence. *In re Malaya H.*, 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Swatting a nine-year-old with a paddle did not constitute "abuse": *Clark v. Clark*, 114 Ohio App. 3d 558, 683 N.E.2d 800 (1996).

An eight-year-old child may be found to be "abused" where a whipping results in severe bruising: *In re Schuerman*, 74 Ohio App. 3d 528, 599 N.E.2d 728 (1991).

Striking a child with a belt is not per se abusive. The court must consider such circumstances as the age of the child, her response to non-corporal punishment in the past, and the behavior being punished: *In re Bretz*, 1990 Ohio App. LEXIS 5685 (1990).

Dismissal of complaint

Trial court properly dismissed a husband's complaint, pursuant to Ohio R. Civ. P. 12, alleging neglect and dependency on behalf of his children because the complaint alleged prospective and conclusory allegations, which were insufficient to support a claim under RC § 2151.27; it was noted that a claim that the children were not performing at appropriate age levels did not fall within the definition of dependency, pursuant to RC § 2151.04, neglect, pursuant to RC § 2151.03, or abuse, pursuant to RC § 2151.031. *Louck v. Louck*, 2003 Ohio App. LEXIS 5328, 2003 Ohio 5999, (2003).

Domestic violence protection order

Trial court's judgment issuing a civil protection order against a father prohibiting the father to have contact with his minor child was not against the manifest weight of the evidence because statements made by the child to her mother, grandmother, babysitter, and social worker indicating that she had been sexually abused and naming the father as the perpetrator constituted evidence that the child was a victim of domestic violence under RC § 3113.31(A)(1)(c) as an abused child under RC § 2151.031(A) and justified the trial court's grant of a protection order. *Ross v. Ross*, 2006 Ohio App. LEXIS 5256, 2006 Ohio 5274, (2006).

Sworn allegations constituted good cause for issuing a temporary protection order as: (1) when the father filed the petition for the protection order, he provided the court with a copy of his driver's license and a signed affidavit swearing that the information he provided in the petition was true, complete, and accurate to the best of his knowledge, and (2) the father's sworn statement was that his children were in immediate and present danger of harm or abuse because a mother was bringing them around a stepbrother, who had just done something to the father's daughter that she would only divulge in a court of law. *Ferris v. Ferris*, 2006 Ohio App. LEXIS 790, 2006 Ohio 878, (2006).

Where the trial court issued a domestic violence civil protection order against the father that included the child within its scope based on the determination that the child was subjected to domestic violence under RC § 3113.31(A)(1)(c) due to the

father's alleged mental abuse of the child under RC § 2151.031(D), the trial court did not commit plain error; although the inclusion of the child in a civil protection order was based upon allegedly hearsay testimony that the magistrate determined was not hearsay under Ohio R. Evid. 801, the admission of the testimony, if erroneous, was not an obvious defect in the proceeding, considering the threats uttered against the mother in the child's presence and the fact that the protection order allowed the father supervised visitation with the son. *Lang v. Lang*, 2004 Ohio App. LEXIS 1772, 2004 Ohio 2035, (2004).

Entry of civil protection order prohibiting a parent from contacting her three minor children was proper because she had abused them by permitting truancy, seeking excessive and unnecessary medical treatment for them, disseminating inappropriate literature attacking their father, and disclosing harmful and damaging information about them. *Schottenstein v. Schottenstein*, 2003 Ohio App. LEXIS 4526, 2003 Ohio 5032, (2003).

Drugs

When a newborn child's toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is, for purposes of RC § 2151.03.1(D), per se an abused child: *In re Blackshear*, 90 Ohio St. 3d 197, 736 N.E.2d 462, 2000 Ohio 173, (2000).

A child who is born addicted to heroin falls within the class of children RC § 2151.03.1 was designed to protect. It is from the point of viability that the state has an interest in the "child's" care, protection and development. A mother creates a substantial risk to the health or safety of the child by using heroin regularly during pregnancy: *In re Ruiz*, 27 Ohio Misc. 2d 31, 27 Ohio B. 350, 500 N.E.2d 935 (JC 1986).

Evidence insufficient

There was insufficient evidence to support a juvenile court's findings that children were neglected or dependent based on an incident where their mother had appeared intoxicated as a chaperone for a school field trip taken by one of the children. The mother had made arrangements for the children to have been cared for by their grandmother, and the appellate court found that the family services department failed to present clear and convincing proof that the children lacked adequate parental care, as there was no showing that either child was ever deprived of adequate food or clothing, the children were never subjected to the mother's sole parental supervision on the day of the field trip, and there was no showing that the mother's problems with substance abuse were such that it deprived her children of adequate or proper parental care. *In re C.M.*, 2004 Ohio App. LEXIS 2041, 2004 Ohio 2294, (2004).

Evidence sufficient

Weight of the evidence supported the trial court's determination that a father's minor child was an abused and dependent child pursuant to RC §§ 2151.031 and 2151.04(C), as she was a credible witness who testified that her father beat her with an extension cord and that he touched her "private parts"; although there was no physical evidence, such would have only strengthened the child's testimony but the lack of it did not require a conclusion that she was not credible where there was clear and convincing evidence to support the findings pursuant to Ohio R. Juv. P. 29(E)(4). *In re A. R.*, 2006 Ohio App. LEXIS 1444, 2006 Ohio 1548, (2006).

Trial court's finding that a mother committed an act of domestic violence was not against the manifest weight of the evidence where: (1) a witness from children services spoke with a daughter about the allegations of abuse and recommended that the children be protected from a stepbrother until a criminal investigation could be completed, (2) the daughter confided in her father that the stepbrother had done something to her and that the daughter was afraid her brother and sister would be harmed as well, (3) the mother was not willing to face the fact that the stepbrother had a problem, and (4) when questioned about the stepbrother by the trial court, the mother indicated that she was not aware of any problem and that she was suspicious because of the timing of the allegations. *Ferris v. Ferris*, 2006 Ohio App. LEXIS 790, 2006 Ohio 878, (2006).

There was clear and convincing evidence under RC § 2151.35(A) to support a finding by a magistrate, which was adopted by the trial court, that a mother's children were abused and dependent, pursuant to RC §§ 2151.031(B) and (C), and 2151.04(D), respectively, where there was expert testimony that the mother's 19-day-old child had abusive grab marks, and the mother admitted that she may have caused those marks when she grabbed her child. The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. In re Butcher, 2005 Ohio App. LEXIS 3510, 2005 Ohio 3816, (2005).

Adjudications of abuse and dependence were affirmed because the uncontested expert testimony that a child's injury was not accidental and that disciplinary methods used on the child were concerning was sufficient to support a finding that the youngest child was abused and the oldest child was dependent as defined by RC § 2151.031 by clear and convincing evidence under Ohio R. Juv. P. 29(E)(4). In re Anthony, 2003 Ohio App. LEXIS 5075, 2003 Ohio 5712, (2003).

Appeals court found no plain error in findings that father's stepchild was abused under RC § 2151.031(D) and child was dependent under RC § 2151.04(D) and children's placement with their mother with children's board services; there was clear and convincing evidence, based upon testimony of social workers, children, and father, and based upon his agreement, of the father's verbal and physical abuse of the children. In re Youngerman, 2003 Ohio App. LEXIS 4866, 2003 Ohio 5397, (2003).

Appeals court affirmed a termination of parental rights to one child adjudicated as abused under RC § 2151.031 and one adjudicated as dependent under RC § 2151.04 where substantial evidence, including the mother's abuse, alcohol use, and encouragement of theft, supported the trial court's best interest findings under RC § 2151.414(D). In re Large, 2003 Ohio App. LEXIS 4772, 2003 Ohio 5275, (2003).

Expert testimony generally

Magistrate did not err by concluding that the children's services board failed to establish, by clear and convincing evidence, that the younger child exhibited evidence of any physical injury for a determination of abuse. The testimony of the board's medical expert was not based on facts perceived by her and, even if the expert's testimony had been properly admitted, her testimony, standing alone, did not satisfy the standard of reasonable medical certainty. In re Vecchia, 2006 Ohio App. LEXIS 6035, 2006 Ohio 6095, (2006).

Physical or mental harm

Trial court erred by denying defendant's Ohio R. Crim. P. 29(A) motion for acquittal because the State failed to establish that defendant had caused, or attempted to cause, physical harm to her children for the child endangering and domestic violence convictions under RC § 2919.22(B)(1) and RC § 2919.25(A). The only evidence about how the child was bruised was the children's statements to the police that their mother had struck them, however, the record did not disclose any circumstances which might have rendered those hearsay statements admissible. City of Newburgh Heights v. Cole, 166 Ohio App. 3d 826, 853 N.E.2d 689, 2006 Ohio 2463, (2006).

There was sufficient evidence to support each element of child endangering, RC § 2919.22(B)(1), as it was shown that defendant recklessly caused serious physical harm to the 11-month old child of his girlfriend. From the evidence it was reasonable to infer that the child was injured while he was in sole custody of defendant because expert medical testimony established that after suffering the break of his femur bone, the child would not have made any attempt to put weight on his leg. State v. Villarreal, 2005 Ohio App. LEXIS 1820, 2005 Ohio 1924, (2005).

Minor child properly was adjudicated as having suffered "serious physical harm" despite the child's happy disposition where the trial court had photographs of the child's bruised body, a physician's affidavit opining that the child was abused, and medical records indicating extensive bruising. In re K.B., 2003 Ohio App. LEXIS 3402, 2003 Ohio 3784, (2003).

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

HISTORY: GC § 1639-4; 117 v 520; Bureau of Code Revision, 10-1-53; 129 v 1778 (Eff 10-27-61); 133 v H 320 (Eff 11-19-69); 142 v S 89 (Eff 1-1-89); 146 v H 274. Eff 8-8-96.

Cross-References to Related Sections

Attendance officer to make complaint before judge of juvenile court when child truant, RC § 3321.22.

Contributing to nonsupport of dependents, RC § 2919.21.

Juvenile court proceedings on truancy, RC § 3321.22.

Ohio Rules

Definitions, JuvR 2.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: dependent child. OAC 5101:2-1-01.

Comparative Legislation

Dependent children:

42 USCS § 670 et seq

CA—Wel & Inst Code § 300

FL—Fla. Stat. § 39.013 et seq

IL—705 ILCS § 405/2-1 et seq; 720 ILCS § 130/1

IN—Burns Ind. Code Ann. §§ 31-34-1-1, 31-37-23-5

KY—KRS §§ 600.020, 620.010 et seq

MI—MCL § 712A.2

NY—NY CLS Family Ct Act § 1011 et seq

PA—42 P.S. §§ 6302, 6351

Juvenile jurisdiction:

CA—Cal Wel & Inst Code § 300

FL—Fla. Stat. § 985.201

IN—Burns Ind. Code Ann. §§ 31-30-1-1 et seq, 33-12-3-1 et seq

KY—KRS §§ 600.020, 610.010, 610.320, 630.020

MI—MCL § 712A.2

NY—NY CLS Family Ct Act § 115

PA—42 P.S. § 6321

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

CASE NOTES AND OAG

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Constitutionality
Generally

§ 2151.04 Dependent child defined.

As used in this chapter, "dependent child" means any child:

Abuse of another child
 Adoption
 Burden of proof
 Care by relatives other than parents
 Child of minor parent
 Child removed after birth
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 Evidence generally
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 Habeas corpus
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Constitutionality

Court rejected a mother's contention that interpreting RC § 2151.04(D) to permit a child to be found prospectively dependent once a child was returned to the parents' home was an unconstitutional violation of the mother's fundamental liberty interest in raising a child because, beyond broadly reciting the legal theory, the mother failed to allege sufficient facts to demonstrate how the juvenile court's application of § 2105.04 infringed upon her parenting choices and protected freedoms. In re W.C., 2005 Ohio App. LEXIS 2767, 2005 Ohio 2968, (2005).

Revised Code § 2151.04(C) is not unconstitutionally vague: *Davis v. Trumbull Cty. Children Serv. Bd.*, 24 Ohio App. 3d 180, 24 Ohio B. 270, 493 N.E.2d 1011 (1985).

Revised Code § 2151.04(C) which provides in pertinent part that a dependent child includes any child "whose condition or environment is such as to warrant the state, in the interests of the child, in assuming his guardianship" does not violate the due process requirement of the fourteenth amendment: *Leshner v. Lavrich*, 632 F. Supp. 77 (N.D. Ohio 1984).

Neither RC § 2151.04 nor RC § 2151.35.3 is unconstitutionally broad or vague: In re Williams, 7 Ohio App. 3d 324, 7 Ohio B. 421, 455 N.E.2d 1027 (1982).

Generally

Determination that a child was dependent required no showing of fault on the parent's part, as the focus was on the child's condition or environment, and whether the child was without adequate care or support, but a court could consider a parent's conduct insofar as it formed part of the child's environment, and, while the child's present "condition or environment" was the focus of a dependency determination, the law did not require the court to experiment with the child's welfare to see if the child would suffer great detriment or harm. In re S.J.J., 2006 Ohio App. LEXIS 6318, 2006 Ohio 6354, (2006).

In determining whether a child was dependent, the focus was on the condition of the child and whether he or she was receiving proper care and support, and the conduct of the parents was relevant only insofar as it formed a part of the child's environment and was significant only if it had a detrimental impact on the child. In re Chancey, 2006 Ohio App. LEXIS 5056, 2006 Ohio 5156, (2006).

Trial court improperly awarded permanent custody (RC § 2151.414 and RC § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the

temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In re Nibert, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

To be deemed a dependent child, he or she must be homeless or destitute or without proper care or support: In re Tikyra A., 103 Ohio App. 3d 452, 659 N.E.2d 867 (1995).

The focus of a charge that a child is dependent under RC § 2151.04(C) is on the child and his conditions, and not on the faults of the parents: In re Bishop, 36 Ohio App. 3d 123, 521 N.E.2d 838 (1987).

The determination of whether a child is dependent under RC § 2151.04 must be made as of the time of the hearing on the complaint: In re Bishop, 36 Ohio App. 3d 123, 521 N.E.2d 838 (1987).

The court may award custody to neither parent where it finds that one parent is preoccupied with religious fanaticism and the other parent is emotionally unstable: *Birch v. Birch*, 11 Ohio St. 3d 85, 11 Ohio B. 327, 463 N.E.2d 1254 (1984).

Unlike a finding of neglect under RC § 2151.03, which requires proof that the parents were willfully at fault in abandoning or neglecting the children or refusing to perform their parental duties, a finding of dependency under RC § 2151.04 must be grounded on whether the children are receiving proper care and support. The focus is on the condition of the children, not the fault of the parents: In re Bibb, 70 Ohio App. 2d 117, 24 Ohio Op. 3d 159, 435 N.E.2d 96 (1980).

A parent's primary rights to the care and custody of a child are rights that must be protected, and parental custody will be terminated only when necessary for the mental and physical development of the child: In re Bibb, 70 Ohio App. 2d 117, 24 Ohio Op. 3d 159, 435 N.E.2d 96 (1980).

Once a child has been found to be "dependent" as defined in RC § 2151.04, the "best interests" of the child are the primary consideration in determining whether an award of permanent custody is justified pursuant to RC § 2151.35.3(D): In re Cunningham, 59 Ohio St. 2d 100, 13 Ohio Op. 3d 78, 391 N.E.2d 1034 (1979).

The issue of whether a child is dependent is to be determined as of about the date specified in the complaint and does not have to include the time of the hearing: In re Baby Girl S., 32 Ohio Misc. 217, 61 Ohio Op. 2d 439, 290 N.E.2d 925 (CP 1972).

The unfitness of the mother may be a factor in adjudging that the child's condition or environment is such as to warrant the state in the interest of the child in assuming his guardianship: In re Infant East, 32 Ohio Misc. 65, 61 Ohio Op. 2d 38, 288 N.E.2d 343 (CP 1972).

The crux of a dependency action is the condition or environment of the child, not the culpable acts of the parents: In re Infant East, 32 Ohio Misc. 65, 61 Ohio Op. 2d 38, 288 N.E.2d 343 (CP 1972).

In a dependency action, where the child's condition or environment warrant it, the child may be removed from the custody of the mother and it is not necessary that she first be given the opportunity to prove that she can properly care for said child: In re Infant East, 32 Ohio Misc. 65, 61 Ohio Op. 2d 38, 288 N.E.2d 343 (CP 1972).

A judicial determination that a child is "dependent" pursuant to this section, must be based on evidence as to conditions at the time of the hearing held therefor: In re Darst, 117 Ohio App. 374, 24 Ohio Op. 2d 144, 192 N.E.2d 287 (1963).

Children whose parents are adulterous, childish, selfish, who speak vilely of each other to the children, and who allow a close association between the children and vicious, criminal and immoral persons, are dependent children: In re Douglas, 82 Ohio L. Ab. 170, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (JC 1959).

Abuse of another child

Trial court's determination that a child was dependent pursuant to RC § 2151.04(D) was proper where a sibling of the child had been adjudicated as abused, as there was no requirement that the sibling had to currently reside in the household for purposes of § 2151.04(D). Accordingly, as the child's parent had previously committed an act of abuse against a sibling of the child, the situation was within § 2151.04(D)(1), even though that sibling had been placed in a permanent planned living arrangement and

had never returned home. In re E. R., 2006 Ohio App. LEXIS 4745, 2006 Ohio 4816, (2006).

A child may be found to be “dependent” where another child in the same household has been abused and there is a danger that the dependent child will also be abused: In re Schuerman, 74 Ohio App. 3d 528, 599 N.E.2d 728 (1991).

Adoption

Where an adopting parent demands the child and is able to provide a good home, such child is not destitute or homeless so as to constitute it a dependent child within the purview of GC § 1639-4 (RC § 2151.04): In re Duncan, 62 Ohio L. Ab. 173, 107 N.E.2d 256 (App 1951).

The mere fact that a mother desires to place her baby for adoption is not enough to constitute dependency: In re Hobson, 44 Ohio L. Ab. 86, 62 N.E.2d 510 (App 1945).

Burden of proof

Clear and convincing evidence supported the determination that a father's 13-year-old daughter was a dependent child pursuant to RC § 2151.04(C), as she lived with the father's former neighbors for a while but they filed an unruly-child complaint against her and did not want her to return to their home. The mother had limited contact with the child, the father did not feel that he could manage her, and there was evidence that she was difficult, struggled with continual incontinence, lied, stayed out beyond her curfew, and stole tobacco products, such that there was no one who provided her with the proper care and support. In re Myers, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1483, 2007 Ohio 1631, (Apr. 9, 2007).

Findings of neglect and dependency were not supported by clear and convincing evidence. The testimony concerning domestic violence between the parents was conflicting: In re Alexander C., 164 Ohio App. 3d 540, 843 N.E.2d 211, 2005 Ohio 6134, (2005).

The fact of dependency must be proved by clear and convincing evidence: In re Bishop, 36 Ohio App. 3d 123, 521 N.E.2d 838 (1987).

The fact of dependency must be proved by clear and convincing evidence, RC § 2151.35: In re Bibb, 70 Ohio App. 2d 117, 24 Ohio Op. 3d 159, 435 N.E.2d 96 (1980).

Care by relatives other than parents

Because the mother voluntarily relinquished custody of the children prior to any involvement by the children's services agency, the trial court erred in finding that the children were dependent. The children did not lack proper care and support, pursuant to RC § 2151.04(B), because the maternal grandparents provided proper care and support, and their condition and environment were adequate, pursuant to RC § 2151.04(C), also due to the care provided by the grandparents. In re Stoll, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

Children were not dependent or neglected where the parent with custody voluntarily placed them with relatives, pursuant to an informal agreement, prior to the involvement of DJFS, and the children were receiving proper care from the relatives: In re Stoll, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

The state's interest under this section arises only if there is no one meeting the obligations of care, support and custody which are owed to a child by a parent. The fact that relatives other than a parent are providing such care and support is immaterial to the determination of whether a child is a “dependent child” within the purview of such section: In re Darst, 117 Ohio App. 374, 24 Ohio Op. 2d 144, 192 N.E.2d 287 (1963).

Child of minor parent

It was not plain error for a magistrate to have accepted the consent of a mother, who was an “unemancipated incompetent minor,” to a disposition of legal custody of her child, as the child was declared dependent pursuant to RC § 2151.04, and accordingly, the trial court had the right to make an award of legal custody with or without the mother's consent, pursuant to RC § 2151.353. In re H.B., 2006 Ohio App. LEXIS 1969, 2006 Ohio 2124, (2006).

Upon a showing that a fifteen-year-old mother has a substantial record of delinquency, that her family situation is financially and emotionally unstable, and that a report of a psychologist suggests

a poor prognosis for her success in the role of a mother, the court may grant a permanent change of custody of the three-day-old infant under this section on the grounds of dependency, although the mother has not had physical custody of the child: In re Turner, 12 Ohio Misc. 171, 41 Ohio Op. 2d 264, 231 N.E.2d 502 (CP 1967).

Child removed after birth

When a child was removed from the hospital shortly after birth, the child was properly found to be dependent by clear and convincing evidence, under RC §§ 2151.04(D) and 2151.35(A), even though she had not actually lived in a household in which another child was found to have been abused or neglected, because there was evidence that had the child not been removed from the hospital, the child would have lived in a home in which her half sibling was found to be abused, due to Munchausen's Syndrome by proxy, her siblings were found to be dependent, and her parents refused to acknowledge the problem which caused the finding that the half sibling was abused, indicating that there continued to be a risk to the child if she was placed in that home. In re Hortsmann, 2005 Ohio App. LEXIS 2089, 2005 Ohio 2168, (2005).

Where the state can show, by clear and convincing evidence, that the “condition” or “environment” into which a newborn baby would enter would be threatening to the health and safety of the child, the state may intervene and have the child declared a “dependent child” pursuant to RC § 2151.04(C): In re Campbell, 13 Ohio App. 3d 34, 13 Ohio B. 36, 468 N.E.2d 93 (1983).

As to the mother who was physically, emotionally and financially unable to care and provide for her infant child, the court held the child to be a dependent child, and the fact that the mother has not had the child in her physical custody and control does not preclude the court from a finding of dependency: In re Baby Girl S., 32 Ohio Misc. 217, 61 Ohio Op. 2d 439, 290 N.E.2d 925 (CP 1972).

Consent to finding of dependency

No person or parent can give their consent to a finding of “dependency” for a child, but the requirements of GC § 1639-4, which defines a dependent child, must be found to exist: In re Hobson, 44 Ohio L. Ab. 86, 62 N.E.2d 510 (App 1945).

Contract for care of child

A child who is receiving proper care pursuant to an arrangement initiated by a parent with a caregiver is not dependent under RC § 2151.04(A): In re Riddle, 79 Ohio St. 3d 259, 680 N.E.2d 1227, 1997 Ohio 391, (1997).

Corporal punishment

The court found that a child was a dependent child as a result of the method by which parent and live-in companion administered corporal punishment: In re Jandrew, 1997 Ohio App. LEXIS 5999 (4th Dist. 1997).

Death of child

Dependency and neglect action was rendered moot when the child died: In re L.W., 168 Ohio App. 3d 613, 861 N.E.2d 546, 2006 Ohio 644, (2006).

Court of common pleas, juvenile division, erred when it determined that the court lacked jurisdiction to adjudicate the issue of abuse when the child was deceased; the technicality of death did not rob children of statutory protection as the statutory protections afforded siblings extended to afterborn children; the law is clear that, pursuant to RC § 2151.01 and .04, the code shall be construed liberally to ensure that the judicial procedures in RC § 2151 and RC § 2152 are executed and enforced. In re Darling, 2003 Ohio App. LEXIS 6640, 2003 Ohio 7184, (2003).

Dismissal of complaint

Trial court properly dismissed a husband's complaint, pursuant to Ohio R. Civ. P. 12, alleging neglect and dependency on behalf of his children because the complaint alleged prospective and conclusory allegations, which were insufficient to support a claim under RC § 2151.27; it was noted that a claim that the children were not performing at appropriate age levels did not fall within the definition of dependency pursuant to RC § 2151.04, neglect pursuant to RC § 2151.03, or abuse pursuant to RC § 2151.031.

Louck v. Louck, 2003 Ohio App. LEXIS 5328, 2003 Ohio 5999, (2003).

Evidence generally

In a dependency proceeding pursuant to RC § 2151.04(D), the trial court's admission of a document that purported to be a copy of a judgment from another court was proper, as it was authenticated under Evid. R. 901(B)(7) for purposes of showing abuse by the mother of another sibling and that the child had been previously adjudicated dependent, and any error was harmless because the mother testified to the substance thereof. *In re E. R.*, 2006 Ohio App. LEXIS 4745, 2006 Ohio 4816, (2006).

Evidence insufficient

Clear and convincing evidence did not support an adjudication of a child as dependent where harm to the child could not be inferred from the mother's failure to abide by protective orders. A child services agency presented no evidence showing how the mother's failure to comply with the protective orders was harmful to the child. *In re Walling*, 2006 Ohio App. LEXIS 729, 2006 Ohio 810, (2006).

Trial court's finding that appellants' son was a dependent child under RC § 2151.04 on the ground that appellants had failed to remedy the conditions which led to the son's removal and awarding permanent custody of the son to the family services agency under RC § 2151.353 was unsupported by clear and convincing evidence because the information relied upon was either inconclusive or related to a time period seventeen months to three years prior to the son's birth when the parents two daughters were permanently removed from their custody. No current evidence or testimony was presented to provide any further explanation as to why the son should be deemed dependent. The trial court's dependency determination was based solely on the fact that appellants had previously lost custody of the first two children and on information which was not relative to the parents' unfitness at the time that the son was removed. *In re Nicholas P.*, 169 Ohio App. 3d 570, 863 N.E.2d 1102, 2006 Ohio 6213, (2006).

Evidence sufficient

Even if it was determined that the trial court erroneously admitted hearsay statements from a father's daughter pursuant to Ohio R. Evid. 802 regarding incidents that occurred while she lived in his home, there was still sufficient other evidence to support the trial court's determination that she was a dependent child pursuant to RC § 2151.04(C); accordingly, the dependency determination withstood challenge under the asserted evidentiary basis. *In re Myers*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1483, 2007 Ohio 1631, (Apr. 9, 2007).

Dependency finding was supported by sufficient evidence because the parents difficulty in understanding the level of supervision appropriate for their children, a requisite for providing them a safe environment, was established by the testimony of the hospital and agency personnel. That evidence, alone, was of sufficient quantity and quality to defeat any manifest weight challenge to the finding of dependency. *In re Corey*, 2006 Ohio App. LEXIS 1837, 2006 Ohio 2013, (2006).

There was no error in the dependency finding, pursuant to RC § 2151.04(C), because the record was replete with attempts by the agency to find the mother for the purpose of eventually reuniting her with her sons, pursuant to RC § 2151.419(A)(1). The agency tried to contact the mother and tried to obtain interstate compact home studies of the various purported residences the mother had, but was unsuccessful. *In re Elliott*, 2006 Ohio App. LEXIS 669, 2006 Ohio 738, (2006).

Trial court did not err in finding the child to be dependent, pursuant to RC § 2151.04(D), because the trial court's decision was based upon present evidence that was sufficient to carry the burden of proof. The trial court found that it had taken permanent custody of three children of whom the mother and her violent boyfriend were the parents; despite the permanent removal of her children, the mother had not distanced herself enough from the boyfriend to ensure her own safety; the mother violated court orders, designed for her own protection, to continue her relationship with her boyfriend; the mother failed to complete any previous case plan in any significant way; and the

mother had made almost no progress emotionally, psychologically, or intellectually. *In re Bourne*, 2006 Ohio App. LEXIS 340, 2006 Ohio 396, (2006).

Clear and convincing evidence, as required by RC § 2151.35(A)(1) and Ohio R. Juv. P. 29(E)(4), supported a trial court's decision that a child was dependent, under RC § 2151.04(B) and (C) because (1) the child's mother admitted that her mental state prevented her from adequately caring for the child, (2) she testified that the child's father was inconsistent in being willing to help her care for the child, (3) she testified the father's epilepsy caused him to "zone out" at times, (4) she accused the father of physically abusing the child but did not seek proper treatment for the child for weeks, (5) her claims of physical abuse, if true, showed the child suffered actual harm in the home and was not given appropriate treatment, and, if false, showed the mother's inability to make appropriate decisions about the child's care. *In re S.J.J.*, 2006 Ohio App. LEXIS 6318, 2006 Ohio 6354, (2006).

There was clear and convincing evidence to support the trial court's determination that a father's child was neglected and dependent pursuant to RC §§ 2151.03 and 2151.04, as his evidence did not establish that he had maintained contact with the child or that he had provided support for her, and testimony from multiple other witnesses indicated that he in fact did not provide support and had failed to maintain regular visitation or communication with the child. The child was presumed abandoned under RC § 2151.011(C) where the father failed to maintain contact or visit the child for more than 90 days. *In re Miajanique W.*, 2006 Ohio App. LEXIS 6271, 2006 Ohio 6295, (2006).

Child was properly adjudicated to be dependent, under RC § 2151.04(C), because her mother was a homeless crack addict who did not desire treatment for her addiction, and the child's father's provision of minimal food and shelter for the child did not mean the child was not dependent, as he admitted he could not control the child, as a result of which the child spent a great deal of time at a known drug house and engaged in sexual activity there. *In re Chancey*, 2006 Ohio App. LEXIS 5056, 2006 Ohio 5156, (2006).

Clear and convincing evidence pursuant to RC § 2151.35 and Ohio R. Juv. P. 29(E)(4) supported a trial court's determination that a child was dependent pursuant to RC § 2151.04(C), as she was diagnosed with mental health issues, she had homicidal and suicidal tendencies, and had run away from home to avoid auditory hallucinations telling her to kill herself and her family; the parents' conduct adversely impacted the child and the severity of her condition, and it created a risk to her safety. *In re E. R.*, 2006 Ohio App. LEXIS 4745, 2006 Ohio 4816, (2006).

Permanent custody of mother's son was properly granted to a family services agency. The evidence showed that permanent custody of the mother's daughter had been granted to the agency shortly before the son's birth, and the record of the proceedings involving the son and the transcripts from the daughter's case supported the trial court's determinations under RC §§ 2151.04(D) and 2151.414(D). *In re Lowther*, 2006 Ohio App. LEXIS 4732, 2006 Ohio 4838, (2006).

Permanent custody of a father's son was properly granted to agency under RC § 2151.414 since the evidence showed that permanent custody of the father's daughter had been granted to the agency shortly before the son's birth, and the case manager continued to emphasize ongoing concerns with the refusal of the father and the son's mother to see anything wrong with their behaviors. The record and the transcripts from the daughter's case supported the trial court's determinations under RC §§ 2151.04(D) and 2151.414(D) and the corresponding grant of permanent custody of the son to the agency. *In re Lowther*, 2006 Ohio App. LEXIS 4731, 2006 Ohio 4837, (2006).

There was clear and convincing evidence that the children were dependent where they were left alone for a period of days, the home was dirty and unsanitary, and the children were probably programmed to say that they were being sexually abused by their stepfather. *In re Colaner*, 166 Ohio App. 3d 355, 850 N.E.2d 794, 2006 Ohio 2404, (2006).

Sufficient evidence supported the juvenile court's determination that the child was dependent, pursuant to RC § 2151.04(C), because the child's environment consisted of being in the care of

the father, who had committed an extremely violent act against his fiancée, and who could not recall the details of the incident due to excessive alcohol consumption. Given the serious nature of the stabbing incident and the detrimental effect his behavior could have on the child, there was sufficient support for the juvenile court's conclusion that the child's environment warranted state intervention. In re A.P., 2006 Ohio App. LEXIS 2551, 2006 Ohio 2717, (2006).

Finding that the children were dependent under RC § 2151.04(D) was supported by clear and convincing evidence, pursuant to RC § 2151.35(A), because the father punched the mother with a closed fist and threw her down the stairs, the mother told a police officer that the father physically abused her several times a month, and the evidence showed that the mother still had some level of relationship and interaction with the father, which in the past had led inevitably to alcohol usage and domestic violence, causing the removal of their other children from their custody. The same economic and home environment issues that imperiled the children's siblings were putting the children at issue in danger as well. In re G.S., 2006 Ohio App. LEXIS 2389, 2006 Ohio 2530, (2006).

There was sufficient evidence to allow the trial court to find by clear and convincing evidence that the elements of RC § 2151.04(D)(1) were met for a finding that the child was dependent. The mother had substance abuse problems, mental problems, and used sex offenders as caregivers and the child's three siblings had been adjudicated abused, neglected, and dependent. In re C. M., 2006 Ohio App. LEXIS 1752, 2006 Ohio 1908, (2006).

Weight of the evidence supported the trial court's determination that a father's minor child was an abused and dependent child pursuant to RC §§ 2151.031 and 2151.04(C), as she was a credible witness who testified that her father beat her with an extension cord and that he touched her "private parts"; although there was no physical evidence, such would have only strengthened the child's testimony but the lack of it did not require a conclusion that she was not credible where there was clear and convincing evidence to support the findings pursuant to Ohio R. Juv. P. 29(E)(4). In re A. R., 2006 Ohio App. LEXIS 1444, 2006 Ohio 1548, (2006).

Child was properly adjudicated a dependent child under RC § 2151.04(D). Although the caseworker for the children services board had never observed the parents' home or their interactions with the week-old child prior to removal, the magistrate's finding that the child was dependent on the ground that the conditions of the household rendered the child in danger of being abused and neglected was not against the manifest weight of the evidence because the mother's parental rights to her other four children had been terminated, and the father had been convicted of child endangering, in that he had shaken a seven-month old child. The child was in danger of being abused, and the father's presence in the household constituted a condition in the household, which placed the child in danger. In re W.C., 2005 Ohio App. LEXIS 2767, 2005 Ohio 2968, (2005).

There was clear and convincing evidence to support the dependency adjudications of both children, under RC § 2151.04, and they were not against the manifest weight of the evidence, because there were serious concerns as to whether the children were receiving adequate care. The older child was underweight, had chronic head-lice infestations, and missed a lot of school while the younger child was born premature, was underweight, and was not properly gaining weight, and both parents refused drug tests and there were reports of a drug lab in their home. In re F.S., 2005 Ohio App. LEXIS 3734, 2005 Ohio 4085, (2005).

Testimony supported the finding that the son was dependent, pursuant to RC § 2151.04 because the father provided no support and refused to participate in services, the mother lacked adequate parenting skills, the mother insisted on continuing in a physically abusive relationship, and the grandmother could no longer care for the child. In re Malaya H., 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Evidence that the residence in which the subject children lived had a strong odor of urine and feces, that several piles of animal feces were observed on the floor of the residence, and that the fathers of two of the children provided clear and convincing evidence that the children were dependent, under RC

§ 2151.04(C). In re Lloyd, 2005 Ohio App. LEXIS 2273, 2005 Ohio 2380, (2005).

There was clear and convincing evidence under RC § 2151.35(A) to support a finding by a magistrate, which was adopted by the trial court, that a mother's children were abused and dependent, pursuant to RC §§ 2151.031(B) and (C), and 2151.04(D), respectively, where there was expert testimony that the mother's 19-day-old child had abusive grab marks, and the mother admitted that she may have caused those marks when she grabbed her child. The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. In re Butcher, 2005 Ohio App. LEXIS 3510, 2005 Ohio 3816, (2005).

Trial court properly denied a mother's motion to dismiss a dependency hearing regarding her three minor children, as there was sufficient credible and competent evidence to support the conclusion that the children were dependent, pursuant to RC § 2151.04(C); the mother had suicidal and homicidal ideations, and although she had placed her children with adults who cared for them and who assisted the mother in providing parental care, those adults did not provide full-time parental care at the time alleged in the complaint. In re Ohm, 2005 Ohio App. LEXIS 3245, 2005 Ohio 3500, (2005).

Trial court's finding that children were neglected, pursuant to RC § 2151.03(A)(2), and dependent, pursuant to RC § 2151.04(C), was supported by clear and convincing evidence and was not against the manifest weight of the evidence by virtue of the testimony of the patrons and employees of a library, along with the testimony of a neighbor and a police officer regarding the discipline of the mother's four minor children. In re Lloyd, 2005 Ohio App. LEXIS 2272, 2005 Ohio 2379, (2005).

Mother's statements to mental health counselors that she had hurt her first daughter, had fantasies of causing more harm to that child, and did not want that child was sufficient to support the juvenile court's finding in the dependency proceeding that the first daughter and the a recently-born second daughter were "dependent children" whose custody should be changed. In re Hauenstein, 2004 Ohio App. LEXIS 2550, 2004 Ohio 2915, (2004).

Where the mother had few financial resources, had been unable to find employment, did not get routine medical treatment for her children, depended upon others for her own maintenance and was on the verge of losing her residence, and psychological tests indicated a lack of efficacy and a lack of independence, there was sufficient evidence presented to the trial court from which it could find by clear and convincing evidence that the minor child was a dependent child. In re Barker, 2003 Ohio App. LEXIS 5758, 2003 Ohio 6406, (2003).

Clear and convincing evidence showed that the minor children were dependent as defined in RC § 2151.04(B); the evidence showed the mother's failure to follow the treatment plan for her depression affected her parenting skills. In re Hurst, 2003 Ohio App. LEXIS 4923, 2003 Ohio 5460, (2003).

Appeals court found no plain error in findings that father's stepchild was abused under RC § 2151.031(D) and child was dependent under RC § 2151.04(D) and children's placement with their mother with children's board services; there was clear and convincing evidence, based upon testimony of social workers, children, and father, and based upon his agreement, of the father's verbal and physical abuse of the children. In re Youngerman, 2003 Ohio App. LEXIS 4866, 2003 Ohio 5397, (2003).

Where the parental rights of the mother and the father had been terminated as to two older siblings of the infant child at issue, and the evidence showed that the problems leading to that termination still existed, there was sufficient evidence to support a dependency finding as to the infant. In re D.B., 2003 Ohio App. LEXIS 4028, 2003 Ohio 4526, (2003).

Juvenile court did not err by finding that a minor child living in an unstable and abusive environment was a dependent. In re Day, 2003 Ohio App. LEXIS 3253, 2003 Ohio 3544, (2003).

Leaving children basically unattended with a loaded, unsecured gun is sufficient to support a finding of neglect and dependency: *Skeen v. Gullett*, 1994 Ohio App. LEXIS 2746 (1994).

Where the evidence shows that to return a child to her natural parent would be clearly detrimental to the child, such child is a "dependent child" under RC § 2151.04(C) and the court is authorized to commit the child permanently to the Children's

Services Board under RC § 2151.35.3(D), even though the parent might be capable of giving proper care and support to other children: *In re Justice*, 59 Ohio App. 2d 78, 13 Ohio Op. 3d 139, 392 N.E.2d 897 (1978).

Finding of parental unsuitability

Where a child's best interests under RC § 2151.42 were served by granting legal custody under RC § 2151.011(B)(19) to the child's relatives due to the mother's mental and/or physical condition pursuant to RC § 2151.04(B), the mother's unsuitability was implicit and a separate finding was not required; reasonable efforts to promote a reunification plan were made. *In re Reeher*, 2003 Ohio App. LEXIS 3152, 2003 Ohio 3470, (2003).

The requirement that a court first find a parent unsuitable before awarding legal custody of a child to a nonparent does not apply to dispositional hearings following an adjudication that the child is abused, dependent, or neglected: *In re D.R.*, 153 Ohio App. 3d 156, 792 N.E.2d 203, 2003 Ohio 2852, (2003).

Finding a mother unfit to have custody of her child is not a necessary condition precedent to an adjudication that the child is dependent: *In re Infant East*, 32 Ohio Misc. 65, 61 Ohio Op. 2d 38, 288 N.E.2d 343 (CP 1972).

Habeas corpus

Habeas corpus was not available where a parent had adequate legal remedies for contesting a temporary custody order based on a finding of dependency: *Rammage v. Saros*, 97 Ohio St. 3d 430, 780 N.E.2d 278, 2002 Ohio 6669, (2002).

Jurisdiction

Grandmother's dependency petition and request for temporary custody of her grandchild pursuant to RC §§ 2151.27(A)(1) and 2151.04 was within the juvenile court's subject matter jurisdiction, as the grandmother qualified as "any person" pursuant to RC § 2151.27(A)(1), and RC §§ 2151.27(C) and 2151.353(A)(3) allowed her to seek custody. *In re Brown*, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

Mental illness of parent

The court did not abuse its discretion in finding that appellant's twins were dependent where appellant was required as a condition of her release from a psychiatric hospital to reside with her mother, with whom the children also resided. It was clear that the dangers presented due to the risk of recurrence of their mother's psychotic features constituted a "condition or environment such as to warrant" state intervention on their behalf: *In re Collins*, 1995 Ohio App. LEXIS 5149 (9th Dist. 1995).

A minor child is correctly determined to be a "dependent" child when the record reveals clear and convincing evidence that the mother's mental illness, her repeated hospitalizations on account of such illness, and her persistent refusal to follow prescribed drug therapy interfere with her ability to provide proper care and support for the child pursuant to RC §§ 2151.04(B) and 2151.05: *In re Brown*, 60 Ohio App. 3d 136, 573 N.E.2d 1217 (1989).

Native Americans

Based on prior adjudications of abuse of a child's siblings and a continued threat to the child's safety, the child was properly deemed dependent under RC §§ 2151.04(D), 2151.35(A). Transfer to the Cherokee Nation pursuant to 25 U.S.C.S. §§ 1911(B), 1914 was not required where the Cherokee Nation merely asked for continued notification and the right to participate. *In re Hortsman*, 2005 Ohio App. LEXIS 2091, 2005 Ohio 2172, (2005).

Parent's mental incapacity

Finding that the child was dependent was not against the manifest weight of the evidence because the mother suffered from a mental condition rendering her unable to adequately care for her son; she suffered from delusions in the form of hallucinations. She testified that she saw spirits and believed that people could be possessed by them, that the spirits could hurt her son by, for example, entering a body and slapping him or throwing things at him, and that, if a spirit possessed her son, her boyfriend would help her drive the spirit out of his body and that there would be some pain associated with the procedure. *In re Anderson*, — Ohio

App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1159, 2007 Ohio 1233, (Mar. 15, 2007).

Before a juvenile court can find that children are dependent in that they lack proper care because of the mental condition of their mother, it is necessary for the petitioner to produce not only evidence of the mother's mental incapacity, but also evidence showing that the children lacked proper care because of the mental incapacity: *In re Larry and Scott H.*, 92 Ohio L. Ab. 436, 24 Ohio Op. 2d 334, 192 N.E.2d 683 (JC 1963).

Parent's relationship with another adult

A child is not necessarily neglected or dependent merely because the child's mother lives with a man who is not her legal spouse. In the absence of evidence showing a detrimental impact upon the child, the relationship does not warrant the state in removing the child from parental custody in the best interest of that child: *In re Burrell*, 58 Ohio St. 2d 37, 12 Ohio Op. 3d 43, 388 N.E.2d 738 (1979).

Pleadings

In an action in the juvenile court to determine that a child is a dependent child under GC § 1639-4 (RC § 2151.04), the complaint is sufficiently definite if there is an allegation of dependency (GC § 1639-23 [RC § 2151.27]): *In re Duncan*, 62 Ohio L. Ab. 173, 107 N.E.2d 256 (App 1951).

An affidavit charging that the accused contributed to the dependency of a minor child and acted in a way tending to cause such dependency, without charging that the minor was a dependent child as defined in this section, does not charge an offense under the laws of Ohio: *State v. Krauss*, 81 Ohio App. 453, 37 Ohio Op. 282, 80 N.E.2d 164 (1945).

Poverty

The court did not base its finding of dependency on the parents' poverty where it noted that they could have taken measures to improve living conditions: *In re Brodbeck*, 97 Ohio App. 3d 652, 647 N.E.2d 240 (1994).

Prospective dependency

Given the father's admitted violations of the no-contact order with the mother, the mother's revelations of domestic violence while pregnant with the child, and the parents' unremedied living circumstances despite extensive services, the adjudication of prospective dependency was supported by clear and convincing evidence. *In re Melchizedek M.*, 2006 Ohio App. LEXIS 2961, 2006 Ohio 3062, (2006).

Religion

The state may compel a juvenile to submit to medical treatment for a contagious and potentially life-threatening disease even though such treatment violates the juvenile's religious beliefs. A parent may be ordered to pay the costs of treatment: *In re J.J.*, 64 Ohio App. 3d 806, 582 N.E.2d 1138 (1990).

The refusal of parents, for "religious reasons," to allow further medical treatment of their sick child may be the basis for finding the child to be a "dependent child" under RC § 2151.04(C): *In re Willman*, 24 Ohio App. 3d 191, 24 Ohio B. 313, 493 N.E.2d 1380 (1986).

Relinquishment of parental rights

The trial court does not err in adjudicating a child "dependent" pursuant to RC § 2151.04 when evidence adduced indicated that the mother had relinquished her parental rights by her execution of a permanent surrender, and the legal and natural father expressed no interest in raising the child: *In re Luallen*, 27 Ohio App. 3d 29, 27 Ohio B. 30, 499 N.E.2d 358 (1985).

Stipulation to dependency

While there was clear and convincing evidence to support a trial court's finding that a mother's children were dependent, the record also indicated that the mother stipulated that the children were dependent; thus, the mother could not object to the dependency finding on appeal. *In re A.F.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1509, 2007 Ohio 1646, (Apr. 9, 2007).

Termination of parental rights

Appeals court affirmed a termination of parental rights to one child adjudicated as abused under RC § 2151.031 and one

adjudicated as dependent under RC § 2151.04 where substantial evidence, including the mother's abuse, alcohol use, and encouragement of theft, supported the trial court's best interest findings under RC § 2151.414(D). In re Large, 2003 Ohio App. LEXIS 4772, 2003 Ohio 5275, (2003).

Once a child is adjudicated dependent, the best interests of the child become the trial court's primary concern when determining whether granting permanent custody is justified; the order to grant permanent custody of a minor child to the child services department was affirmed because the evidence supported the finding that a legally secure permanent placement could not be achieved without terminating the parents' custody. In re Riley, 2003 Ohio App. LEXIS 3657, 2003 Ohio 4108, (2003).

Witness

Trial court did not violate a father's Fifth Amendment self-incrimination privilege when it allowed a county agency to call the father as a witness on cross-examination during the adjudicatory hearing of a dependency proceeding involving his daughter, pursuant to RC § 2151.04(C), as the trial court did not compel the father to answer any questions and he chose not to answer a single question or make any statement that would have incriminated him in a subsequent criminal proceeding. In re Myers, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1483, 2007 Ohio 1631, (Apr. 9, 2007).

§ 2151.05 Child without proper parental care.

Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

HISTORY: GC § 1639-5; 117 v 520; Bureau of Code Revision, 10-1-53; 136 v H 85. Eff 11-28-75.

Ohio Rules

Definitions, JuvR 2.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.21 Parent-Child Relationship

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Evidence sufficient

Where a home had no electricity, the children lacked food and/or supervision, and where the mother refused to accept help or follow advice, the children were neglected pursuant to RC §§ 2151.03(A)(2), 2151.011(B)(1), and 2151.05; therefore, the RC § 2151.35(A) determination of neglect was proper. In re Browne Children, 2003 Ohio App. LEXIS 3293, 2003 Ohio 3637, (2003).

Mental illness of parent

A minor child is correctly determined to be a "dependent" child when the record reveals clear and convincing evidence that the mother's mental illness, her repeated hospitalizations on account of such illness, and her persistent refusal to follow prescribed

drug therapy interfere with her ability to provide proper care and support for the child pursuant to RC §§ 2151.04(B) and 2151.05: In re Brown, 60 Ohio App. 3d 136, 573 N.E.2d 1217 (1989).

§ 2151.06 Residence or legal settlement.

Under sections 2151.01 to 2151.54, inclusive, of the Revised Code, a child has the same residence or legal settlement as his parents, legal guardian of his person, or his custodian who stands in the relation of loco parentis.

HISTORY: GC § 1639-6; 117 v 520; 121 v 557; Bureau of Code Revision. Eff 10-1-53.

Ohio Rules

Definitions, JuvR 2.

Residence requirements for complaint, JuvR 10(A).

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Generally

Under this section, a child has, for the purposes of the sections enumerated therein, the same residence or legal settlement as his custodian who stands in the relation of loco parentis, and in such case a child may acquire a legal settlement otherwise than in accordance with the definition of legal settlement in RC § 5113.05: 1956 OAG No. 7008 (1956), (1956 OAG No. 6542, modified).

Child in custody of agency

Under JuvR 11, an order of transfer may only be to the county of the child's residence. A child is not deemed to have the same residence as his parents, pursuant to RC § 2151.06, where the child is in the custody of a public agency: In re Smith, 64 Ohio App. 3d 773, 582 N.E.2d 1117 (1990).

Jurisdiction

Where there is no existing award of custody of an orphaned minor resident of Ohio by a foreign court, the Probate Court of the county of such residence has jurisdiction, under RC § 2111.02 to appoint a guardian of the minor, irrespective of the fact that the domicile of such minor may be in another state: In re Fore, 168 Ohio St. 363, 56 Ohio Op. 337, 127 N.E.2d 1 (1958).

When a juvenile court exercising jurisdiction over a child under the provisions of GC § 1639-16 terminates such jurisdiction, said child by virtue of GC §§ 1639-6 and 3391-16 immediately acquires a legal settlement in the county of residence of the parents, surviving parent, sole parent, parent having custody awarded by a court having jurisdiction, or guardian of the person of such minor: 1953 OAG No. 2656 (1953).

[ESTABLISHMENT AND JURISDICTION]

§ 2151.07 Creation and powers of juvenile court; assignment of judges.

The juvenile court is a court of record within the court of common pleas. The juvenile court has and shall exercise the powers and jurisdiction conferred in Chapters 2151. and 2152. of the Revised Code.

Whenever the juvenile judge of the juvenile court is sick, is absent from the county, or is unable to attend court, or the volume of cases pending in court necessitates it, upon the request of the administrative juvenile

judge, the presiding judge of the court of common pleas pursuant to division (DD) of section 2301.03 of the Revised Code shall assign a judge of any division of the court of common pleas of the county to act in the juvenile judge's place or in conjunction with the juvenile judge. If no judge of the court of common pleas is available for that purpose, the chief justice of the supreme court shall assign a judge of the court of common pleas, a juvenile judge, or a probate judge from a different county to act in the place of that juvenile judge or in conjunction with that juvenile judge. The assigned judge shall receive the compensation and expenses for so serving that is provided by law for judges assigned to hold court in courts of common pleas.

HISTORY: GC § 1639-7; 117 v 520; 122 v 390; Bureau of Code Revision, 10-1-53; 127 v 847 (Eff 9-16-57); 133 v H 320 (Eff 11-19-69); 134 v H 574 (Eff 6-29-72); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 11, § 3. Eff 1-1-2002; 150 v H 26, § 1, eff. 8-8-03; 150 v H 86, § 1, eff. 11-13-03.

Effect of Amendments

H.B. 86, Acts 2003, effective November 13, 2003, substituted "(DD)" for "(CC)" in the final paragraph.

H.B. 26, Acts 2003, effective August 8, 2003, substituted "division (CC)" for "division (BB)" in the final paragraph.

Cross-References to Related Sections

Compensation and expenses of judges holding court outside county of residence, RC § 141.07.

Duties and powers of probation department, RC §§ 2151.14, 2151.15.

Judge of court of common pleas, juvenile divisions, RC § 2301.03.

Juvenile court—

Cuyahoga county, RC § 2153.01 et seq.

Administrative juvenile judge to be clerk of court, RC § 2153.08.

Hamilton county, RC § 2151.08.

Original jurisdiction, RC § 2151.23.

Ohio Constitution

Judges may serve on more than one court in less populous counties, OConst art IV, § 23.

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Authority of court

A juvenile court has authority to grant immunity under RC § 2945.44, even though there was not any criminal proceeding pending against the "grantee" of the immunity, and even though the grantee was not a witness at the time of the grant: *In re Poth*, 2 Ohio App. 3d 361, 2 Ohio B. 417, 442 N.E.2d 105 (1981).

The power to punish for contempt is an inherent power of the juvenile court: *State v. Hershberger*, 77 Ohio L. Ab. 487, 150 N.E.2d 671 (JC 1958).

All courts of record have an inherent common law power to enter, where proper, judgments nunc pro tunc: *In re Howell*, 74 Ohio L. Ab. 217, 140 N.E.2d 347 (JC 1956).

Compatibility of positions

The office of probate and juvenile judge is incompatible with the office of county court judge: 1957 OAG No. 880 (1957).

Compensation

A county auditor may legally pay to the probate judge presiding over the juvenile court of such county as provided by this section,

such of the compensation provided for in SB No. 50 (122 v 390), which became effective during the judge's term, as will bring the probate judge's salary up to but not to exceed the salary of the common pleas judge of such county: 1949 OAG No. 304 (1949).

Under the provisions of SubSB No. 223 (122 v 444), and AmSB No. 50 (122 v 390), the probate judge of Columbiana county, who is also performing the functions of the judge of the juvenile court, can receive no additional salary or compensation during his present term of office: 1947 OAG No. 2159 (1947).

Jurisdiction

The grant of original jurisdiction, by RC § 2151.23(A)(3), to juvenile courts in habeas corpus actions involving the custody of minors is exclusive only as between juvenile courts and those courts given general habeas corpus jurisdiction by RC § 2725.02: *In re Black*, 36 Ohio St. 2d 124, 65 Ohio Op. 2d 308, 304 N.E.2d 394 (1973).

The juvenile court is a court of record and exercises the power and jurisdiction of such a court: *State v. Hershberger*, 77 Ohio L. Ab. 487, 150 N.E.2d 671 (JC 1958).

The juvenile court of Allen County, Ohio, by virtue of this section, is within the probate court and is presided over by the probate judge and is a court of record: *In re Howell*, 74 Ohio L. Ab. 217, 140 N.E.2d 347 (JC 1956).

No "separate and independent juvenile court" has ever been created in Lucas county, the tribunal authorized to administer the law relating to juveniles being the common pleas court, division of domestic relations, and not the "juvenile court": *Burke v. Burke*, 76 Ohio App. 431, 32 Ohio Op. 176, 64 N.E.2d 683 (1945).

After the effective date of the new juvenile court code, in all counties of Ohio not having a juvenile court or a court of common pleas, division of domestic relations, separately and independently created, established and functioning as such by law, all juvenile jurisdiction is reposed in a juvenile court within the probate court of such county to be presided over by the probate judge: 1937 OAG No. 871 (1937).

§ 2151.08 Juvenile court in Hamilton county.

In Hamilton county, the powers and jurisdiction of the juvenile court as conferred by Chapters 2151. and 2152. of the Revised Code shall be exercised by the judge of the court of common pleas whose term begins on January 1, 1957, and that judge's successors and by the judge of the court of common pleas whose term begins on February 14, 1967, and that judge's successors as provided by section 2301.03 of the Revised Code. This conferral of powers and jurisdiction on the specified judges shall be deemed a creation of a separately and independently created and established juvenile court in Hamilton county, Ohio. The specified judges shall serve in each and every position where the statutes permit or require a juvenile judge to serve.

HISTORY: GC § 1639-8; 117 v 520; Bureau of Code Revision, 10-1-53; 127 v 847 (Eff 9-16-57); 131 v 631 (Eff 11-16-65); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Juvenile court defined, RC § 2151.01.1.

CASE NOTES AND OAG

Generally

Under RC §§ 2151.08 and 2151.12, the judge of the juvenile court of Hamilton county is not the clerk of his own court, when exercising the powers and jurisdictions conferred in RC §§ 2151.01 to 2151.54, inclusive, charged with keeping the records sought by the minor: *State ex rel. Hibbard v. Hoffman*, 101 Ohio App. 547, 1 Ohio Op. 2d 454, 137 N.E.2d 606 (1955).

§ 2151.09 Separate building and site may be purchased or leased.

Upon the advice and recommendation of the juvenile judge, the board of county commissioners may provide by purchase, lease, or otherwise a separate building and site to be known as "the juvenile court" at a convenient location within the county which shall be appropriately constructed, arranged, furnished, and maintained for the convenient and efficient transaction of the business of the court and all parts thereof and its employees, including adequate facilities to be used as laboratories, dispensaries, or clinics for the use of scientific specialists connected with the court.

HISTORY: GC § 1639-15; 117 v 520; Bureau of Code Revision. Eff 10-1-53.

CASE NOTES AND OAG

Authority and duties of commissioners

A board of county commissioners has a duty to appropriate funds requested by a juvenile court, so long as such funds are reasonable and necessary to the court's administration of its business, whether or not the program for which such funds are requested is a "traditional" juvenile court program. Opinion No. 2005-028 (2005).

§ 2151.10 Appropriation for court expenses and care of children.

The juvenile judge shall annually submit a written request for an appropriation to the board of county commissioners that shall set forth estimated administrative expenses of the juvenile court that the judge considers reasonably necessary for the operation of the court, including reasonably necessary expenses of the judge and such officers and employees as the judge may designate in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the maintenance and operation of the detention facility, the care, maintenance, education, and support of neglected, abused, dependent, and delinquent children, other than children eligible to participate in the Ohio works first program established under Chapter 5107, of the Revised Code, and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, abused, dependent, or delinquent children. The board shall conduct a public hearing with respect to the written request submitted by the judge and shall appropriate such sum of money each year as it determines, after conducting the public hearing and considering the written request of the judge, is reasonably necessary to meet all the administrative expenses of the court. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge.

If the judge considers the appropriation made by the board pursuant to this section insufficient to meet all the administrative expenses of the court, the judge shall commence an action under Chapter 2731, of the Revised Code in the court of appeals for the judicial district for a determination of the duty of the board of county commissioners to appropriate the amount of money in dispute. The court of appeals shall give priority to the action filed by the juvenile judge over all cases pending on its docket. The burden shall be on the juvenile judge to prove that the appropriation requested is reasonably necessary to meet all administrative expenses of the

court. If, prior to the filing of an action under Chapter 2731, of the Revised Code or during the pendency of the action, the judge exercises the judge's contempt power in order to obtain the sum of money in dispute, the judge shall not order the imprisonment of any member of the board of county commissioners notwithstanding sections 2705.02 to 2705.06 of the Revised Code.

HISTORY: GC § 1639-57; 117 v 520; 119 v 731; 121 v 557; Bureau of Code Revision, 10-1-53; 136 v H 85 (Eff 11-28-75); 138 v S 63 (Eff 7-26-79); 147 v H 408 (Eff 10-1-97); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Appropriations for court of common pleas, RC § 307.01.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Tax levy for judicial and court fund, RC § 5707.02.

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Constitutionality

Revised Code § 2101.11(B), limiting the Ohio Supreme Court's jurisdiction in mandamus, is unconstitutional: State ex rel. Wilke v. Hamilton County Bd. of Comm'rs, 90 Ohio St. 3d 55, 734 N.E.2d 811, 2000 Ohio 13, (2000).

Revised Code § 2151.10, effective July 26, 1979, is an impermissible legislative encroachment upon the inherent powers of the judiciary, and is, therefore, unconstitutional: State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 20 Ohio Op. 3d 361, 423 N.E.2d 80 (1981).

Generally

County commissioners must provide the funds requested by a probate court unless they can show that the requested funding is unreasonable and unnecessary: State ex rel. Morley v. Lordi, 72 Ohio St. 3d 510, 651 N.E.2d 937, 1995 Ohio 182, (1995).

It is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court. Therefore, county commissioners must provide the funds requested by a court of common pleas unless they can show that the requested funding is unreasonable and unnecessary: State ex rel. Weaver v. Lake County Bd. of Comm'rs, 62 Ohio St. 3d 204, 580 N.E.2d 1090 (1991).

Under RC § 2151.10, it is the mandatory duty of the board of county commissioners to appropriate annually a sum of money sufficient to meet all the administrative expenses of the juvenile court of its county regardless of competing demands made upon such board by other branches of the county government: State ex rel. Milligan v. Freeman, 31 Ohio St. 2d 13, 60 Ohio Op. 2d 7, 285 N.E.2d 352 (1972).

By this section, the board of county commissioners is obligated to appropriate annually a sum of money sufficient to meet all the administrative expenses of the juvenile court of its county,

including reasonable expenses of the judge and such officers and employees as he may designate in attending conferences: *State ex rel. Ray v. South*, 176 Ohio St. 241, 27 Ohio Op. 2d 133, 198 N.E.2d 919 (1964).

Under this section the juvenile court is the only "person or tribunal" empowered to incur obligations on behalf of the county for care and treatment of delinquent children: *Cleveland v. Gorman*, 87 Ohio App. 36, 42 Ohio Op. 278, 89 N.E.2d 605 (1949).

By the enactment of this section and GC § 1639-34 (RC § 2151.36) the legislature has granted to the juvenile court authority commensurate with its enlarged responsibility for the welfare of neglected, dependent or delinquent children. The court may obligate the county for the payment of expenses necessary to the proper discharge of its responsibility but it is not contemplated that such action will be taken where the welfare of such children is subserved adequately by their commitment to private or municipal institutions that voluntarily assume the expenses resulting therefrom: *Cleveland v. Gorman*, 87 Ohio App. 36, 42 Ohio Op. 278, 89 N.E.2d 605 (1949).

Under this section it is the duty of county commissioners to appropriate annually a sum of money sufficient to meet all the administrative expenses of the juvenile court in their county, inclusive of the salary and traveling expenses of a regularly appointed probation officer, and an action in mandamus will lie to compel the performance of such duty: *State ex rel. Clarke v. Commissioners*, 141 Ohio St. 16, 25 Ohio Op. 134, 46 N.E.2d 410 (1943).

Where, under division (B) of RC § 2151.35, a juvenile court commits a child to a specialized school in another state, the court, under RC § 2151.36, must itself pay expenses occasioned by the commitment and authorized by the court at the time of commitment, which expenses are paid out of funds appropriated to the court by the board of county commissioners under RC § 2151.10; and pursuant to RC § 2151.36, the court may order the parents, guardian, or person charged with the child's support to reimburse the court for such payments: 1962 OAG No. 2938 (1962).

Administrative expenses

Under the provisions of RC § 2151.10 determination of the necessary annual administrative expenses of the juvenile court lies solely within the sound discretion of the juvenile judge, and the board of county commissioners has no authority to substitute its judgment for that of the juvenile judge by appropriating an amount less than that requested: *State ex rel. Foster v. Wittenberg*, 16 Ohio St. 2d 89, 45 Ohio Op. 2d 442, 242 N.E.2d 884 (1968).

As used in RC §§ 2101.11 and 2151.10, "administrative expenses" of the juvenile and probate courts, respectively, include expenses of office equipment, stationery and supplies: *State ex rel. Ray v. South*, 176 Ohio St. 241, 27 Ohio Op. 2d 133, 198 N.E.2d 919 (1964).

The amount necessary for administrative expenses of the juvenile court lies in the sound discretion of the judge and not that of the board of county commissioners, and under the provisions of this section there is a mandatory duty on the board of county commissioners to appropriate the funds requested by a juvenile court judge for the operation of his court unless such request is for an amount which is so unreasonable as to constitute the request an abuse of discretion: *State ex rel. Moorehead v. Reed*, 177 Ohio St. 4, 28 Ohio Op. 2d 409, 201 N.E.2d 594 (1964).

Before moneys may be expended for administrative expenses, the county commissioners must find the necessity for such attendance and approve the expenditure of moneys so appropriated for such purpose: 1944 OAG No. 7006 (1944).

The provisions of this section and GC § 1639-18 (RC § 2151.13) are mandatory insofar as they refer to appropriations for compensation of a chief probation officer and the administrative expenses of the court; the county commissioners, therefore, must appropriate money for expenses authorized under this act from the date it becomes effective: 1937 OAG No. 1246 (1937).

Attendance at meetings etc.

A registration prepayment, approved by a board of county commissioners, which is made by a county officer, deputy or

employee for a meeting of an association of county officers is an expense which may be reimbursed by the board of county commissioners under RC § 325.20, whether or not such authorized meeting is actually attended: 1964 OAG No. 760 (1964).

A board of county commissioners can only pass upon the reasonableness of expenses of a juvenile judge, or such officers or employees as he may designate, in attending conferences at which juvenile or welfare problems are discussed, provided that specifically itemized vouchers certified by the judge as stipulated in this section are submitted to the board of county commissioners: 1964 OAG No. 1296 (1964).

A board of county commissioners may make an allowance under RC § 325.20, for the expenses of a juvenile judge in attending the Ohio state and American bar association meetings and conventions, provided, there is some portion of these meetings devoted to discussion of juvenile or welfare problems: 1964 OAG No. 760 (1964).

Under this section, a juvenile judge and such officers and employees as he may designate may attend conferences at which juvenile or welfare problems are discussed without securing the approval of the board of county commissioners under RC § 325.20: 1964 OAG No. 1296 (1964).

Payment of the expenses of a juvenile judge, or such officers or employees as he designates, for attending conferences at which juvenile or welfare problems are discussed shall be upon the warrant of the county auditor pursuant to RC § 319.16, upon presentation of specifically itemized vouchers certified by the juvenile judge, as provided in this section, and allowed by the board of county commissioners: 1964 OAG No. 1296 (1964).

Authority of county commissioners

A board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary: *State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 569 N.E.2d 1046 (1991).

Mandamus will issue where the county commissioners fail to meet their burden of proving that the budget requests submitted for the probate and juvenile divisions of the court of common pleas were unreasonable and unnecessary: *State ex rel. Rudes v. Rofkar*, 15 Ohio St. 3d 69, 15 Ohio B. 163, 472 N.E.2d 354 (1984).

Under the provisions of RC § 2151.10, determination of the necessary annual administrative expenses of the juvenile court lies solely within the sound discretion of the juvenile court judge, and the board of county commissioners has no authority to substitute its judgment for that of the juvenile court judge by appropriating an amount less than that requested: *State ex rel. Milligan v. Freeman*, 31 Ohio St. 2d 13, 60 Ohio Op. 2d 7, 285 N.E.2d 352 (1972).

The provisions of this section are mandatory and it is the duty of the county commissioners to make appropriations for such purposes accordingly: *State ex rel. Motter v. Atkinson*, 146 Ohio St. 11, 31 Ohio Op. 472, 63 N.E.2d 440 (1945).

A board of county commissioners has no authority to approve or disapprove the travel expenses of a juvenile court judge. (1944 OAG No. 7006, p. 373, overruled; 1964 OAG No. 1296, p. 2-317, overruled to the extent it is inconsistent with this opinion): OAG No. 97-012 (1997).

The board of county commissioners is not authorized to dictate to the juvenile court the monthly or daily amount that will be expended for the support, care and maintenance of any child under the juvenile court's control: OAG No. 68-094 (1968).

Revised Code § 2151.10 imposes an absolute duty upon the board of county commissioners to appropriate an amount equal to that which is reasonably requested by a juvenile court judge, and that duty is unaffected by the availability or unavailability of unanticipated or unappropriated funds: OAG No. 68-094 (1968).

Authority of court

By attempting to usurp the legislative function of the county commissioners of conducting a budget hearing, the probate court judge acted in a patently and unambiguously unauthorized manner: *State ex rel. Mahoning County Comm'rs v. Maloney*, 100 Ohio St. 3d 248, 797 N.E.2d 1284, 2003 Ohio 5770, (2003).

A court's funding orders are presumed to be reasonable, and the county commissioners must rebut the presumption to justify

noncompliance: State ex rel. Dellick v. Sherlock, 100 Ohio St. 3d 77, 796 N.E.2d 897, 2003 Ohio 5058, (2003).

When a board of county commissioners fails to appropriate funds under this section for the use of juvenile court in the maintenance and support of a dependent child, the juvenile court may not order the county auditor to issue a warrant for such purpose, as under RC § 5705.41, no expenditure of county funds may be made unless funds have been appropriated for that purpose; but the court may proceed against the board of county commissioners to compel it to appropriate the necessary funds: 1962 OAG No. 3489 (1962).

Under RC § 2151.35 a juvenile court may, upon finding that a child is neglected, dependent, or delinquent, commit the child to any person or institution meeting the requirements of RC §§ 5103.02 and 5103.03, even though a county child welfare board exists and could provide care and support for the child; and under this section, the board of county commissioners has a duty to appropriate each year such sum as will provide the court with necessary funds for the care, maintenance, education, and support of neglected, dependent and delinquent children: 1962 OAG No. 3489 (1962).

The authority of the juvenile court to expend public funds to publish and distribute pamphlets discussed: 1944 OAG No. 6877 (1944).

Child apprehended in another state

When a child charged with juvenile delinquency in this state is apprehended and detained by the officers of another state and such child is returned to this state without the issuance of a requisition by the governor, the fees charged by the officers of such other state for apprehending and detaining such child may be paid from the funds appropriated under this section for the care of delinquent children: 1956 OAG No. 7308 (1956).

Contempt

Regardless of statutory authorization, the judges of the courts of common pleas and their divisions have the inherent authority to determine in the first instance, in the exercise of sound discretion, the sum of money reasonable for the efficient operation of the court, and absent an abuse of discretion in the determination of such sum, may proceed either in contempt or mandamus to receive the necessary funding from their respective counties: State ex rel. Slaby v. Summit County Council, 7 Ohio App. 3d 199, 7 Ohio B. 258, 454 N.E.2d 1379 (1983).

When a judge undertakes to enforce his ex parte order, directing a board of county commissioners to purchase furnishings and equipment reasonably necessary for the proper and efficient operation of the court, by proceedings in contempt, the board has remedy by way of appeal only from the finding and order in the contempt proceedings: In re Furnishings for Courtroom Two, 66 Ohio St. 2d 427, 20 Ohio Op. 3d 367, 423 N.E.2d 86 (1981).

The county commissioners could not collaterally attack the court's appropriation request in an appeal from the judgment of contempt: In re Appropriation for 1979, 62 Ohio St. 2d 99, 16 Ohio Op. 3d 104, 403 N.E.2d 974 (1980).

Where the basic function of a court is impeded by a failure or refusal of the body responsible to provide a necessary appropriation, that court possesses the inherent power to order such appropriation and to enforce its order by contempt proceedings: State ex rel. Edwards v. Murray, 48 Ohio St. 2d 303, 2 Ohio Op. 3d 446, 358 N.E.2d 577 (1976).

Employee compensation

Mandamus action by court officials to secure the requested funding appropriation will be denied where the requested salary increases for court employees constitute an abuse of discretion: State ex rel. Britt v. Bd. of Franklin Cty. Commrs., 18 Ohio St. 3d 1, 18 Ohio B. 1, 480 N.E.2d 77 (1985).

The statutory limitation on appointee compensation, set forth in RC § 2101.11, may not validly be applied to the judge of the probate division of the court of common pleas when there has been no showing that the judge abused his discretion in establishing either the size or compensation ranges of his staff: State ex rel. Slaby v. Summit County Council, 7 Ohio App. 3d 199, 7 Ohio B. 258, 454 N.E.2d 1379 (1983).

Modification of budget request

A court may modify its budget request at any time if such modification is otherwise reasonable and necessary: State ex rel. Arbaugh v. Richland Cty. Bd. of Commrs., 14 Ohio St. 3d 5, 14 Ohio B. 311, 470 N.E.2d 880 (1984).

§ 2151.11 Amended and renumbered RC § 2152.73 in 148 v'S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.12 Clerk; bond; judge as clerk.

(A) Except as otherwise provided in this division, whenever a court of common pleas, division of domestic relations, exercises the powers and jurisdictions conferred in Chapters 2151. and 2152. of the Revised Code, the judge or judges of that division or, if applicable, the judge of that division who specifically is designated by section 2301.03 of the Revised Code as being responsible for administering sections 2151.13, 2151.16, 2151.17, 2151.18, and 2152.71 of the Revised Code shall be the clerk of the court for all records filed with the court pursuant to Chapter 2151. or 2152. of the Revised Code or pursuant to any other section of the Revised Code that requires documents to be filed with a juvenile judge or a juvenile court. If, in a division of domestic relations of a court of common pleas that exercises the powers and jurisdiction conferred in Chapters 2151. and 2152. of the Revised Code, the judge of the division, both judges in a two-judge division, or a majority of the judges in a division with three or more judges and the clerk of the court of common pleas agree in an agreement that is signed by the agreeing judge or judges and the clerk and entered into formally in the journal of the court, the clerk of courts of common pleas shall keep the records filed with the court pursuant to Chapter 2151. or 2152. of the Revised Code or pursuant to any other section of the Revised Code that requires documents to be filed with a juvenile judge or a juvenile court.

Whenever the juvenile judge, or a majority of the juvenile judges of a multi-judge juvenile division, of a court of common pleas, juvenile division, and the clerk of the court of common pleas agree in an agreement that is signed by the judge and the clerk and entered formally in the journal of the court, the clerks of courts of common pleas shall keep the records of those courts. In all other cases, the juvenile judge shall be the clerk of the judge's own court.

(B) In counties in which the juvenile judge is clerk of the judge's own court, before entering upon the duties of office as the clerk, the judge shall execute and file with the county treasurer a bond in a sum to be determined by the board of county commissioners, with sufficient surety to be approved by the board, conditioned for the faithful performance of duties as clerk. The bond shall be given for the benefit of the county, the state, or any person who may suffer loss by reason of a default in any of the conditions of the bond.

HISTORY: GC § 1639-17; 117 v 520; Bureau of Code Revision, 10-1-53; 137 v S 336 (Eff 3-3-75); 146 v H 423 (Eff 10-31-96); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Additional fees to pay for computerizing court, RC § 2151.54.1. Employees; bond, RC § 2151.13.

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Generally

Because the Richland County court of common pleas, division of domestic relations, exercises the powers and jurisdiction of a juvenile court, the clerk of the Richland County court of common pleas is required by RC § 2151.12 to keep the juvenile court records: OAG No. 95-026 (1995).

Judges

Under RC §§ 2151.08 and 2151.12, the judge of the juvenile court of Hamilton county is not the clerk of his own court, when exercising the powers and jurisdictions conferred in RC § 2151.01 to 2151.54, inclusive, charged with keeping the records sought by such minor: State ex rel. Hibbard v. Hoffman, 101 Ohio App. 547, 1 Ohio Op. 2d 454, 137 N.E.2d 606 (1955).

§ 2151.13 Employees; compensation; bond.

The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. Such employees shall serve during the pleasure of the judge.

The compensation and expenses of all employees and the salary and expenses of the judge shall be paid in semimonthly installments by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the judge.

The judge may require any employee to give bond in the sum of not less than one thousand dollars, conditioned for the honest and faithful performance of his duties. The sureties on such bonds shall be approved in the manner provided by section 2151.12 of the Revised Code. The judge shall not be personally liable for the default, misfeasance, or nonfeasance of any employee from whom a bond has been required.

HISTORY: GC § 1639-18; 117 v 520; 121 v 557; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

County probation department, RC § 2301.27 et seq.

Employees of juvenile facilities, RC § 2151.70.

Judge as clerk, RC § 2151.12.

Judges of the court of domestic relations; juvenile court responsibility, RC § 2301.03.

Superintendent of facility; employees, RC § 2152.42.

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Civil service generally

Under RC §§ 2301.03(1)(2) and 2151.13, juvenile court employees are unclassified: State ex rel. Hunter v. Summit County

Human Resource Comm'n, 81 Ohio St. 3d 450, 692 N.E.2d 185, 1998 Ohio 614, (1998).

A county visitor appointed from a civil service eligible list by a juvenile court judge may be dismissed at the latter's discretion in accordance with this section: State ex rel. Haskins v. Tyroler, 63 Ohio App. 88, 16 Ohio Op. 378, 25 N.E.2d 309 (1939), [affirmed, 137 Ohio St. 24, 17 Ohio Op. 335, 27 N.E.2d 931.]

A person employed within a juvenile court as chief probation officer and who also acts as county visitor for aid to dependent children serves under the provisions of this section, and is, therefore, within the unclassified civil service: 1939 OAG No. 1123 (1939).

The new juvenile court code expressly takes out of the classified service of the civil service the employees and officers mentioned in this section, all of whom must be appointed by the juvenile court judge and hold their positions subject to his pleasure: 1937 OAG No. 1190 (1937).

When two or more probation officers are appointed by the court, one of them must be known as chief probation officer: 1917 OAG vol. 1, p. 403 (1917).

Compatibility of positions

The position of county personnel officer is compatible with the position of court appointed volunteer of a juvenile court: OAG No. 91-067 (1991).

The offices of township trustee and juvenile probation officer are compatible: OAG No. 73-035 (1973).

The office of probation officer for the juvenile court and that of secret service officer for the prosecuting attorney are compatible and there is no legal reason why one individual may not serve in the two offices at the same time, providing that it is physically possible to properly attend to the duties of both: 1957 OAG No. 461 (1957).

In the event it is found physically possible for one person to hold both offices, there is no incompatibility in the offices of probation officer in the juvenile court, and executive secretary of the child welfare board, in the same county: 1951 OAG No. 961 (1951).

A deputy sheriff employed full time, as such, may not lawfully be employed as a probation officer of the juvenile court: 1949 OAG No. 1076 (1949), [1913 OAG No. 633 approved and followed].

The positions of probation officer of the juvenile court and relief administrator of a city are not in themselves incompatible: 1941 OAG No. 3410 (1941).

The offices of a member of the county board of education and probation officer are incompatible: 1933 OAG No. 1926 (1933).

The sheriff of a county may not be appointed or act as probation officer: 1918 OAG vol. 1, p. 120 (1918).

The superintendent of a detention home may also be appointed probation officer: 1918 OAG vol. 1, p. 145 (1918).

There is no statutory inhibition against the same person holding the position of humane officer and probation officer of the juvenile court: 1915 OAG vol. 1, p. 542 (1915).

Employment agreements

An administrative judge of the juvenile division of a court of common pleas is not authorized to enter into an employment agreement with employees of the court: Malone v. Court of Common Pleas, 45 Ohio St. 2d 245, 74 Ohio Op. 2d 413 (1976).

Expense allowance

A juvenile judge, acting under this section, may fix as the expense allowance of a bailiff, probation officer, or other employee appointed under this section a fixed sum to be paid periodically, provided that the amount paid shall never exceed the amount of actual compensable expense incurred in that period: 1958 OAG No. 2208 (1958).

Termination of employees

Where the code governed the employment of juvenile court employees, the court held that a county board of commissioners had no special relationship with a former juvenile corrections officer who was terminated for trading movie ticket booklets for items of lesser value, and therefore, it was not an appropriate defendant in the former employee's employment discrimination action. Burton v. Hamilton County Juvenile Court, — F. Supp. 2d

—, 2005 U.S. Dist. LEXIS 39775 (S.D. Ohio Dec. 5, 2005), dismissed by 2006 U.S. Dist. LEXIS 718 (S.D. Ohio Jan. 10, 2006).

The administrative judge of the juvenile division has the authority to terminate at will the employment of employees of a juvenile detention center: *Abbott v. Stepanik*, 64 Ohio App. 3d 719, 582 N.E.2d 1082 (1990).

§ 2151.14 Duties and powers of probation department; records; command assistance.

(A) The chief probation officer, under the direction of the juvenile judge, shall have charge of the work of the probation department. The department shall make any investigations that the judge directs, keep a written record of the investigations, and submit the record to the judge or deal with them as the judge directs. The department shall furnish to any person placed on community control a statement of the conditions of community control and shall instruct the person regarding them. The department shall keep informed concerning the conduct and condition of each person under its supervision and shall report on their conduct and condition to the judge as the judge directs. Each probation officer shall use all suitable methods to aid persons on community control and to bring about improvement in their conduct and condition. The department shall keep full records of its work, keep accurate and complete accounts of money collected from persons under its supervision, give receipts for the money, and make reports on the money as the judge directs.

(B) Except as provided in this division or in division (C) or (D) of this section, the reports and records of the department shall be considered confidential information and shall not be made public. If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the department shall make available to the officer, for use in preparing the report, any reports and records it possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications. A probation officer may serve the process of the court within or without the county, make arrests without warrant upon reasonable information or upon view of the violation of this chapter or Chapter 2152. of the Revised Code, detain the person arrested pending the issuance of a warrant, and perform any other duties, incident to the office, that the judge directs. All sheriffs, deputy sheriffs, constables, marshals, deputy marshals, chiefs of police, municipal corporation and township police officers, and other peace officers shall render assistance to probation officers in the performance of their duties when requested to do so by any probation officer.

(C) When a complaint has been filed alleging that a child is delinquent by reason of having committed an act that would constitute a violation of section 2907.02, 2907.03, 2907.05, or 2907.06 of the Revised Code if committed by an adult and the arresting authority, a court, or a probation officer discovers that the child or a person whom the child caused to engage in sexual activity, as defined in section 2907.01 of the Revised Code, has a communicable disease, the arresting authority, court, or probation officer immediately shall notify the victim of the delinquent act of the nature of the disease.

(D)(1) In accordance with division (D)(2) of this section, subject to the limitation specified in division (D)(4)

of this section, and in connection with a disposition pursuant to section 2151.354 [2151.35.4] of the Revised Code when a child has been found to be an unruly child, a disposition pursuant to sections 2152.19 and 2152.20 of the Revised Code when a child has been found to be a delinquent child, or a disposition pursuant to sections 2152.20 and 2152.21 of the Revised Code when a child has been found to be a juvenile traffic offender, the court may issue an order requiring boards of education, governing bodies of chartered nonpublic schools, public children services agencies, private child placing agencies, probation departments, law enforcement agencies, and prosecuting attorneys that have records related to the child in question to provide copies of one or more specified records, or specified information in one or more specified records, that the individual or entity has with respect to the child to any of the following individuals or entities that request the records in accordance with division (D)(3)(a) of this section:

- (a) The child;
- (b) The attorney or guardian ad litem of the child;
- (c) A parent, guardian, or custodian of the child;
- (d) A prosecuting attorney;
- (e) A board of education of a public school district;
- (f) A probation department of a juvenile court;
- (g) A public children services agency or private child placing agency that has custody of the child, is providing services to the child or the child's family, or is preparing a social history or performing any other function for the juvenile court;

(h) The department of youth services when the department has custody of the child or is performing any services for the child that are required by the juvenile court or by statute;

(i) The individual in control of a juvenile detention or rehabilitation facility to which the child has been committed;

(j) An employee of the juvenile court that found the child to be an unruly child, a delinquent child, or a juvenile traffic offender;

(k) Any other entity that has custody of the child or is providing treatment, rehabilitation, or other services for the child pursuant to a court order, statutory requirement, or other arrangement.

(2) Any individual or entity listed in divisions (D)(1)(a) to (k) of this section may file a motion with the court that requests the court to issue an order as described in division (D)(1) of this section. If such a motion is filed, the court shall conduct a hearing on it. If at the hearing the movant demonstrates a need for one or more specified records, or for information in one or more specified records, related to the child in question and additionally demonstrates the relevance of the information sought to be obtained from those records, and if the court determines that the limitation specified in division (D)(4) of this section does not preclude the provision of a specified record or specified information to the movant, then the court may issue an order to a designated individual or entity to provide the movant with copies of one or more specified records or with specified information contained in one or more specified records.

(3)(a) Any individual or entity that is authorized by an order issued pursuant to division (D)(1) of this section to obtain copies of one or more specified records, or specified information, related to a particular child may file a written request for copies of the records or for the information with any individual or entity required by the

order to provide copies of the records or the information. The request shall be in writing, describe the type of records or the information requested, explain the need for the records or the information, and be accompanied by a copy of the order.

(b) If an individual or entity that is required by an order issued pursuant to division (D)(1) of this section to provide one or more specified records, or specified information, related to a child receives a written request for the records or information in accordance with division (D)(3)(a) of this section, the individual or entity immediately shall comply with the request to the extent it is able to do so, unless the individual or entity determines that it is unable to comply with the request because it is prohibited by law from doing so, or unless the requesting individual or entity does not have authority to obtain the requested records or information. If the individual or entity determines that it is unable to comply with the request, it shall file a motion with the court that issued the order requesting the court to determine the extent to which it is required to comply with the request for records or information. Upon the filing of the motion, the court immediately shall hold a hearing on the motion, determine the extent to which the movant is required to comply with the request for records or information, and issue findings of fact and conclusions of law in support of its determination. The determination of the court shall be final. If the court determines that the movant is required to comply with the request for records or information, it shall identify the specific records or information that must be supplied to the individual or entity that requested the records or information.

(c) If an individual or entity is required to provide copies of one or more specified records pursuant to division (D) of this section, the individual or entity may charge a fee for the copies that does not exceed the cost of supplying them.

(4) Division (D) of this section does not require, authorize, or permit the dissemination of any records or any information contained in any records if the dissemination of the records or information generally is prohibited by any provision of the Revised Code and a specific provision of the Revised Code does not specifically authorize or permit the dissemination of the records or information pursuant to division (D) of this section.

HISTORY: GC § 1639-19; 117 v 520; Bureau of Code Revision, 10-1-53; 141 v H 468 (Eff 9-17-86); 143 v S 258 (Eff 8-22-90); 146 v H 445 (Eff 9-3-96); 148 v H 442 (Eff 10-17-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 247. Eff 5-30-2002.

Cross-References to Related Sections

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Confidentiality of student information; law enforcement use, RC § 3319.32.1.

Creation and powers of juvenile court, RC § 2151.07.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Exemption from regulations concerning personal information systems, RC § 1347.04.

Powers and duties vested in county department of probation, RC § 2151.15.

Request for copies of records concerning child alleged to be abused, neglected or dependent, RC § 2151.14.1.

Ohio Rules

Probation, JuvR 34(C), 35(B).

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Authority of officers

Under the provisions of RC §§ 2151.14 and 2151.31, it is the manifest duty of enforcement officers to co-operate with and assist the juvenile authorities in the performance of their duties when such officers are specifically requested to do so by the juvenile authorities; and such officers may avoid liability in an action for false imprisonment by showing that they were justified in the detention or restraint of the juvenile made under the specific direction and order of the juvenile authorities: *Garland v. Dustman*, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

Compatible offices

The offices of township trustee and juvenile probation officer are compatible: OAG No. 73-035 (1973).

Cross-examination

Although Ohio law generally protects a minor from the exposure of his acts in another judicial forum, paragraph (G) of this section, does not prohibit the cross-examination, in a criminal trial, of a defendant, or defendant's witnesses, concerning a prior juvenile record, where the defendant's evidence attempts to establish his good character: *State v. Hale*, 21 Ohio App. 2d 207, 50 Ohio Op. 2d 340, 256 N.E.2d 239 (1969).

Disclosure of information

Where a minor and a parent executed waivers pursuant to RC § 1347.08, permitting access to the minor's juvenile records and the records concerning the minor's criminal history were relevant to prove the issues of notice and foreseeability in a civil action, good cause was demonstrated; consequently, the trial court did not abuse its discretion or breach the confidentiality considerations of RC §§ 2151.14 and 5153.17, and Ohio R. Juv. P. 32 in compelling production of the records under Ohio R. Civ. P. 26(B)(1). *Grant v. Discovery for Youth*, 2005 Ohio App. LEXIS 701, 2005 Ohio 680, (2005).

The federal constitution does not encompass a general right to nondisclosure of private information. Thus disclosure of juvenile court records, including individual social histories, to appropriate governmental and social agencies is not unconstitutional: *J.P. v. DeSanti*, 653 F.2d 1080 (6th Cir. 1981).

An informal procedure is distinguished from the formal procedure by the fact that no written pleadings are filed, and the case is not docketed or recorded, but memoranda are made and kept in the social files of the court which, under the provisions of this section, are confidential: *In re Douglas*, 82 Ohio L. Ab. 170, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (JC 1959).

The provisions of this section, that "the reports and records of the [probation] department [of the juvenile court] shall be considered confidential information and shall not be made public," apply only to the probation department of the juvenile court and have no application to cases where juvenile delinquents have been sentenced and committed to a state institution: *State v. Sherow*, 101 Ohio App. 169, 1 Ohio Op. 2d 100, 138 N.E.2d 444 (1956).

Pursuant to JuvR 32(B), 37(B) and RC § 2151.14, juvenile court records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court

probation department are not public records under RC § 149.43: OAG No. 90-101 (1990).

Polygraph examinations

Submission to polygraph examinations is a reasonable requirement of probation: In re D.S., 160 Ohio App. 3d 552, 828 N.E.2d 143, 2005 Ohio 1803, (2005), reversed by 111 Ohio St. 3d 361, 2006 Ohio 5851, 856 N.E.2d 921, 2006 Ohio LEXIS 3275 (2006).

[§ 2151.14.1] § 2151.141 Request for copies of records concerning child alleged to be abused, neglected or dependent.

(A) If a complaint filed with respect to a child pursuant to section 2151.27 of the Revised Code alleges that a child is an abused, neglected, or dependent child, any individual or entity that is listed in divisions (D)(1)(a) to (k) of section 2151.14 of the Revised Code and that is investigating whether the child is an abused, neglected, or dependent child, has custody of the child, is preparing a social history for the child, or is providing any services for the child may request any board of education, governing body of a chartered nonpublic school, public children services agency, private child placing agency, probation department, law enforcement agency, or prosecuting attorney that has any records related to the child to provide the individual or entity with a copy of the records. The request shall be in writing, describe the type of records requested, explain the need for the records, be accompanied by a copy of the complaint, and describe the relationship of the requesting individual or entity to the child. The individual or entity shall provide a copy of the request to the child in question, the attorney or guardian ad litem of the child, and the parent, guardian, or custodian of the child.

(B)(1) Any board of education, governing body of a chartered nonpublic school, public children services agency, private child placing agency, probation department, law enforcement agency, or prosecuting attorney that has any records related to a child who is the subject of a complaint as described in division (A) of this section and that receives a request for a copy of the records pursuant to division (A) of this section shall comply with the request, unless the individual or entity determines that it is unable to do so because it is prohibited by law from complying with the request, the request does not comply with division (A) of this section, or a complaint as described in division (A) of this section has not been filed with respect to the child who is the subject of the requested records. If the individual or entity determines that it is unable to comply with the request, it shall file a motion with the court in which the complaint as described in division (A) of this section was filed or was alleged to have been filed requesting the court to determine the extent to which it is required to comply with the request for records. Upon the filing of the motion, the court immediately shall hold a hearing on the motion, determine the extent to which the movant is required to comply with the request for records, and issue findings of fact and conclusions of law in support of its determination. The determination of the court shall be final. If the court determines that the movant is required to comply with the request for records, it shall identify the specific records that must be supplied to the individual or entity that requested them.

(2) In addition to or in lieu of the motion described in division (B)(1) of this section, a law enforcement agency or prosecuting attorney that receives a request for a copy

of records pursuant to division (A) of this section may file a motion for a protective order as described in this division with the court in which the complaint as described in division (A) of this section was filed or alleged to have been filed. Upon the filing of a motion of that nature, the court shall conduct a hearing on the motion. If at the hearing the law enforcement agency or prosecuting attorney demonstrates that any of the following applies and if, after considering the purposes for which the records were requested pursuant to division (A) of this section, the best interest of the child, and any demonstrated need to prevent specific information in the records from being disclosed, the court determines that the issuance of a protective order is necessary, then the court shall issue a protective order that appropriately limits the disclosure of one or more specified records or specified information in one or more specified records:

(a) The records or information in the records relate to a case in which the child is alleged to be a delinquent child or a case in which a child is transferred for trial as an adult pursuant to section 2152.12 of the Revised Code and Juvenile Rule 30, and the adjudication hearing in the case, the trial in the case, or other disposition of the case has not been concluded.

(b) The records in question, or the records containing the information in question, are confidential law enforcement investigatory records, as defined in section 149.43 of the Revised Code.

(c) The records or information in the records relate to a case in which the child is or was alleged to be a delinquent child or to a case in which a child is or was transferred for trial as an adult pursuant to section 2152.12 of the Revised Code and Juvenile Rule 30; another case is pending against any child or any adult in which the child is alleged to be a delinquent child, the child is so transferred for trial as an adult, or the adult is alleged to be a criminal offender; the allegations in the case to which the records or information relate and the allegations in the other case are based on the same act or transaction, are based on two or more connected transactions or constitute parts of a common scheme or plan, or are part of a course of criminal conduct; and the adjudication hearing in, trial in, or other disposition of the other case has not been concluded.

(C) If an individual or entity is required to provide copies of records pursuant to this section, the individual or entity may charge a fee for the copies that does not exceed the cost of supplying them.

(D) This section does not require, authorize, or permit, the dissemination of any records or any information contained in any records if the dissemination of the records or information generally is prohibited by section 2151.142 [2151.14.2] or another section of the Revised Code and a waiver as described in division (B)(1) of section 2151.142 [2151.14.2] of the Revised Code or a specific provision of the Revised Code does not specifically authorize or permit the dissemination of the records or information pursuant to this section.

HISTORY: 143 v S 258 (Eff 8-22-90); 148 v H 412 (Eff 4-10-2001); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

See Comment, Legislative Service Commission following RC § 2151.02.2.

Cross-References to Related Sections

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Confidentiality of student information; law enforcement use, RC § 3319.32.1.

Exemption from regulations concerning personal information systems, RC § 1347.04.

Ohio Rules

Relinquishment of jurisdiction, JuvR 30.

Ohio Administrative Code

Department of job and family services, division of social services—

Family and children services information system (FACSIS) reporting requirements. OAC 5101.2-33-05.

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Generally

Sealing of records

Generally

Pursuant to RC § 2151.14.1, when a complaint alleging abuse, neglect, or dependency of a child is filed under RC § 2151.27, a request directed to a public children services agency or the prosecuting attorney for "any records related to the child" must be granted or denied by following the procedures set forth in RC § 2151.14.1: OAG No. 91-003 (1991).

Sealing of records

Records of a county children's services board investigation made pursuant to RC §§ 5153.17 and 2151.14.1 are "official records" within the meaning of RC § 2953.52: *State v. S.R.*, 63 Ohio St. 3d 590, 589 N.E.2d 1319 (1992).

[§ 2151.14.2] § 2151.142 Confidentiality of residential addresses of public children services agency or private child placing agency personnel.

(A) As used in this section, "public record" and "journalist" have the same meanings as in section 149.43 of the Revised Code.

(B) Both of the following apply to the residential address of each officer or employee of a public children services agency or a private child placing agency who performs official responsibilities or duties described in section 2151.14, 2151.141 [2151.14.1], 2151.33, 2151.353 [2151.35.3], 2151.412 [2151.41.2], 2151.413 [2151.41.3], 2151.414 [2151.41.4], 2151.415 [2151.41.5], 2151.416 [2151.41.6], 2151.417 [2151.41.7], or 2151.421 [2151.42.1] or another section of the Revised Code and to the residential address of persons related to that officer or employee by consanguinity or affinity:

(1) Other officers and employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency shall consider those residential addresses to be confidential information. The officer or employee of the public children services agency or private child placing agency may waive the confidentiality of those residential addresses by giving express permission for their disclosure to other officers or employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency.

(2) To the extent that those residential addresses are contained in public records kept by a public children services agency, private child placing agency, juvenile court, or law enforcement agency, they shall not be

considered to be information that is subject to inspection or copying as part of a public record under section 149.43 of the Revised Code.

(C) Except as provided in division (D) of this section, in the absence of a waiver as described in division (B)(1) of this section, no officer or employee of a public children services agency, private child placing agency, juvenile court, or law enforcement agency shall disclose the residential address of an officer or employee of a public children services agency or private child placing agency, or the residential address of a person related to that officer or employee by consanguinity or affinity, that is confidential information under division (B)(1) of this section to any person, when the disclosing officer or employee knows that the person is or may be a subject of an investigation, interview, examination, criminal case, other case, or other matter with which the officer or employee to whom the residential address relates currently is or has been associated.

(D) If, on or after the effective date of this section, a journalist requests a public children services agency, private child placing agency, juvenile court, or law enforcement agency to disclose a residential address that is confidential information under division (B)(1) of this section, the agency or juvenile court shall disclose to the journalist the residential address if all of the following apply:

(1) The request is in writing, is signed by the journalist, includes the journalist's name and title, and includes the name and address of the journalist's employer.

(2) The request states that disclosure of the residential address would be in the public interest.

(3) The request adequately identifies the person whose residential address is requested.

(4) The public children services agency, private child placing agency, juvenile court, or law enforcement agency receiving the request is one of the following:

(a) The agency or juvenile court with which the official in question serves or with which the employee in question is employed;

(b) The agency or juvenile court that has custody of the records of the agency with which the official in question serves or with which the employee in question is employed.

HISTORY: 148 v H 412. Eff 4-10-2001.

Cross-References to Related Sections

Request for copies of records concerning child alleged to be abused, neglected or dependent, RC § 2151.14.1.

§ 2151.15 Powers and duties vested in county department of probation.

When a county department of probation has been established in the county and the juvenile judge does not establish a probation department within the juvenile court as provided in section 2151.14 of the Revised Code, all powers and duties of the probation department provided for in sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall vest in and be imposed upon such county department of probation.

In counties in which a county department of probation has been or is hereafter established the judge may transfer to such department all or any part of the powers and duties of his own probation department; provided that all juvenile cases shall be handled within a county department of probation exclusively by an officer or

division separate and distinct from the officers or division handling adult cases.

HISTORY: GC § 1639-20; 117 v 520; 121 v 557; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Creation and powers of juvenile court, RC § 2151.07.
Probation department, common pleas court, RC § 2301.27 et seq.

Ohio Rules

Probation, JuvR 34(C), 35(B).

[§ 2151.15.1] § 2151.151 Contract for services for children on probation.

(A) The juvenile judge may contract with any agency, association, or organization, which may be of a public or private, or profit or nonprofit nature, or with any individual for the provision of supervisory or other services to children placed on probation who are under the custody and supervision of the juvenile court.

(B) The juvenile judges of two or more adjoining or neighboring counties may join together for purposes of contracting with any agency, association, or organization, which may be of a public or private, or profit or nonprofit nature, or with any individual for the provision of supervisory or other services to children placed on probation who are under the custody and supervision of the juvenile court of any of the counties that joins [join] together.

HISTORY: 139 v H 440. Eff 11-23-81.

Ohio Rules

Probation, JuvR 34(C), 35(B).

Ohio Administrative Code

Department of youth services—
Community juvenile corrections facilities—
Fiscal rules and procedures. OAC ch. 5139-63.
Program rules and procedures. OAC ch. 5139-61.

[§ 2151.15.2] § 2151.152 Reimbursement of court for costs of children in custody of court.

The juvenile judge may enter into an agreement with the department of job and family services pursuant to section 5101.11 of the Revised Code for the purpose of reimbursing the court for foster care maintenance costs and associated administrative and training costs incurred on behalf of a child eligible for payments under Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C.A. 670 (1980) and who is in the temporary or permanent custody of the court or subject to a disposition issued under division (A)(5) of section 2151.354 [2151.35.4] or division (A)(7)(a)(ii) or (A)(8) of section 2152.19 of the Revised Code. The agreement shall govern the responsibilities and duties the court shall perform in providing services to the child.

HISTORY: 146 v H 274 (Eff 8-8-96); 148 v H 471 (Eff 7-1-2000); 149 v H 57 (Eff 2-19-2002); 149 v H 400. Eff 4-3-2003.

† The effective date of sections 1 and 2 of Sub. H.B. 57 (149 v —) differs from the effective date set for the sections by section 3 of the Act. See provisions of OConst art II, §§ 1c and d.

§ 2151.16 Referees; powers and duties.

The juvenile judge may appoint and fix the compensation of referees who shall have the usual power of masters in chancery cases, provided, in all such cases submitted to them by the juvenile court, they shall hear the testimony of witnesses and certify to the judge their findings upon the case submitted to them, together with their recommendation as to the judgment or order to be made in the case in question. The court, after notice to the parties in the case of the presentation of such findings and recommendation, may make the order recommended by the referee, or any other order in the judgment of the court required by the findings of the referee, or may hear additional testimony, or may set aside said findings and hear the case anew. In appointing a referee for the trial of females, a female referee shall be appointed where possible.

HISTORY: GC § 1639-21; 117 v 520; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Judge as clerk, RC § 2151.12.
Judges of the court of domestic relations; juvenile court responsibility, RC § 2301.03.

Ohio Rules

Magistrates, JuvR 40.

Comparative Legislation

Juvenile referees:

CA—Cal Wel & Inst Code § 247
IL—705 ILCS §§ 405/2-12, 405/3-14, 405/4-11
IN—Burns Ind. Code Ann. §§ 31-31-3-6, 33-5-5.1-8
MI—MCLS § 712A.10
PA—42 P.S. § 6305

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Generally

The action of a juvenile court in postponing a hearing on a matter submitted to a referee who failed to file findings and recommendations and in rectifying such deficiency by taking additional testimony and, thereafter, rendering a decision constitutes a substantial compliance with this section, which sets forth the duties of juvenile court referees: *In re Cutman*, 22 Ohio App. 2d 125, 51 Ohio Op. 2d 252, 259 N.E.2d 128 (1969).

The practice of hearings before referees is recognized procedure in the juvenile court: *Allstate Ins. Co. v. Cook*, 26 Ohio Op. 2d 192, 324 F.2d 752 (6th Cir. 1963).

A referee of the juvenile court appointed pursuant to this section has functions and duties similar to those of a master commissioner appointed pursuant to GC §§ 11487 to 11492 (RC §§ 2315.38 to 2315.43), inclusive: *DeVillie v. DeVillie*, 87 Ohio App. 220, 42 Ohio Op. 423, 94 N.E.2d 474 (1949).

The findings and recommendations by the referee are required by statute to be in writing; and since the findings and recommendations so certified to the trial judge must be in writing, the findings and recommendations, of which the parties shall have notice, shall likewise be in writing: *In re Hobson*, 44 Ohio L. Ab. 86, 62 N.E.2d 510 (App 1945).

Compatibility of offices

A person may serve as a part-time administrative hearing officer for a county child support enforcement agency and

part-time magistrate of a court of common pleas in an adjacent county, provided that as a magistrate she does not preside over cases involving the child support enforcement agency that employs her as an administrative hearing officer. (1989 Op. Att'y Gen. No. 89-072, distinguished.) Opinion No. 2005-022 (2005).

Hearing by court

An evidentiary hearing before the juvenile court judge is discretionary under RC § 2151.16 after a hearing before a juvenile court referee: *In re Stall*, 36 Ohio St. 2d 139, 65 Ohio Op. 2d 338, 304 N.E.2d 596 (1973).

Investigator

While the juvenile court has authority by this section to appoint a referee with power of masters in chancery to hear a case and report his findings and recommendations to the judge, there is no such statutory provision with reference to an investigating counselor, and the action and report of such counselor is *ex parte* and does not constitute the hearing of "additional testimony" by the judge under such statute: *Dolgin v. Dolgin*, 1 Ohio App. 2d 430, 30 Ohio Op. 2d 435, 205 N.E.2d 106 (1965).

Trial of adult

A juvenile judge has no authority to commit the trial of a criminal charge against an adult to a referee and any proceedings so committed are null and void: *State v. Eddington*, 52 Ohio App. 2d 312, 6 Ohio Op. 3d 317, 369 N.E.2d 1054 (1976).

§ 2151.17 Rules governing practice and procedure.

Except as otherwise provided by rules promulgated by the supreme court, the juvenile court may prescribe rules regulating the docketing and hearing of causes, motions, and demurrers, and such other matters as are necessary for the orderly conduct of its business and the prevention of delay, and for the government of its officers and employees, including their conduct, duties, hours, expenses, leaves of absence, and vacations.

HISTORY: GC § 1639-11; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53; 133 v H 320. Eff 11-19-69.

Cross-References to Related Sections

Judge as clerk, RC § 2151.12.

Judges of the court of domestic relations; juvenile court responsibility, RC § 2301.03.

Ohio Rules

Pleadings and motions, JuvR 22.

Procedure not otherwise specified, JuvR 45.

Rule of court, JuvR 2(JJ).

§ 2151.18 Court records generally; annual report.

(A) The juvenile court shall maintain records of all official cases brought before it, including, but not limited to, an appearance docket, a journal, and records of the type required by division (A)(2) of section 2151.35 of the Revised Code. The parents, guardian, or other custodian of any child affected, if living, or the nearest of kin of the child, if the parents would be entitled to inspect the records but are deceased, may inspect these records, either in person or by counsel, during the hours in which the court is open.

(B) Not later than June of each year, the court shall prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition of the cases, and any other data pertaining to the work of the court that the juvenile

judge directs. The court shall file copies of the report with the board of county commissioners. With the approval of the board, the court may print or cause to be printed copies of the report for distribution to persons and agencies interested in the court or community program for dependent, neglected, abused, or delinquent children and juvenile traffic offenders. The court shall include the number of copies ordered printed and the estimated cost of each printed copy on each copy of the report printed for distribution.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Analogous to former RC § 2151.18, amended and re-numbered RC § 2152.71 in 148 v S 179, eff 1-1-2002.

Ohio Rules

Reports and information, SupR 37.

§ 2151.19 Summons; expense.

The summons, warrants, citations, subpoenas, and other writs of the juvenile court may issue to a probation officer of any such court or to the sheriff of any county or any marshal, constable, or police officer, and the provisions of law relating to the subpoenaing of witnesses in other cases shall apply in so far as they are applicable.

When a summons, warrant, citation, subpoena, or other writ is issued to any such officer, other than a probation officer, the expense in serving the same shall be paid by the county, township, or municipal corporation in the manner prescribed for the payment of sheriffs, deputies, assistants, and other employees.

HISTORY: GC §§ 1639-52, 1639-53; 117 v 520; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

District detention facilities rules, RC § 5139.28.1.

Ohio Rules

Process, JuvR 15-17.

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Administrative expenses

Expenses incurred by the county sheriff in serving summonses, warrants, citations, subpoenas, writs, and other papers issued by the juvenile court in connection with cases that are filed in the juvenile court shall, pursuant to RC § 2151.19, be paid out of the monthly allowance that is made available therefor by the board of county commissioners under RC § 325.07. Such expenses shall not be taxed and collected by the juvenile court as fees or costs under RC § 2151.54: OAG No. 89-086 (1989).

The sheriff has no authority to arrest a delinquent child outside of the state and is not entitled to a fee or expenses for so doing: 1918 OAG vol. 1, p. 980 (1918).

Immunity of officer

On grounds of public policy, an administrative or executive officer, whether he be constable, policeman, game warden, sheriff, or any other authorized officer of the state, whose duty it is under the law to serve the process of a court having jurisdiction of an offense sought to be charged in a complaint by affidavit, information or indictment, but which complaint is insufficient in law, is exempt from any liability arising from an imprisonment by

virtue of such process, which is prima facie regular: *Brinkman v. Drolesbaugh*, 97 Ohio St. 171, 119 N.E. 451 (1918).

§ 2151.20 Seal of court; dimensions.

Juvenile courts within the probate court shall have a seal which shall consist of the coat of arms of the state within a circle one and one-fourth inches in diameter and shall be surrounded by the words "juvenile court... county."

The seal of other courts exercising the powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall be attached to all writs and processes.

HISTORY: GC § 1639-9; 117 v 520; Bureau of Code Revision, 10-1-53; 132 v H 164. Eff 12-15-67.

§ 2151.21 Jurisdiction in contempt.

The juvenile court has the same jurisdiction in contempt as courts of common pleas.

HISTORY: GC § 1639-10; 117 v 520; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Contempt powers, RC § 2705.01 et seq.

Ohio Rules

Contempt, JuvR 15(B)(4), 17(F).

CASE NOTES AND OAG

INDEX

Generally
Immunity grant

Generally

The power to punish for contempt is an inherent power of the juvenile court: *State v. Hershberger*, 77 Ohio L. Ab. 487, 150 N.E.2d 671 (JC 1958).

Immunity grant

A juvenile court has authority to grant immunity under RC § 2945.44, even though there was not any criminal proceeding pending against the "grantee" of the immunity, and even though the grantee was not a witness at the time of the grant: *In re Poth*, 2 Ohio App. 3d 361, 2 Ohio B. 417, 442 N.E.2d 105 (1981).

[§ 2151.21.1] § 2151.211 Employee may not be penalized for being subpoenaed.

No employer shall discharge or terminate from employment, threaten to discharge or terminate from employment, or otherwise punish or penalize any employee because of time lost from regular employment as a result of the employee's attendance at any proceeding pursuant to a subpoena under this chapter or Chapter 2152. of the Revised Code. This section generally does not require and shall not be construed to require an employer to pay an employee for time lost as a result of attendance at any proceeding under either chapter. However, if an employee is subpoenaed to appear at a proceeding under either chapter and the proceeding pertains to an offense against the employer or an offense involving the employee during the course of the employee's employment, the employer shall not decrease or withhold the employ-

ee's pay for any time lost as a result of compliance with the subpoena. Any employer who knowingly violates this section is in contempt of court.

HISTORY: 140 v S 172 (Eff 9-26-84); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Prohibited actions by employer of victim, RC § 2930.18.

Victim's right to attend proceeding without being penalized by employer, RC § 109.42.

Ohio Rules

Depositions, JuvR 25.

Subpoena, JuvR 17.

CASE NOTES AND OAG

Wrongful discharge

An exception to the employment-at-will doctrine exists in Ohio creating a cause of action for wrongful discharge in violation of public policy as articulated in a specific statute, e.g., RC § 2313.18, jury duty. (*Greeley v. Miami Valley Maintenance Contrs., Inc.* [1990], 49 OS3d 228, 551 NE2d 981, applied); *Shaffer v. Frontrunner, Inc.*, 57 Ohio App. 3d 18, 566 N.E.2d 193 (1990).

§ 2151.22 Terms of court; sessions.

The term of any juvenile or domestic relations court, whether a division of the court of common pleas or an independent court, is one calendar year. All actions and other business pending at the expiration of any term of court is automatically continued without further order. The judge may adjourn court or continue any case whenever, in his opinion, such continuance is warranted.

Sessions of the court may be held at such places throughout the county as the judge shall from time to time determine.

HISTORY: GC § 1639-12; 117 v 520; Bureau of Code Revision, 10-1-53; 136 v H 390. Eff 8-6-76.

§ 2151.23 Jurisdiction of juvenile court.

Effective until 1-1-08.

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who, is alleged to be an unruly or delinquent child for being an habitual or chronic truant;

(2) Subject to divisions (G) and (V) of section 2301.03 of the Revised Code, to determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to

hospitalization by court order, as defined in section 5122.01 of the Revised Code;

(5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;

(6) To hear and determine all criminal cases in which an adult is charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of section 2919.23, or section 2919.24 of the Revised Code, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of section 2919.23, or section 2919.24 of the Revised Code;

(7) Under the interstate compact on juveniles in section 2151.56 of the Revised Code;

(8) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

(9) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code;

(10) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code;

(11) Subject to divisions (G) and (V) of section 2301.03 of the Revised Code, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code;

(12) Concerning an action commenced under section 3121.38 of the Revised Code;

(13) To hear and determine violations of section 3321.38 of the Revised Code;

(14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child;

(15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.85 and Chapter 2950. of the Revised Code regarding a child who has been adjudicated a delinquent child and to refer the duties conferred upon the juvenile court judge under sections 2152.82 to 2152.85 and Chapter 2950. of the Revised Code to magistrates appointed by the juvenile court judge in accordance with Juvenile Rule 40.

(B) Except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, the juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.18 of the Revised Code;

(3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code;

(4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state;

(5) To hear and determine an action commenced under section 3111.28 of the Revised Code;

(6) To hear and determine a motion filed under section 3119.961 [3119.96.1] of the Revised Code;

(7) To receive filings under section 3109.74 of the Revised Code, and to hear and determine actions arising under sections 3109.51 to 3109.80 of the Revised Code.

(8) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction pursuant to section 3127.32 of the Revised Code;

(9) To grant any relief normally available under the laws of this state to enforce a child custody determination made by a court of another state and registered in accordance with section 3127.35 of the Revised Code.

(C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas with all the papers filed in the action to the juvenile court for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.

(D) The juvenile court, except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children.

(E) The juvenile court, except as provided in divisions (G) and (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if the child comes within the jurisdiction of the juvenile court as defined by this section.

(F)(1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04, 3127.01 to 3127.53, and 5103.20 to 5103.22 of the Revised Code.

(2) The juvenile court shall exercise its jurisdiction in child support matters in accordance with section 3109.05 of the Revised Code.

(G) Any juvenile court that makes or modifies an order for child support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person

and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

(I) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.

HISTORY: 133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 21 (Eff 10-29-93); 145 v H 173 (Eff 12-31-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 377 (Eff 10-17-96); 146 v H 124 (Eff 3-31-97); 147 v H 215 (Eff 6-30-97); 147 v H 352 (Eff 1-1-98); 148 v H 583 (Eff 6-14-2000); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v H 38, § 1, eff. 6-17-04; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06.

§ 2151.23 Jurisdiction of juvenile court.

Effective 1-1-08.

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

(1) Concerning any child who on or about the date specified in the complaint, indictment, or information is

alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant;

(2) Subject to divisions (G) and (V) of section 2301.03 of the Revised Code, to determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code;

(5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;

(6) To hear and determine all criminal cases in which an adult is charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of section 2919.23, or section 2919.24 of the Revised Code, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222 [2919.22.2], division (B) of section 2919.23, or section 2919.24 of the Revised Code;

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(8) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

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(10) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code;

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(12) Concerning an action commenced under section 121.38 of the Revised Code;

(13) To hear and determine violations of section 3321.38 of the Revised Code;

(14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child;

(15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code regarding a child who has been

adjudicated a delinquent child and to refer the duties conferred upon the juvenile court judge under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code to magistrates appointed by the juvenile court judge in accordance with Juvenile Rule 40.

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(8) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction pursuant to section 3127.32 of the Revised Code;

(9) To grant any relief normally available under the laws of this state to enforce a child custody determination made by a court of another state and registered in accordance with section 3127.35 of the Revised Code.

(C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.

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(G) Any juvenile court that makes or modifies an order for child support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

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HISTORY: 133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 244 (Eff 8-26-76); 137 v S 135 (Eff 10-25-77); 139 v H 1 (Eff 8-5-81); 139 v H 515 (Eff 6-1-82); 140 v H 93 (Eff 3-19-84); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 258 (Eff 8-22-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145

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The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of SB 3 (149 v —) read as follows:

SECTION 3. Sections 1 and 2 of this act shall take effect on January 1, 2002, or the earliest date permitted by law, whichever is later.

The provisions of § 4 of SB 3 (149 v —) read, in part, as follows:

SECTION 4. Section 2151.23 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 179, Am. Sub. S.B. 180, and Sub. S.B. 218 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

152 v S 10, effective January 1, 2008, corrected internal references.

151 v S 238, effective September 21, 2006, corrected internal references.

150 v S 185, effective April 11, 2005, added (B)(7) through (9); and corrected internal references.

150 v H 38, effective June 17, 2004, corrected internal references.

Cross-References to Related Sections

Complaints, RC §§ 2151.27, 2152.02.1.

Criminal prosecution; transfer of case to appropriate court abates jurisdiction of juvenile court over offense, RC § 2152.12.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Failure to send child to school, jurisdiction, RC § 3321.28.

Form for acknowledgment of paternity affidavit, RC § 3111.31.

Grandparent who is providing support to child born to unmarried and unemancipated minors may bring parentage or support action, RC § 3109.19.

Interfering with action to issue or modify support order, RC § 2919.23.1.

Nonsupport of dependents as misdemeanor of first degree; court costs and attorney fees may be imposed upon conviction, RC § 2919.21.

Parent killing other parent, custody order defined, RC § 3109.41.

Termination of inmate's participation in prison nursery program, RC § 5120.65.3.

Venue under uniform interstate family support act, RC § 3115.56.

Ohio Rules

Consent to marry, JuvR 42.

Divorce, annulment, and legal separation actions, CivR 75.

Exceptions, JuvR 1(C).

Jurisdiction unaffected by rules, JuvR 44.

Transfer, JuvR 11.

Ohio Administrative Code

Department of job and family services, division of public assistance—

Child support enforcement agency (CSEA)—

Administrative process relative to paternity and child support orders. OAC ch. 5101:1-32.

Administrative rules. OAC ch. 5101:1-31.

Locating absent parents; paternity establishment; garnishment and withholding; tax refund offsets. OAC ch. 5101:1-30.

Uniform Interstate Family Support Act (UIFSA). OAC 5101:1-30-50 et seq.

Title IV-D cases. OAC ch. 5101:1-29.

Department of job and family services, division of social services—

Public children services agency (PCSA). OAC ch. 5101:2-33.

Alleged child abuse and neglect; those mandated to report. OAC ch. 5101:2-34.

Central registry reports on child abuse and neglect; referral procedures for children's protective services. OAC ch. 5101:2-35.

Substitute care. OAC ch. 5101:2-42.

"Agreement for Temporary Custody of a Child," form 1645. OAC 5101:2-42-06 et seq.

Interstate placements of children into or from Ohio. OAC 5101:2-42-20 et seq.

"Permanent Surrender of Child," form 1666. OAC 5101:2-42-09.

Supportive services. OAC ch. 5101:2-39.

Case plan requirements. OAC 5101:2-39-08 et seq.

Protective supervision by PCSAs and PCPAs. OAC 5101:2-39-30.

Comparative Legislation

Juvenile jurisdiction:

CA—Cal Wel & Inst Code § 300

FL—Fla. Stat. § 985.201

IN—Burns Ind. Code Ann. §§ 31-30-1-1 et seq, 33-12-3-1 et seq

KY—KRS §§ 600.020, 610.010, 610.320, 630.020

MI—MCLS § 712A.2

NY—NY CLS Family Ct Act § 115

PA—42 P.S. § 6321

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Ohio Transaction Guide: Family Law & Forms § 20.03 Jurisdiction of Courts Regarding Child Support

Ohio Transaction Guide: Family Law & Forms § 20.21 Jurisdiction of Courts to Award Custody

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Access to proceedings

Proceedings in juvenile court to determine if a child is abused, neglected, or dependent, or to determine custody of a minor child, are neither presumptively open nor presumptively closed to the public. The juvenile court may restrict public access to these proceedings pursuant to JuvR 27 and RC § 2151.35 if the court finds, after hearing evidence and argument on the issue, (1) that there exists a reasonable and substantial basis for believing that public access could harm the child or endanger the fairness of the adjudication, and (2) the potential for harm outweighs the benefits of public access: In re T.R., 52 Ohio St. 3d 6, 556 N.E.2d 439 (1990).

ADC payments

Where the state brought an action against the father of the children, as representative of the mother, to recover ADC payments made and to establish a future child support obligation, but such action was dismissed for failure to prosecute, the dismissal was res judicata as to claims for past support, but not as to claims for future support: Crittendon v. Crittendon, 82 Ohio App. 3d 484, 612 N.E.2d 759 (1992).

Age upon apprehension

Where the 1997 amendments to RC §§ 2151.23(I) and 2151.011 made defendant's age upon apprehension the touchstone for determining jurisdiction, there were no constitutional violations in trying defendant as an adult for an offense committed while defendant was a juvenile. State v. Schaar, 2004 Ohio App. LEXIS 1459, 2004 Ohio 1631, (2004).

Appeal

Juvenile court lacks jurisdiction to proceed with an adjudication of a child after a notice of appeal has been filed from an order of that court. During the pendency of an appeal, any adjudication of a child made by a juvenile court is void. Therefore, the double jeopardy clause of the United States Constitution does not apply, and the court of appeals may review the merits of the appeal: In re S.J., 106 Ohio St. 3d 11, 829 N.E.2d 1207, 2005 Ohio 3215, (2005).

After a full hearing, the retroactive modification of a prior multiple child support order will not be disturbed on appeal in the absence of an abuse of discretion by the trial court: Asztalos v. Fortney, 48 Ohio App. 2d 66, 2 Ohio Op. 3d 45, 355 N.E.2d 517 (1975).

Bindover for prosecution

Trial court did not err in failing to treat defendant as a serious youthful offender who, if convicted, would have been subject to a blended juvenile-adult sentence as there was no statutory mechanism for the trial court to return a case to a juvenile court once the juvenile court had relinquished jurisdiction. Under RC §§ 2152.12(I) and 2151.23(H), once a juvenile court has transferred a case to the Ohio Common Pleas Court, it has no further jurisdiction to hear or to determine a child's case, and the courts have held that when a juvenile has been bound over to the Ohio Common Pleas Court, the Ohio Common Pleas Court has no

jurisdiction to review the bindover order for error. State v. Harris, 2006 Ohio App. LEXIS 653, 2006 Ohio 716, (2006).

Where defendant, age 16, was charged in the juvenile court with carrying concealed weapons in violation of RC § 2923.12 and aggravated robbery involving use of a deadly weapon in violation of RC § 2911.01(A)(1) and where defendant was bound over to the general division of the common pleas court on both offenses based on the aggravated robbery offense of which defendant was later acquitted, all further proceedings in the juvenile division on the carrying concealed weapons charge were discontinued under RC § 2152.12(I), thus terminating the juvenile division's jurisdiction under RC § 2151.23(H). State v. Washington, 2005 Ohio App. LEXIS 5902, 2005 Ohio 6546, (2005).

Once defendant was properly bound over, the court of common pleas had jurisdiction over the proceedings against defendant; moreover, following the bindover, defendant was no longer a "child" within the meaning of the statutes conferring jurisdiction on the juvenile court over cases involving children, former RC §§ 2151.23(A) and 2151.011(B)(5)(e). State v. Burrell, 2005 Ohio App. LEXIS 50, 2005 Ohio 34, (2005).

Change of custody

Trial court's judgment overruling a mother's motion for reallocation of parental rights, asking that she be designated as custodian of her daughter rather than the daughter's maternal grandmother, was reversed because the judgment entry failed to discuss the best interests of the child, as required by RC § 2151.23, and there was no indication of the factors that the trial court used in overruling the mother's motion. In re Bell, 2005 Ohio App. LEXIS 5921, 2005 Ohio 6603, (2005).

There was no evidence before the juvenile court to justify the issuance of an ex parte order because nothing in the parents' motion for emergency custody of their child or supporting affidavit showed that the child's interest and welfare required immediate action. To the contrary, the parents' motion was not filed until 20 days after the fire; the guardian ad litem and the court were aware of the fire. The juvenile court's finding that it did not constitute a change of circumstances sufficient to warrant a change of custody was not an abuse of discretion; and the juvenile court could easily have determined that the emergency motion was simply another attempt to relitigate custody, which the parents were not entitled to do. Hempen v. Bailey (In re Bailey), 2005 Ohio App. LEXIS 2830, 2005 Ohio 3039, (2005).

A change of circumstances is not a prerequisite for a parent to regain legal custody of a child when the relinquishment of legal custody was not based on unsuitability of the parent. Culp v. Burkhardt, 2004 Ohio App. LEXIS 4011, 2004 Ohio 4425, (2004).

Where custody of a child had been awarded to the child's grandparents due to the mother's unsuitability, the mother was only entitled to one unsuitability determination and could not re-litigate that issue in her subsequent motion for change of custody: Shargo v. Gregory, 2004 Ohio App. LEXIS 3161, 2004 Ohio 3512, (2004).

In a change of custody proceeding, RC § 3109.04(B)(1), in conjunction with RC § 3109.04(A) and (C), sets the standards for the court by which it must be guided in making its decision: In re Brazell, 27 Ohio Misc. 2d 7, 27 Ohio B. 68, 499 N.E.2d 925 (CP 1986).

Children out of wedlock

Where there is uncontradicted evidence that there is an admitted natural father of children in a pending custody proceeding, it is in the best interests of the children and a requirement of the law that said father, whether or not he has legitimated his children, be notified of the custody action and be given an opportunity to be heard: In re Dych, 1990 Ohio App. LEXIS 2334 (1990).

Acknowledgement of paternity pursuant to RC § 2105.18 is an establishment of paternity upon which an order of custody and support may be based: In re Custody of Davis, 41 Ohio App. 3d 81, 534 N.E.2d 945 (1987).

Legitimation of the child is not a prerequisite for the natural father to have equality of standing with the mother in a RC § 2151.23(A)(2) custody action. All three methods by which a father in Ohio can legitimate his child—(1) in an acknowledgment

proceeding brought under RC § 2105.18; (2) by adopting the child; or (3) by marrying the mother—require the consent of the mother, and therefore the mother can thwart any attempt by the natural father to legitimate the child. A second reason for not requiring legitimation is that such a requirement would not necessarily be in the best interests of the child, and would, in fact, result in dissimilar treatment between legitimate and illegitimate children. Therefore, where the alleged natural father of an illegitimate child has participated in the nurturing process of the child, files a complaint seeking custody of the child under RC § 2151.23(A)(2), and the mother admits that he is the natural father of the child, the natural father has equity of standing with the mother with respect to the custody of the child. The court shall determine which parent shall have the legal custody of the child, taking into account what would be in the best interests of the child: *In re Byrd*, 66 Ohio St. 2d 334, 20 Ohio Op. 3d 309, 421 N.E.2d 1284 (1981).

The mother of an illegitimate child cannot be deprived of her superior right of custody simply by the exercise of the juvenile court's discretion upon an application for custody by the putative father under RC § 2151.23(A)(2): *In re Brenda H.*, 37 Ohio Misc. 123, 66 Ohio Op. 2d 178, 305 N.E.2d 815 (CP 1973).

When a probate court dismisses an adoption petition and, pursuant to RC § 3107.12, certifies the case to the juvenile court for appropriate action and disposition, the certification of itself does not give the juvenile court jurisdiction to determine custody of an illegitimate child: *In the Matter of Robert O.*, 91 Ohio L. Ab. 101, 28 Ohio Op. 2d 165, 199 N.E.2d 765 (JC 1964).

Jurisdiction is conferred by this section, on the juvenile court to determine the paternity of a child born out of wedlock and to provide for its support: *Knox v. Covrett*, 85 Ohio App. 524, 40 Ohio Op. 437, 89 N.E.2d 610 (1949).

Child support

A juvenile court lacks jurisdiction over a child support action where the child turns eighteen before the complaint is filed: *In re Livingston*, 115 Ohio App. 3d 613, 685 N.E.2d 1285 (1996).

Determination by a juvenile court that the children were dependent did not divest the domestic relations court of jurisdiction to enter a contempt finding for nonpayment of a support order: *State ex rel. Clermont County Dep't of Human Servs. v. Walsson*, 108 Ohio App. 3d 125, 670 N.E.2d 287 (1995).

Where an original child support order was for a total sum on behalf of four children and did not designate a specific amount for each child, and thereafter one child was emancipated and the custody of a second child was transferred from the wife to the husband, the court, in its discretion, may modify the prior order retroactively. A modification, if any, need not be made on a pro rata basis: *Asztalos v. Fortney*, 48 Ohio App. 2d 66, 2 Ohio Op. 3d 45, 355 N.E.2d 517 (1975).

The equities involved in a multiple child support order case are such that if a substantial change in material circumstances has occurred since the original decree was entered, the Juvenile Court may, upon a proper hearing, modify a support order retroactively [*McPherson v. McPherson*, 153 OS 82, 41 OO 151, distinguished]: *Asztalos v. Fortney*, 48 Ohio App. 2d 66, 2 Ohio Op. 3d 45, 355 N.E.2d 517 (1975).

The manner of enforcing such order of the juvenile court upon the defendant's default is to seek, by motion filed in the juvenile court, a revocation of the order of probation and to enforce against him the penalty of the judgment: *Anderson v. Anderson*, 4 Ohio App. 2d 90, 33 Ohio Op. 2d 145, 212 N.E.2d 643 (1965).

Continuing jurisdiction

Juvenile court's transfer of a delinquent juvenile's placement from a residential treatment program to the Division of Youth Services was within the court's authority under RC § 2152.16(A)(1), as it had continuing jurisdiction once the juvenile was adjudicated as delinquent pursuant to RC §§ 2151.23 and 2151.38. *In re D.B.*, 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

New York effectively obtained exclusive and continuing jurisdiction when all the parties, including the child, had moved from the issuing state to New York and, at that point, Puerto Rico no longer had jurisdiction. Puerto Rico reestablished its jurisdiction by issuing a new support order for the child's prospective care

because the mother and daughter were again residing in Puerto Rico. Although Puerto Rico did not have jurisdiction to seek enforcement of the 1971 support order for arrears that accrued after New York obtained jurisdiction, it did have jurisdiction to enter a support order for the prospective care of the child. *Cruz v. Cumba-Ortiz*, 2006 Ohio App. LEXIS 1230, 2006 Ohio 1362, (2006).

Trial court did not abuse its discretion in finding that Alabama had jurisdiction over the custody dispute because there had been no valid custody order to enforce and the parents had equal parenting rights. Accordingly, the trial court could not have continuing jurisdiction and the Federal Parental Kidnapping Prevention Act was inapplicable. *In re Sklenchar*, 2004 Ohio App. LEXIS 3992, 2004 Ohio 4405, (2004).

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful: *In re Gillespie*, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

Contributing to delinquency

Trial court lacked subject matter jurisdiction over non-felony charges filed against defendant in two criminal matters, alleging that he violated RC § 2919.24 for contributing to the unruliness or delinquency of a child, as the juvenile court had exclusive jurisdiction, pursuant to RC § 2151.23(A)(6), over non-felony violations of RC § 2919.24. Defendant's motion to dismiss a pending charge and to vacate a void judgment of conviction arising from his guilty plea to another charge should have been granted. *State v. King*, 2005 Ohio App. LEXIS 5565, 2005 Ohio 6174, (2005).

A hearing in juvenile court on a charge of contributing to the delinquency of a minor which resulted in binding the prisoner over to the grand jury upon concluding that a felony over which the juvenile court lacked jurisdiction had been committed, in no way offended the prisoner's federal granted right to be free from double jeopardy: *Grear v. Maxwell*, 35 Ohio Op. 2d 333, 8 Ohio Misc. 210, 355 F.2d 991 (6th Cir. 1966).

Custody generally

Reasonable fact-finder could have determined, pursuant to 2151.23(A)(2), that awarding legal custody to the couple was in the children's best interest, under RC § 3109.04(B)(1). The children, twins, had stayed with the couple off and on since they were three months old and had bonded with them and their two-year-old son; would be receiving money from Social Security and Veteran's benefits; and stability would be accomplished by remaining with the couple. *In re Snyder*, 2006 Ohio App. LEXIS 3430, 2006 Ohio 3478, (2006).

Trial court did not err in adopting a magistrate's decision to deny maternal grandparents' motion to intervene in an action commenced by their minor grandchild's biological father, seeking a determination of paternity, custody, visitation, and child support pursuant to RC § 2151.23(A)(2), as they did not establish an *in loco parentis* relationship with the minor child merely because they cared for the child during a period of time when the complaint was filed, and accordingly, they were not within the scope of the parties defined under Ohio R. Juv. R. 2(Y) and they did not have a right to intervene in the matter pursuant to Ohio R. Civ. P. 24(A); there was no cause to review the issue of parental unsuitability or the constitutional right of parents in the care, custody, and management of their children at that juncture of the matter. *Brokaw v. Haser*, 2006 Ohio App. LEXIS 5134, 2006 Ohio 5171, (2006).

Trial court awards of legal custody of one child to an aunt, another child to his biological father, and three other children back to the mother and her husband was supported by the evidence and the best interests of the children involved, as the appropriateness of a custody placement for one child is not necessarily the same custody arrangement that suits the best interest of another child. As the county child services agency did not completely withdraw from the matter because it asked, and was ordered, to provide protective supervision to the family, there was no requirement that the trial court make a separate finding of

unsuitability of the mother prior to awarding custody to a non-parent pursuant to RC § 2151.23(A)(2). In re Palmer, 2006 Ohio App. LEXIS 4661, 2006 Ohio 4747, (2006).

Trial court did not err when it granted custody to the grandparents after determining that it would be in the child's best interests to remain with them; the finding of neglect implicitly involved a determination that the mother was an unsuitable parent. The trial court also did not err or abuse its discretion when it applied the best interest standard in determining that custody of the child should remain with the grandparents because, although the mother had completed her case plan, she remained with the father who had a mental illness and minimized the risk that the father posed to the child. In re Sorgen, 2006 Ohio App. LEXIS 4136, 2006 Ohio 4180, (2006).

Trial court's finding that granting custody of a child to the child's maternal grandmother was in the best interest of the child was supported by the evidence. While the evidence showed that the child would be well cared for and loved in either the home of the maternal grandmother or the home of the paternal grandmother, the evidence allowed a conclusion that the maternal grandmother would be more conducive to visitation between the parties. In re Mitchell, 2006 Ohio App. LEXIS 564, 2006 Ohio 632, (2006).

Trial court's finding that a child's father was an unfit parent was not against the manifest weight of the evidence. The evidence showed that the father had a history of drug abuse; that, while he had sought some treatment, he had not had a completely clean rehabilitation; that the father had not held a meaningful, full-time job for the past 18 months; and that the father continued to rely upon the paternal grandmother for his support as well as the support of his son. In re Mitchell, 2006 Ohio App. LEXIS 564, 2006 Ohio 632, (2006).

In a custody proceeding under RC § 2151.23(A)(2) between a son's mother and the son's paternal aunt, the trial court's finding that the mother did not take the son to court-ordered therapy for his emotional issues, did not make her son do eye therapy exercises as instructed by his doctor, did not timely schedule a follow-up appointment with a specialist the son saw for stomach problems, and did not timely report to the specialist that the son was unable to take the medication constituted competent, credible evidence for the trial court's finding that the mother was unsuitable. In re Kovaleski, 2006 Ohio App. LEXIS 281, 2006 Ohio 317, (2006).

Award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities. Juvenile court adjudication of abuse, neglect, or dependency is a determination about the care and condition of a child and implicitly involves a determination of the unsuitability of the child's custodial and/or noncustodial parents. When a juvenile court adjudicates a child to be abused, neglected, or dependent, it has no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding legal custody to a nonparent. In re C.R., 108 Ohio St. 3d 369, 843 N.E.2d 1188, 2006 Ohio 1191, (2006).

Juvenile court has exclusive jurisdiction to determine custody of any child not a ward of another court. Under RC § 5103.15(B)(2), parents may permanently surrender a child under six months of age to a child-placing agency only if they have custody of the child: Adoption Link, Inc. v. Suver, 112 Ohio St. 3d 166, 858 N.E.2d 424, 2006 Ohio 6528, (2006).

Trial court did not abuse its discretion in finding that a mother was an unsuitable parent under RC § 2151.23(A)(2) and awarding custody of the son to his foster parents because evidence that the mother was living with her mother, that she was receiving governmental assistance and was unemployed, and that she was not involved in her son's schooling showed that the present return of custody to the mother would be detrimental to her special needs son. In re Fout, 2005 Ohio App. LEXIS 3935, 2005 Ohio 4344, (2005).

Juvenile court's finding that a mother was an unsuitable parent was supported by evidence that the mother might have coached the child to fear that he would be sexually abused by the father, that the mother had inappropriate parenting skills and poor judgment, that the child had a significant knowledge of sexual behavior and terminology, and that the mother's allegations of

sexual abuse against the father were unsubstantiated. In re Manweiler, 2005 Ohio App. LEXIS 2506, 2005 Ohio 2657, (2005).

Because the father was not properly named on or served with a petition for custody, the trial court erred by awarding custody to the child's maternal grandparents under RC § 2151.23(A)(2); consequently, the father was entitled to relief under Ohio R. Civ. P. 60(B), U.S. Const. amend. XIV, and Ohio Const. art. I, § 16. In re A.H., 2005 Ohio App. LEXIS 1275, 2005 Ohio 1307, (2005).

There was no abuse of discretion in granting custody of the children to the grandmother because, in determining that the trial court's classification of the mother as "unsuitable" was supported by the evidence, the trial court's action of awarding custody to a non-parent, under the circumstances, did not infringe on the mother's fundamental right to custody of her children, under U.S. Const., Amend. 14 and Ohio Const., art. 1, § 16. The mother had demonstrated an inability to care for her children on a regular basis through the frequency of changing residences, her marriage to a man who was a risk to her children, her financial instability, and her mental health issues. In re Hamblett, 2005 Ohio App. LEXIS 589, 2005 Ohio 550, (2005).

Award of legal custody to the maternal grandparents did not divest the mother of her residual parental rights. The evidence supported the court's finding that awarding custody to the mother would be detrimental to the children: In re Sean T., 164 Ohio App. 3d 218 (2005).

Juvenile court erred in using the Perales standard that the state supreme court applied to private custody cases and that required an examination of parental unsuitability in determining whether a parent or a nonparent should be awarded legal custody of children; instead, because the case of the legal custody of the two minor children was initiated by the children's services agency, the juvenile court should have applied a "best interest of the child" standard to determine whether the father or the uncle should have received legal custody of the children. In re Trowbridge, 2004 Ohio App. LEXIS 2335, 2004 Ohio 2645, (2004).

Juvenile court did not abuse its discretion in awarding custody of a mother's son to his maternal grandparents where sufficient evidence was presented as to the mother's unsuitability as a parent, including her: (1) failure to provide him financial support; (2) frequent moves over a four-year period; (3) failure to provide him with a suitable home; (4) act of disappearing and abandoning the child on one occasion; and (5) complete lack of an ability to provide him with consistent medical care given his various needs. Karr v. Dunn, 2004 Ohio App. LEXIS 837, 2004 Ohio 928, (2004).

Where the trial court adopted the magistrate's decision finding that the mother was unsuitable and awarding custody of the child to the paternal grandmother, in doing so, the trial court complied with RC § 2151.23(A)(2), as the magistrate found that the mother was unsuitable before recommending placement with the grandmother. Walther v. Newsome, 2003 Ohio App. LEXIS 4263, 2003 Ohio 4723, (2003).

Because the scope of inquiry is broader in custody proceedings between a parent and a nonparent, the action fell within the coverage of R.C. § 2151.23(A), requiring application of the "suitability of the parent" test, rather than under R.C. § 3109.04, which would require the "best interests of the child" test. Ives v. Ives, 2003 Ohio App. LEXIS 3212, 2003 Ohio 3505, (2003).

Revised Code § 3109.04 specifically uses the term "parent," and that term is defined in RC § 3111.01. Pursuant to RC § 2151.23(A)(2), a juvenile court may determine whether a shared custody agreement involving a second or psychological parent is in the best interests of a child: In re Bonfield, 97 Ohio St. 3d 387, 780 N.E.2d 241, 2002 Ohio 6660, (2002).

In custody proceedings initiated following the murder of a child's biological mother and custodial parent, there was no abuse of discretion in the trial court's award of legal custody to the maternal grandmother and grant of supervised visitation to the father, who had moved to Alabama years earlier and had had only limited contact with the child since: In re Smith, 1998 Ohio App. LEXIS 517 (12th Dist. 1998).

Under RC § 2151.23, nonbiological "parents" may be awarded custody where a biological parent has abandoned the child due to lack of interest: Reynolds v. Goll, 75 Ohio St. 3d 121, 661 N.E.2d 1008, 1996 Ohio 153, (1996).

While RC § 2151.23(F)(1) states that a juvenile court must

exercise its jurisdiction in child custody matters in accordance with RC § 3109.04, neither RC § 2151.23 nor 2151.35.3 specify that the juvenile court must apply the change of circumstances standard before granting legal custody of the child: *In re Wells*, 108 Ohio App. 3d 41, 669 N.E.2d 887 (1995).

Unlike the RC § 3109.04(D)(2) certification process, the RC § 3109.06 certification process does not require the certifying court to first find that it is in the best interest of the child for neither parent to have custody. RC § 3109.06 proceedings do not require a finding of parental unsuitability: *In re Whaley*, 86 Ohio App. 3d 304, 620 N.E.2d 954 (1993).

The best interest of the child remains the primary standard to be applied in custody cases. Nevertheless, while the welfare of the child is the primary consideration, suitable parents have a paramount right to custody: *In re Pryor*, 86 Ohio App. 3d 327, 620 N.E.2d 973 (1993).

Parent may be denied custody only if a preponderance of the evidence indicates abandonment, contractual relinquishment of custody, total inability to provide care or support, or that his custody would be detrimental to the child: *Reynolds v. Ross Cty. Children's Service Agency*, 5 Ohio St. 3d 27, 5 Ohio B. 87, 448 N.E.2d 816 (1983).

In a child custody dispute between the parent of a child and a non-parent brought under RC § 3109.04, a suitable parent has a paramount right to custody so long as such custody is not detrimental to the child. (*In re Perales*, 52 OS2d 89, 6 OO3d 293, adopted for RC § 3109.04 custody disputes): *Thrasher v. Thrasher*, 3 Ohio App. 3d 210, 3 Ohio B. 240, 444 N.E.2d 431 (1981).

The word "custody" as used in RC § 3109.04 has the same meaning as the word used in RC §§ 2151.23(A)(2) and 3105.21, so that the former section is equally applicable to the other two: *In re Smelser*, 22 Ohio Misc. 41, 51 Ohio Op. 2d 31, 257 N.E.2d 769 (CP 1969).

The word "custody" as used in this section, connotes the sum total of all parental rights, among which is the right to support for such child: *Kolody v. Kolody*, 110 Ohio App. 260, 13 Ohio Op. 2d 25, 169 N.E.2d 34 (1960).

In order to determine the right of custody, it is not necessary for the court to find first that such child is delinquent, neglected, dependent, crippled, or otherwise physically handicapped: *In re Torok*, 161 Ohio St. 585, 53 Ohio Op. 433, 120 N.E.2d 307 (1954).

—Abandonment

A parent may be denied custody if a preponderance of the evidence indicates that he has abandoned the child: *Hughes v. Scaffide*, 58 Ohio St. 2d 88, 12 Ohio Op. 3d 92, 388 N.E.2d 1233 (1979).

A parent has forfeited his paramount right to custody if he has abandoned the child. The court must then weigh the best interests of the child in determining whether to grant the writ returning the child to the parent: *In re Young*, 58 Ohio St. 2d 90, 12 Ohio Op. 3d 93, 388 N.E.2d 1235 (1979).

—Parental unsuitability

Denial of the grandparents' motion for custody was proper as the mother's drug use and mental health issues did not automatically make her unsuitable to care for her child. Just because the child's home with the grandparents could have been perceived as the "better" placement, it did not mean that the mother was an unsuitable parent. It was noted that the children's services agency would not have removed the child from the mother's care based on its investigation, that the child forensic interview failed to show any cause for concern, and that the mother had been able to care for her younger child since his birth. *In re Todd*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1281, 2007 Ohio 1410, (Mar. 22, 2007).

In a custody proceeding under RC § 2151.23(A)(2) between a son's mother and the son's paternal aunt, the trial court properly applied the unsuitability standard rather than the modification of custody standard under RC § 3109.04(E)(1) because a nonparent was seeking custody of the son, and the trial court had not previously considered whether the mother was a suitable parent. *In re Kovaleski*, 2006 Ohio App. LEXIS 281, 2006 Ohio 317, (2006).

Since it appeared that the issue of the unsuitability of the child's

mother was raised in the initial custody proceeding, was found to have been previously resolved at the time of the original transfer of custody without objection from counsel, and was not raised on appeal, there was no reason to revisit the issue in the mother's appeal from the trial court's judgment overruling her motion for reallocation of parental rights. *In re Bell*, 2005 Ohio App. LEXIS 5921, 2005 Ohio 6603, (2005).

Finding of parental unsuitability was properly based on the father's limited interest and participation in the children's care and well-being. The trial court properly awarded custody to the maternal grandmother: *In re S.M.*, 160 Ohio App. 3d 794, 828 N.E.2d 1044, 2005 Ohio 2187, (2005).

Because juvenile court had already determined that a child was abused, dependent, or neglected in accordance with RC § 2151.353, there was no requirement that it first determine that the mother was unfit before denying her RC § 2151.23(A)(2) motion to modify custody for the child. *In re Allah*, 2005 Ohio App. LEXIS 1163, 2005 Ohio 1182, (2005).

Where a custody hearing did not constitute a true dispositional hearing as envisioned by RC § 2151.353, the trial court abused its discretion in granting custody to a maternal grandmother absent a finding that the children's mother was unsuitable or unfit, pursuant to RC § 2151.23(A)(2). *In re Mahley*, 2004 Ohio App. LEXIS 1571, 2004 Ohio 1772, (2004).

The requirement that a court first find a parent unsuitable before awarding legal custody of a child to a nonparent does not apply to dispositional hearings following an adjudication that the child is abused, dependent, or neglected: *In re D.R.*, 153 Ohio App. 3d 156, 792 N.E.2d 203, 2003 Ohio 2852, (2003).

In a child custody case arising out of a parentage action between a natural parent of the child and a nonparent, a trial court must make a parental unsuitability determination on the record before awarding legal custody of the child to the nonparent: *Hockstok v. Hockstok*, 98 Ohio St. 3d 238, 781 N.E.2d 971, 2002 Ohio 7208, (2002).

A parent has a paramount right to custody over a nonparent unless the parent is found unsuitable: *In re Porter*, 113 Ohio App. 3d 580, 681 N.E.2d 954 (1996).

In custody disputes between a parent and a non-parent brought pursuant to RC § 2151.23(A)(2), the juvenile court must consider the "paramount" rights of the parent, finding the parent "unsuitable" before awarding custody to a non-parent: *Reynolds v. Goll*, 80 Ohio App. 3d 494, 609 N.E.2d 1276 (1992).

In a RC § 2151.23(A)(2) child custody proceeding between a parent and a nonparent, the hearing officer may not award custody to the nonparent without first making a finding of parental unsuitability—that is, without first determining that a preponderance of the evidence shows that the parent abandoned the child, that the parent contractually relinquished custody of the child, that the parent has become totally incapable of supporting or caring for the child, or that an award of custody to the parent would be detrimental to the child: *In re Perales*, 52 Ohio St. 2d 89, 6 Ohio Op. 3d 293, 369 N.E.2d 1047 (1977).

Death of child

Court of common pleas, juvenile division, erred when it determined that the court lacked jurisdiction to adjudicate the issue of abuse when the child was deceased as the technicality of death did not rob children of statutory protection since the statutory protections afforded siblings extended to afterborn children; RC § 2151.23 does not limit the juvenile court to deciding only particular aspects of a juvenile's case, or in any way restrict its jurisdiction, other than by limiting the court to dealing with juveniles. *In re Darling*, 2003 Ohio App. LEXIS 6640, 2003 Ohio 7184, (2003).

Dependent child

The determination of whether or not a child is "dependent," as defined in RC § 2151.04, must be made as of the time of the hearing on the complaint, and a determination that a child is not a "dependent child" at one time is no bar to a later determination that the child is then "dependent": *In re Justice*, 59 Ohio App. 2d 78, 13 Ohio Op. 3d 139, 392 N.E.2d 897 (1978).

Estate matters

Juvenile court had no jurisdiction to determine estate matters, and its judgment finding that child support arrearages owed to the

mother were not an asset of her estate was vacated. *Miller v. McMichael*, 2003 Ohio App. LEXIS 6081, 2003 Ohio 6713, (2003).

Forfeiture proceedings

Forfeiture proceedings apply to juveniles found to be delinquent, and juvenile courts have jurisdiction over such proceedings: *In re Harman*, 63 Ohio Misc. 2d 529, 635 N.E.2d 96 (1994).

Guardian ad litem

Statute providing for appointment of a guardian ad litem was inapplicable in a proceeding to terminate visitation where no abuse charges were ever filed against the noncustodial parent: *Truitt v. Truitt*, 65 Ohio App. 3d 126, 583 N.E.2d 331 (1989).

Habeas corpus

A parent, alleging that he failed to receive notice of a hearing concerning the shelter care of his child, must move the juvenile court for a rehearing, pursuant to *JuvR 7(G)*, before seeking a writ of habeas corpus: *Linger v. Weiss*, 57 Ohio St. 2d 97, 11 Ohio Op. 3d 281, 386 N.E.2d 1354 (1979).

Where a petition is filed which states a proper cause of action for a writ of habeas corpus, and there is no plain and adequate remedy in the ordinary course of the law, *OConst art IV, §§ 2 and 3* require the supreme court and the court of appeals to exercise their original jurisdiction in habeas corpus; and in such a case, these courts cannot refuse to exercise that original jurisdiction under the doctrine of *forum non conveniens*: *Hughes v. Scaffide*, 53 Ohio St. 2d 85, 7 Ohio Op. 3d 175, 372 N.E.2d 598 (1978).

Under RC § 2151.23(A), the Juvenile Court has exclusive original jurisdiction in applications for a writ of habeas corpus involving custody of a child and is thereby empowered to determine custody in such proceeding: *In re Wright*, 52 Ohio Misc. 4, 6 Ohio Op. 3d 31, 367 N.E.2d 931 (JC 1977).

Both the courts of appeals and the juvenile courts have original jurisdiction in habeas corpus actions as to the custody of children: *In re Children*, 64 Ohio App. 2d 168, 18 Ohio Op. 3d 123, 411 N.E.2d 802 (1977).

The grant of original jurisdiction, by RC § 2151.23(A)(3), to juvenile courts in habeas corpus actions involving the custody of minors is exclusive only as between juvenile courts and those courts given general habeas corpus jurisdiction by RC § 2725.02: *In re Black*, 36 Ohio St. 2d 124, 65 Ohio Op. 2d 308, 304 N.E.2d 394 (1973).

A juvenile who submits without challenge to the jurisdiction of a municipal court cannot thereafter secure release in a habeas corpus action on the ground that the judgment and sentence of the municipal court is void for want of jurisdiction: *Hemphill v. Johnson*, 31 Ohio App. 2d 241, 60 Ohio Op. 2d 404, 287 N.E.2d 828 (1972).

Since under RC § 2151.23(A) the juvenile court has exclusive original jurisdiction "to hear and determine any application for a writ of habeas corpus involving the custody of a child," the court is empowered to adjudicate fully as to the needs of the child involved: *Baker v. Rose*, 28 Ohio Misc. 200, 57 Ohio Op. 2d 57, 270 N.E.2d 678 (CP 1970).

Habeas corpus in a court of competent jurisdiction as prescribed in RC Chapter 2725., is the proper proceeding to raise the question of rightful custody of minor children, where it is alleged that the restraint is illegal, or where a parent or other person claims that he or she has been unlawfully deprived of custody of a minor child; and, as part of such proceedings, the best interests and welfare of the child is a primary question and determining factor, and all other matters must yield accordingly, including the comity existing between states: *In re Messner*, 19 Ohio App. 2d 33, 48 Ohio Op. 2d 31, 249 N.E.2d 532 (1969).

A writ of habeas corpus will not be granted to release from the state reformatory a minor who, upon being arrested and taken before the municipal court, stated his age to be 19 years, when in fact he was but 17 years of age, and thereafter was indicted, pleaded guilty and was convicted in the common pleas court on a criminal charge: *In re Evans*, 67 Ohio App. 66, 21 Ohio Op. 93, 35 N.E.2d 887 (1941).

Hearings

Where a complaint is filed alleging that a child is dependent or neglected in violation of RC §§ 2151.03(B) and 2151.04(A), (B),

and (C), *JuvR 29(D)(2)* does not prohibit the child's mother from participating in the adjudicatory hearing just because she entered a plea of "admitted" to the allegations in the complaint: *In re Sims*, 13 Ohio App. 3d 37, 13 Ohio B. 40, 468 N.E.2d 111 (1983).

Jurisdiction

Juvenile court had subject matter jurisdiction pursuant to RC § 2151.23(A)(1) over a matter commenced by a county social service agency against a mother regarding allegations of neglect and dependency as to her three minor children. *In re L.S.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1455, 2007 Ohio 1583, (Apr. 4, 2007).

Where a juvenile court acquires jurisdiction of a minor child, pursuant to RC § 2151.23, and a divorce is later instituted, the juvenile court has exclusive jurisdiction to make custody determinations of such child. *Issa v. Bair*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 883, 2007 Ohio 930, (Feb. 22, 2007).

When a juvenile court awarded a child's custody to the child's grandparents, in a dependency and neglect action, and then terminated the involvement of a child protection agency and closed its case, a general division court hearing the child's parents' divorce did not have jurisdiction to award the child's custody to the father because once the juvenile court acquired jurisdiction over the child's custody, it retained exclusive jurisdiction over that issue, pursuant to RC § 2151.23(A)(1), (2), and (F)(1), and it did not relinquish its jurisdiction, as its final order required any further proceedings concerning the child's custody, support, and visitation to be filed in a division of the juvenile court. *Issa v. Bair*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 883, 2007 Ohio 930, (Feb. 22, 2007).

When, in one county, a father's parentage was established and he was ordered to pay child support and then, in another county, he filed a complaint for child support because he had obtained custody of the child, without modifying the first court's orders, the two courts, under the terms of RC §§ 2151.23(B)(4) and 2151.231, appeared to have concurrent jurisdiction because the child was not a ward of another court and apparently resided with each of his parents at the times each of them sought child support, so the court in which an action was first filed had exclusive jurisdiction, and it was not error to dismiss the complaint filed in the second court. *Dazey v. Pollock*, 2006 Ohio App. LEXIS 4756, 2006 Ohio 4850, (2006).

When a juvenile court awarded the Director of a county department of job and family services temporary custody of a child, that court had exclusive jurisdiction over the child's custody, under RC § 2151.23(A)(9), so another juvenile court had no jurisdiction to order the Director to surrender the child to an adoption agency, pursuant to a purported surrender of permanent custody by the child's parents, under RC § 5103.15, and the agency was not entitled to habeas corpus relief. *Adoption Link, Inc. v. Suver*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 4363, 2006 Ohio 4438, (Aug. 23, 2006), affirmed by 112 Ohio St. 3d 166, 2006 Ohio 6528, 858 N.E.2d 424, 2006 Ohio LEXIS 3574 (2006).

Trial court had subject matter jurisdiction over a dependency proceeding in which the agency involved later filed a motion for permanent custody of the subject child because, pursuant to RC § 2151.23(A), the trial court acquired subject matter jurisdiction over the matter with the filing of the dependency complaint. *In re L.H.*, 2006 Ohio App. LEXIS 4045, 2006 Ohio 4116, (2006).

RC § 2151.23(A)(2) granted exclusive, original jurisdiction to determine the custody of any child not a ward of another Ohio court; therefore, a trial court had the power to determine custody of a child, including the journalization of the agreed entry granting custody of the child to her grandparents. *In re Weller*, 2006 Ohio App. LEXIS 2880, 2006 Ohio 3015, (2006).

Where a mother sought to preclude a juvenile court judge from exercising post-judgment jurisdiction over visitation and custody motions filed by the father of her child after the mother had filed her intent to relocate to North Carolina with the child, her claim that the judge no longer had jurisdiction over the matter lacked merit, as the juvenile court and the judge had general statutory authority over such issues pursuant to RC §§ 2151.23 and 2151.231. The mother also failed to show entitlement to the writ where she had an adequate remedy at law through either an appeal or a request to transfer the proceedings to North Carolina,

pursuant to Ohio R. Juv. P. 11 and 39, such that dismissal of the complaint was warranted. *Rivers v. Ramsey*, 2006 Ohio App. LEXIS 1610, 2006 Ohio 1744, (2006).

Although a trial court had jurisdiction under RC §§ 2151.23(A)(2) and 3127.18(A)(2) to make a temporary emergency ex parte custody order of children who resided in Louisiana to be in the custody of their grandmother, an Ohio resident, based on allegations that the mother and her boyfriend were using drugs in their Louisiana home, it was divested of jurisdiction under RC § 3127.18(B) of the Uniform Child Custody Jurisdiction Enforcement Act, RC §§ 3127.01 to 3127.53, when the mother commenced divorce proceedings that included a request for custody in her home state of Louisiana. Given the Louisiana court's jurisdiction over the children, RC § 3127.15(A)(3) and (4) did not apply to give the Ohio court jurisdiction. In *re Fluharty*, 2006 Ohio App. LEXIS 6426, 2006 Ohio 6529, (2006).

Where a divorce was commenced but prior to a custody determination having been entered by the domestic relations court (DRC), a juvenile court made a custody decision pursuant to neglect proceedings instituted on behalf of the parties' minor child, the DRC lacked jurisdiction on that issue pursuant to RC §§ 2151.23 and 3109.04; accordingly, the DRC acted properly in sua sponte vacating those portions of the order that allocated parental rights and child support. *Ryan v. Ryan*, 2005 Ohio App. LEXIS 3793, 2005 Ohio 4166, (2005).

Juvenile court's subject matter jurisdiction in a juvenile delinquency case was established under RC §§ 2151.23(A)(1), 2151.011(B)(5), and 2152.02(F)(1) because the complaint alleged appellant was a delinquent child. In *re C.W.*, 2005 Ohio App. LEXIS 3579, 2005 Ohio 3905, (2005).

Where the parties' child lived in Ohio until just a few days before the father filed a custody complaint, both venue and jurisdiction rested in Ohio pursuant to RC §§ 2151.23(A)(2) and 3109.22(A). *Goeller v. Moore*, 2005 Ohio App. LEXIS 249, 2005 Ohio 292, (2005).

Under RC § 2101.24(A)(1)(e), a probate court retained exclusive jurisdiction over modification of its custody decision and appointment of a guardian even after a minor became the subject of a neglect/dependency complaint within the exclusive jurisdiction of a juvenile court under RC § 2151.23(A)(1). In *re Guardianship of Pierce*, 2003 Ohio App. LEXIS 3559, 2003 Ohio 3997, (2003).

The juvenile court had jurisdiction to revoke the suspension of permanent commitment even though the juvenile had been released from official probation: In *re Bracewell*, 126 Ohio App. 3d 133, 709 N.E.2d 938 (1998).

The court of common pleas loses jurisdiction over custody determinations when it concludes that the father is not the biological father; jurisdiction over the matter of custody is then vested in the juvenile court: *Thompson v. Thompson*, 1995 Ohio App. LEXIS 3402 (4th Dist. 1995).

Absent a proper bindover procedure pursuant to RC § 2151.26, the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent. The exclusive subject matter jurisdiction of the juvenile court cannot be waived: *State v. Wilson*, 73 Ohio St. 3d 40, 652 N.E.2d 196, 1995 Ohio 217, (1995).

Revised Code § 2151.23(A)(1) vests the juvenile court with exclusive original jurisdiction when the matter concerns an alleged delinquent child. Where appellants seek compensatory relief for the alleged wrongful acts of the Department of Human Services in removing the child from their home, such claims are separate and distinct from custody issues and may be pursued in the general division. Conversely, the general division may not grant injunctive relief regarding custody as such action would usurp the juvenile division's exclusive jurisdiction: *Tingley v. Williams County Dep't of Human Servs.*, 1993 Ohio App. LEXIS 3627 (1993).

The juvenile court did not have jurisdiction to make an order requiring reimbursement of ADC payments where the child was a ward of the probate court due to the guardianship proceedings: *Lake County Dep't of Human Servs. v. Adams*, 82 Ohio App. 3d 494, 612 N.E.2d 766 (1992).

Pursuant to RC § 2151.23(A), the juvenile court has jurisdiction to determine the custody of a child alleged to be abused, neglected, or dependent, when that child is not the ward of any

court in this state. This jurisdiction includes children subject to a divorce decree granting custody pursuant to RC § 3109.04. When a juvenile court makes a custody determination under RC §§ 2151.23 and 2151.35.3, it must do so in accordance with RC § 3109.04 (RC § 2151.23[F][1], construed and applied): In *re Poling*, 64 Ohio St. 3d 211, 594 N.E.2d 589, 1992 Ohio 144, (1992).

If jurisdiction has been previously acquired over children through custody disposition in a divorce decree, the common pleas court must certify the custody matter to the juvenile court before such court has jurisdiction to determine any subsequent custody issue. Before the juvenile court may determine custody in a neglect proceeding, it must make an adjudication of abuse, neglect or dependency: *Moore v. Moore*, 1991 Ohio App. LEXIS 472 (4th Dist. 1991).

A juvenile court lacks jurisdiction to order that a delinquent child be cared for in a private mental health facility at the expense of the department of mental health and of an organization of community mental health boards: In *re Hoodlet*, 72 Ohio App. 3d 115, 593 N.E.2d 478 (1991).

Revised Code § 2151.23(A)(4) grants jurisdiction to the juvenile court to exercise only those powers given to the probate courts by RC Chapters 5122 and 5123. A probate court can hold a hearing under RC § 5122.15 and subsequently judicially commit a person to a mental health board pursuant to RC § 5122.15(C)(4) only if the judicial commitment proceedings were commenced in accordance with the procedural requirements of RC § 5122.11 and the other requirements of RC §§ 5122.11 through 5122.15 were complied with thereafter: In *re Shott*, 75 Ohio App. 3d 270, 599 N.E.2d 363 (1991).

A failure to support one's minor children constitutes a tortious act or omission in Ohio conferring in personam jurisdiction under CivR 4.3(A)(3): *Wayne County Bureau of Support v. Wolfe*, 71 Ohio App. 3d 765, 595 N.E.2d 421 (1991).

Juvenile Court has no jurisdiction under RC § 3109.21 (Uniform Custody Jurisdiction Act) to enforce foreign support order. Doctrine of forum non conveniens cannot vest juvenile court with jurisdiction to enforce foreign support order: In *re Dych*, 1990 Ohio App. LEXIS 2334 (1990).

Where child had resided in another state for three years, but was born in Ohio, spent first five years in Ohio, mother lived in Ohio, and evidence of future care, protection, and training were available in Ohio, Ohio court had jurisdiction to entertain custody action. Where child resided in another state, mother resided in Ohio, evidence from other state was accessible and could be documented and submitted in Ohio, Ohio was more convenient forum for custody action brought by mother: In *re Capton*, 1990 Ohio App. LEXIS 3296 (1990).

The probate court has no jurisdiction to determine custody of a minor once it terminates the guardianship of that minor. Once the guardianship is terminated, the juvenile court then has exclusive jurisdiction to determine the custody of the child under RC § 2151.23(A)(2): In *re Guardianship of Harrison*, 60 Ohio App. 3d 19, 572 N.E.2d 855 (1989).

Once the probate court appoints a guardian for a minor, the juvenile court is without jurisdiction to grant custody of the ward to another person, until the guardianship has been terminated: In *re Miller*, 33 Ohio App. 3d 224, 515 N.E.2d 635 (1986).

The juvenile court does not have exclusive jurisdiction where a defendant could have been charged under RC Chapter 2151., but was charged and convicted under RC Chapter 2907.: *Peck v. Marshall*, 22 Ohio St. 3d 78, 22 Ohio B. 94, 488 N.E.2d 870 (1986).

Juvenile court lacks jurisdiction over charges under RC Title 29: *State ex rel. McMinn v. Whitfield*, 27 Ohio St. 3d 4, 27 Ohio B. 73, 500 N.E.2d 875 (1986).

A court which obtains jurisdiction over and enters orders regarding the custody and support of children retains continuing and exclusive jurisdiction over such matters: *Hardesty v. Hardesty*, 16 Ohio App. 3d 56, 16 Ohio B. 59, 474 N.E.2d 368 (1984).

Revised Code § 2151.23(A) which states that "[t]he juvenile court has exclusive original jurisdiction under the Revised Code: *** (2) [t]o determine the custody of any child not a ward of another court of this state ***" confers concurrent jurisdiction upon this state's court, where another state's court has already properly assumed and exercised jurisdiction in conformity with

RC §§ 3109.21 to 3109.36: *Squires v. Squires*, 12 Ohio App. 3d 138, 12 Ohio B. 460, 468 N.E.2d 73 (1983).

The Juvenile Court acts beyond the scope of its jurisdiction when it orders the Ohio Department of Mental Health to pay the cost of care of a child placed in a private, non-public psychiatric hospital: *In re Hamil*, 69 Ohio St. 2d 97, 23 Ohio Op. 3d 151, 431 N.E.2d 317 (1982).

Revised Code § 2151.23 does not limit the juvenile court to deciding only particular aspects of a juvenile's case, or in any way restrict its jurisdiction, other than by limiting the court to dealing with juveniles. Thus a juvenile may challenge in that forum the distribution of juvenile court records, including social histories, to governmental and social agencies: *J. F. v. DeSanti*, 653 F.2d 1080 (6th Cir. 1981).

The juvenile court has exclusive original jurisdiction, pursuant to RC § 2151.23(A), concerning any child who is alleged in a proper complaint to be neglected, and the court does not lose jurisdiction by failing to adhere to the time limits set forth in JuvR 29(A) and 34(A): *Linger v. Weiss*, 57 Ohio St. 2d 97, 11 Ohio Op. 3d 281, 386 N.E.2d 1354 (1979).

In any case where a court of common pleas has made an award of custody or an order for support, or both, of minor children, that court may certify the case to the juvenile court of any county in the state for further proceedings: *Pylant v. Pylant*, 61 Ohio App. 2d 247, 15 Ohio Op. 3d 407, 401 N.E.2d 940 (1978).

Where a court, having acquired jurisdiction over a child by virtue of a divorce action between the child's parents, certifies the matter of the child's custody to a juvenile court, the consent of the juvenile court having first been obtained, the juvenile court has exclusive jurisdiction over the child's custody by virtue of RC § 3109.06 and RC § 2151.23(D) and a finding of unfitness of the parents or that there is no suitable relative to have custody is not a necessary prerequisite to such certification: *In re Height*, 47 Ohio App. 2d 203, 1 Ohio Op. 3d 279, 353 N.E.2d 887 (1975).

The amendment of this section, adopted by the Legislature effective November 19, 1969, deprives a municipal court of any jurisdiction to hear and determine any criminal case charging an adult with the violation of any section of RC Chapter 2151.: *State v. Sanchez*, 22 Ohio App. 2d 145, 51 Ohio Op. 2d 292, 259 N.E.2d 139 (1970).

An Ohio juvenile court, in a dependency proceeding pursuant to RC § 2151.27 et seq., has no jurisdiction to interfere with mother's legal custody of her children, in the absence of proof, and a finding, of unfitness of such parent, merely for the purpose of releasing such children to the officers of the court of a foreign state; the Ohio juvenile court need not give full faith and credit to a Michigan decree where that decree was obtained by the husband in an ex parte custody determination, subsequent to a divorce decree, in which the Michigan court had no personal jurisdiction over the nonresident wife: *In re Messner*, 19 Ohio App. 2d 33, 48 Ohio Op. 2d 31, 249 N.E.2d 532 (1969).

The state of Ohio has the burden of proof in the prosecution of a delinquency complaint to establish the jurisdiction of the juvenile court over the person of the "child": *State v. Mendenhall*, 21 Ohio App. 2d 135, 50 Ohio Op. 2d 227, 255 N.E.2d 307 (1969).

Under the authority derived from RC §§ 2151.23, 2151.27 and 2151.35, the juvenile court has the authority to hear and determine the case of a neglected child notwithstanding the fact that the child is at the time within the continuing jurisdiction of the common pleas court by virtue of a divorce decree: *In re Gail*, 12 Ohio Misc. 251, 41 Ohio Op. 2d 341, 231 N.E.2d 253 (JC 1967).

Subsections (A)(1) and (A)(2) of this section are independent grants of jurisdiction to the juvenile court. Subsection (A)(2) does not modify the power granted by subsection (A)(1): *James v. Child Welfare Board*, 9 Ohio App. 2d 299, 38 Ohio Op. 2d 347, 224 N.E.2d 358 (1967).

The common pleas court is, therefore, without jurisdiction to entertain an action filed by the mother against the father for alleged delinquencies in the weekly payments ordered as a condition of probation by the juvenile court: *Anderson v. Anderson*, 4 Ohio App. 2d 90, 33 Ohio Op. 2d 145, 212 N.E.2d 643 (1965).

In such case, where the mother files a petition for divorce in the common pleas court subsequent to the action in juvenile court and upon trial a divorce is granted to the mother, the common pleas court in its decree is without jurisdiction to deal with the

custody and support of the minor children, jurisdiction of custody and support then being exclusively in the juvenile court: *Anderson v. Anderson*, 4 Ohio App. 2d 90, 33 Ohio Op. 2d 145, 212 N.E.2d 643 (1965).

Where the jurisdiction of the juvenile court has been invoked by the arrest of a father of minor children on a charge of nonsupport filed by the mother, and upon trial the father pleads guilty and is sentenced, which sentence is suspended and the defendant put on probation, the condition of the probation being that the defendant will pay a specified sum weekly for support, the minor children thereby become wards of the Juvenile Court and the subject of their support and the power to enforce the condition of probation is exclusively in that court until each child has reached the age of eighteen years (RC §§ 2151.49 and 2151.99): *Anderson v. Anderson*, 4 Ohio App. 2d 90, 33 Ohio Op. 2d 145, 212 N.E.2d 643 (1965).

The statutes of Ohio confer jurisdiction on the juvenile court with respect to custody of a neglected or dependent child: *Byington v. Byington*, 175 Ohio St. 513, 26 Ohio Op. 2d 176, 196 N.E.2d 588 (1964).

A juvenile court which acquires jurisdiction of a minor child of persons who are subsequently divorced has, by virtue of this section exclusive jurisdiction of such minor, and the common pleas court wherein such divorce is granted has no jurisdiction to make any order respecting the custody of such child: *Patton v. Patton*, 1 Ohio App. 2d 1, 30 Ohio Op. 2d 49, 203 N.E.2d 662 (1963).

The juvenile court has exclusive original jurisdiction of delinquent minors: *State ex rel. Schwartz v. Haines*, 172 Ohio St. 572, 18 Ohio Op. 2d 130, 179 N.E.2d 46 (1962).

The physical presence of the child within the geography of the court empowers the juvenile court to determine its custody, provided it is "not a ward of another court": *In re Wolfe*, 91 Ohio L. Ab. 167, 26 Ohio Op. 2d 274, 187 N.E.2d 658 (JC 1962).

Where separate complaints, alleging each of petitioner's children to be a neglected child, were filed in the juvenile court before the petitioner filed a habeas corpus proceeding in the common pleas court alleging that he was unlawfully deprived of their custody, the juvenile court acquired jurisdiction over the matter of custody: *In re Ruth*, 88 Ohio L. Ab. 1, 16 Ohio Op. 2d 408, 176 N.E.2d 187 (CP 1961).

When the question of custody only comes before a court, under the authority granted in this section, that court has jurisdiction to include in the award of custody an order for the support of such child: *Kolody v. Kolody*, 110 Ohio App. 260, 13 Ohio Op. 2d 25, 169 N.E.2d 34 (1960).

Where a neglected child proceeding is instituted in the juvenile court, pursuant to RC § 2151.27, by a parent of such child, and a divorce action is later instituted by such parent, the juvenile court has exclusive original jurisdiction to determine whether the child is neglected, the power to determine his custody and the authority to place the child with a relative: *In re Small*, 114 Ohio App. 248, 19 Ohio Op. 2d 128, 181 N.E.2d 503 (1960).

Where the juvenile court has entertained jurisdiction over a minor, and has by decree, placed the permanent custody of said minor, with the county welfare department, the juvenile court has original and continuing jurisdiction and the probate court is without jurisdiction and authority to grant letters of guardianship in such a case: *In re Brinegar's Guardianship*, 81 Ohio L. Ab. 158, 160 N.E.2d 589 (PC 1959).

Under division (A) of this section the juvenile court has exclusive original jurisdiction of any child who is neglected and this excludes action by any other court not explicitly given jurisdiction: *Hartshorne v. Hartshorne*, 89 Ohio L. Ab. 243, 185 N.E.2d 329 (App 1959).

By the language of this section, the juvenile court is without authority to accept or exercise jurisdiction where the matter has not been referred to it by a court vested with authority to do so: *Haynie v. Haynie*, 169 Ohio St. 467, 8 Ohio Op. 2d 476, 159 N.E.2d 765 (1959), [affirming 108 Ohio App. 342, 9 Ohio Op. 2d 301, 161 N.E.2d 549.]

Under RC §§ 3105.21 and 2151.23, where the court of common pleas in a divorce action dismisses the action for insufficient evidence and without making a determination on the merits, it lacks the power and authority to certify the question of the custody of the minor child of the parties to the juvenile court,

and the juvenile court is without power to accept such question: Haynie v. Haynie, 169 Ohio St. 467, 8 Ohio Op. 2d 476, 159 N.E.2d 765 (1959), [affirming 108 Ohio App. 342, 9 Ohio Op. 2d 301, 161 N.E.2d 549.]

The right to custody of a minor child, the duty to support and the right of a parent to reasonable visitation may, where the interest of the child requires it, be determined or altered by a court of this state in whose jurisdiction the child may be, even though a court of another state has determined the right to custody: Bain v. Rose, 103 Ohio App. 297, 3 Ohio Op. 2d 326, 145 N.E.2d 319 (1957).

The juvenile court has exclusive original jurisdiction under this section to determine the custody of any child not a ward of another court: Crum v. Howard, 73 Ohio L. Ab. 111, 1 Ohio Op. 2d 399, 137 N.E.2d 654 (CP 1956).

Under the provisions of this section, the juvenile court is invested with original jurisdiction to determine the custody of any child not a ward of another court: In re Torok, 161 Ohio St. 585, 53 Ohio Op. 433, 120 N.E.2d 307 (1954).

Under the provisions of this section, the juvenile court is given original jurisdiction in a proper proceeding to determine the right of custody of any child where such child is not a ward of another court, and it is not necessary in the exercise of such jurisdiction that the juvenile court first determine that such child is a dependent, neglected or delinquent child as defined by GC §§ 1639-2, 1639-3, and 1639-4 (RC §§ 2151.02, 2151.03, and 2151.04): In re Lorok, 93 Ohio App. 251, 51 Ohio Op. 10, 114 N.E.2d 65 (1952).

This section confers exclusive original jurisdiction upon the juvenile court to determine the custody of any child not a ward of another court: Withorowski v. Withorowski, 89 Ohio App. 424, 46 Ohio Op. 259, 102 N.E.2d 896 (1951).

There was no proper basis for certification from the probate court to the juvenile court, and, no complaint having been filed charging the child to be a dependent child or any other form of complaint originating in the juvenile court, that court was without jurisdiction to determine that the child was a dependent child or to make an order depriving the mother of custody and committing the child to the custody of a detention home: State ex rel. Clark v. Allaman, 87 Ohio App. 101, 42 Ohio Op. 330, 90 N.E.2d 394 (1950).

By the provisions of this section, jurisdiction is conferred on the juvenile court to "determine the custody of any child not a ward of another court" and "to hear and determine the case of any child duly certified to the court according to law by any court of competent jurisdiction, and to make disposition of said child in accordance with the provisions of this chapter": State ex rel. Sparto v. Williams, 86 Ohio App. 377, 41 Ohio Op. 474, 86 N.E.2d 501 (1949), [affirmed, 153 Ohio St. 64.]

The juvenile court has jurisdiction of a child only if such child is found to be delinquent, neglected or dependent: Paddock v. Ripley, 149 Ohio St. 539, 37 Ohio Op. 262, 80 N.E.2d 129 (1948).

Under this section the juvenile court has exclusive original jurisdiction over delinquent, neglected, dependent, crippled or otherwise physically handicapped children, and if a complaint is filed in the juvenile court alleging that a child is delinquent, neglected, dependent, crippled, or otherwise physically handicapped, the juvenile court may exercise such jurisdiction if the complaint is proven and may make such order as provided by the juvenile court code even though the child is a ward of the common pleas court in a divorce proceeding, except that it may not change the custody of said child as between the parties to the divorce action unless the question of custody is certified to the juvenile court by the court granting the divorce decree: In re Jones, 46 Ohio L. Ab. 132, 33 Ohio Op. 331, 68 N.E.2d 97 (JC 1946).

The jurisdiction over minors acquired by the common pleas court in a divorce action is continuing and, as between the parties to a divorce action, no other court has authority to make any order affecting the custody of such minors: McFadden v. Kendall, 81 Ohio App. 107, 36 Ohio Op. 414, 77 N.E.2d 625 (1946).

Where a child is properly charged with being a delinquent, neglected, or dependent child, and is proven to be such, the juvenile court, by this section, is the special and exclusive tribunal for determining the issue of such child's care, custody and control:

McFadden v. Kendall, 81 Ohio App. 107, 36 Ohio Op. 414, 77 N.E.2d 625 (1946).

This section, relative to the jurisdiction of the juvenile court to determine custody of minors, is a grant, and not a limitation, of jurisdiction: McFadden v. Kendall, 81 Ohio App. 107, 36 Ohio Op. 414, 77 N.E.2d 625 (1946).

Since August 19, 1937, the juvenile court, subject to the jurisdiction of the common pleas court in divorce cases, has exclusive original jurisdiction over dependent, neglected and crippled children: In re Howell, 21 Ohio Op. 379, 7 Ohio Supp. 4 (JC 1941).

The juvenile court code, GC § 1639-1 (RC § 2151.01) et seq. does not make the jurisdiction of the juvenile court exclusive throughout. It vests jurisdiction over the infant, not the crime: In re Evans, 67 Ohio App. 66, 21 Ohio Op. 93, 35 N.E.2d 887 (1941).

When the common pleas court, under authority of GC § 8034-1 (RC § 3109.06), certified to the juvenile court the matter of arrearages which had arisen on support orders, the common pleas court surrendered all jurisdiction as to that question and thereafter the juvenile court had continuing and exclusive jurisdiction as to any modification of the orders: Baumgarten v. Baumgarten, 29 Ohio L. Ab. 112, 14 Ohio Op. 490 (CP 1939).

In the part relating to adults, found in this section, the word "exclusive" is not used; it will be observed therefore that exclusive jurisdiction is only conferred by the juvenile court code with respect to offenses from the standpoint of the child: In re Cooper, 134 Ohio St. 40, 11 Ohio Op. 416, 15 N.E.2d 634 (1938), [affirming 58 Ohio App. 519.]

Pursuant to R.C. 2151.23(A), the Probate and Juvenile Division of the Muskingum County Court of Common Pleas has exclusive original jurisdiction to issue orders of support in cases brought under R.C. 2151.27 to R.C. 2151.331, including orders complying with R.C. 2151.33(B)(2)(a). The language of R.C. 2301.03(AA) establishing the powers and duties of the judge of the Domestic Relations Division of the Muskingum County Court of Common Pleas does not modify or restrict the exclusive original jurisdiction of the juvenile court in this regard. Opinion No. 2005-003 (2005).

When a juvenile court exercising jurisdiction over a child under GC § 1639-16 (RC § 2151.23) terminates such jurisdiction, said child by virtue of GC §§ 1639-6 and 3391-16 (RC §§ 2151.06 and 5113.05) immediately acquires a legal settlement in the county of residence of the parents, surviving parent, sole parent, parent having custody awarded by a court having jurisdiction, or guardian of the person of such minor: 1953 OAG No. 2656 (1953).

Juvenile courts have no jurisdiction of felonies or offenses described in GC §§ 13008 and 13012 (RC §§ 3113.01 and 3113.06): 1946 OAG No. 1100 (1946).

—Surrender of child to relative

A juvenile court does not have jurisdiction to approve a parent's permanent surrender of rights to a relative: State ex rel. Lunsford v. Buck, 88 Ohio App. 3d 425, 623 N.E.2d 1356 (1993).

—Visitation

Trial court's requirement of supervised visitation and the numerous rules imposed on visitation were justified by the history of the case. Because the determination that the parents had to pay the supervision and guardian ad litem fees had already been made, the parents needed to present some evidence regarding their income and expenses to prove their contention that they could not afford the fees, which they failed to do. Hempen v. Bailey (In re Bailey), 2005 Ohio App. LEXIS 2830, 2005 Ohio 3039, (2005).

The complaint of a grandparent seeking only visitation with a grandchild may not be determined by the juvenile court pursuant to its authority to determine the "custody" of children under RC § 2151.23(A)(2): In re Gibson, 61 Ohio St. 3d 168, 573 N.E.2d 1074 (1991).

—Ward of another state court

Juvenile Court did not have jurisdiction, pursuant to RC § 2151.23(A)(2), to grant permanent custody of a child to a county agency, as the child was the ward of another state court

that had specifically retained jurisdiction over the child after the court granted legal custody of the child to her relatives in her parents' divorce proceeding. *In re Frenz*, 2003 Ohio App. LEXIS 3289, 2003 Ohio 3653, (2003).

Money judgments

The juvenile court does not have jurisdiction to render a money judgment: *Snyder v. Snyder*, 32 Ohio L. Ab. 28, 18 Ohio Op. 69, 5 Ohio Supp. 222 (JC 1940).

Parentage proceedings

Under the circumstances, the juvenile division and the general division had concurrent jurisdiction over the parentage action: *Payne v. Cartee*, 111 Ohio App. 3d 580, 676 N.E.2d 946 (1996).

A juvenile court's jurisdiction in paternity actions includes authority to order the father to reimburse the human services department pursuant to RC § 5107.04. The order must provide for full reimbursement of the department: *Brightwell v. Easter*, 93 Ohio App. 3d 425, 638 N.E.2d 1067 (1994).

A juvenile court has statutory authority to award child support arrearages to the mother and/or minor child upon a motion for child support arrearages filed by the mother and minor child in a parentage action brought pursuant to RC § 2151.23(B)(2) and RC §§ 3111.01 through 3111.19 where the father has acknowledged the father-child relationship and the mother has consented to the filing of a legitimation order by a probate court pursuant to RC § 2105.18: *Lewis v. Chapin*, 93 Ohio App. 3d 695, 639 N.E.2d 848 (1994).

Privilege against self-incrimination

The privilege against self-incrimination applied to a parent in a proceeding where the county was seeking temporary custody of a child that was alleged to be neglected: *Gill v. Cuyahoga County Dep't of Children & Family Servs.* (In re Knight), 135 Ohio App. 3d 172, 733 N.E.2d 303 (1999).

Prohibition

Where a juvenile court judge had statutory authority to determine permanent custody issues under RC §§ 2151.23(A)(2) and 2151.353(A)(4), and a father had a legal remedy providing adequate relief, the father was foreclosed from pursuing an extraordinary remedy in prohibition. *State ex rel. Wells v. Costine*, 2004 Ohio App. LEXIS 530, 2004 Ohio 563, (2004).

Proof of age

Once a court has properly established subject matter and personal jurisdiction over an alleged juvenile offender, additional evidence of the juvenile's age is not essential to a finding of delinquency, unless one of the elements of the adult crime alleged requires specific proof of age: *In re Burton S.*, 136 Ohio App. 3d 386, 736 N.E.2d 928 (1999).

Unless a child has been transferred from the juvenile court, a court of common pleas does not have jurisdiction over a person under 18. A court of common pleas has jurisdiction to determine defendant's age at a hearing. The state has the burden of proving beyond a reasonable doubt that defendant was an adult at the time of the offense: *State v. Neguse*, 71 Ohio App. 3d 596, 594 N.E.2d 1116 (1991).

Reference

A juvenile judge has no authority to commit the trial of a criminal charge against an adult to a referee and any proceedings so committed are null and void: *State v. Eddington*, 52 Ohio App. 2d 312, 6 Ohio Op. 3d 317, 369 N.E.2d 1054 (1976).

Right to counsel

When a parent's mother sought custody of the parent's child, the parent was not entitled to have counsel appointed, despite the use of the word "dependent" in the mother's petition, because the use of that word did not place the mother's petition under RC § 2151.23(A)(1), under which the parent would have had a right to appointed counsel, but, rather, the petition was simply the petition of a private party for custody, which was governed by RC § 2151.23(A)(2), under which the parent did not have a right to appointed counsel. *State ex rel. Johnson v. Baronzzi*, 2006 Ohio App. LEXIS 4889, 2006 Ohio 4955, (2006).

A party who has a right to appointed counsel in a juvenile court

action for child support is also entitled to counsel on the issues of custody and visitation: *McKinney v. McClure*, 102 Ohio App. 3d 165, 656 N.E.2d 1310 (1995).

Same-sex relationship

Pursuant to its authority under RC § 2151.23(A)(2), a juvenile court may determine whether a shared custody agreement between partners in a same-sex relationship is in the best interests of the children: *In re Bonfield*, 96 Ohio St. 3d 218, 773 N.E.2d 507, 2002 Ohio 4182, (2002), substituted opinion at 97 Ohio St. 3d 387, 2002 Ohio 6660, 780 N.E.2d 241, 2002 Ohio LEXIS 3047 (2002).

Shared parenting

Juvenile court had jurisdiction to rule on a father's motion for a shared parenting plan concerning the parties' daughter and to make a custody determination in accordance with RC § 3109.04. *Steven D. C. v. Carrie Anne P.*, 2005 Ohio App. LEXIS 3548, 2005 Ohio 3858, (2005).

Temporary custody

Revised Code § 3109.04(B) has no application where a parent is seeking to extinguish an award of temporary custody to a non-parent in order to re-establish custody of the child: *In re Custody of Carpenter*, 41 Ohio App. 3d 182, 534 N.E.2d 1216 (1987).

Revised Code § 3109.04(C) does not apply to orders of temporary custody; nevertheless, the factors enumerated therein are factors that the trial court may, in its discretion, consider in connection with the determination required by *In re Perales* (1977), 52 OS2d 89, 6 OO3d 293, 369 NE2d 1047: *In re Custody of Carpenter*, 41 Ohio App. 3d 182, 534 N.E.2d 1216 (1987).

URESA

Prohibition will not issue to prevent a juvenile court, in a URESA action, from requiring information as to a party's financial status: *Manrow v. Court of Common Pleas of Lucas Cty.*, 20 Ohio St. 3d 37, 20 Ohio B. 285, 485 N.E.2d 713 (1985).

Unborn child

The juvenile court has no jurisdiction to regulate the conduct of a pregnant adult for the purpose of protecting the health of her unborn child: *Cox v. Franklin Cty. Court of Common Pleas*, 42 Ohio App. 3d 171, 537 N.E.2d 721 (1988).

Uniform child custody jurisdiction act

The juvenile court did not abuse its discretion by declining jurisdiction pursuant to the uniform child custody jurisdiction act. Ex parte communications between the judges involved concerning procedural matters were proper: *In re Simons*, 118 Ohio App. 3d 622, 693 N.E.2d 1111 (1997).

Visiting judge

In a court that possesses subject matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court's jurisdiction over the particular case and render the judgment voidable, not void: *In re J.J.*, 111 Ohio St. 3d 205, 855 N.E.2d 851, 2006 Ohio 5484, (2006).

Voluntary placement with relatives

Children were not dependent or neglected where the parent with custody voluntarily placed them with relatives, pursuant to an informal agreement, prior to the involvement of DJFS, and the children were receiving proper care from the relatives: *In re Stoll*, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

[§ 2151.23.1] § 2151.231 Child support order without regard to marital status of parents.

The parent, guardian, or custodian of a child, the person with whom a child resides, or the child support enforcement agency of the county in which the child, parent, guardian, or custodian of the child resides may bring an action in a juvenile court or other court with

jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code under this section requesting the court to issue an order requiring a parent of the child to pay an amount for the support of the child without regard to the marital status of the child's parents. No action may be brought under this section against a person presumed to be the parent of a child based on an acknowledgment of paternity that has not yet become final under former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] or section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code.

The parties to an action under this section may raise the issue of the existence or nonexistence of a parent-child relationship, unless a final and enforceable determination of the issue has been made with respect to the parties pursuant to Chapter 3111. of the Revised Code or an acknowledgment of paternity signed by the child's parents has become final pursuant to former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] or section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code. If a complaint is filed under this section and an issue concerning the existence or nonexistence of a parent-child relationship is raised, the court shall treat the action as an action pursuant to sections 3111.01 to 3111.18 of the Revised Code. An order issued in an action under this section does not preclude a party to the action from bringing a subsequent action pursuant to sections 3111.01 to 3111.18 of the Revised Code if the issue concerning the existence or nonexistence of the parent-child relationship was not determined with respect to the party pursuant to a proceeding under this section, a proceeding under Chapter 3111. of the Revised Code, or an acknowledgment of paternity that has become final under former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] or section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code. An order issued pursuant to this section shall remain effective until an order is issued pursuant to sections 3111.01 to 3111.18 of the Revised Code that a parent-child relationship does not exist between the alleged father of the child and the child or until the occurrence of an event described in section 3119.88 of the Revised Code that would require the order to terminate.

The court, in accordance with sections 3119.29 to 3119.56 of the Revised Code, shall include in each support order made under this section the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court.

HISTORY: 144 v S 10 (Eff 7-15-92); 146 v H 167† (Eff 6-11-96); 147 v H 352 (Eff 1-1-98); 148 v S 180 (Eff 3-22-2001); 149 v H 657. Eff 12-13-2002.

† The effective date of HB 167 (146 v —) for this section was changed from 11-15-96 to 6-11-96 by § 7 of HB 710 (146 v —), effective 6-11-96.

Cross-References to Related Sections

Action objecting to order; finality of unchallenged order, RC § 3111.84.
Grandparent who is providing support to child born to unmarried and unemancipated minors may bring parentage or support action, RC § 3109.19.
Interfering with action to issue or modify support order, RC § 2919.23.1.
Modification of child support order, RC § 3119.61.
Nonsupport or contributing to nonsupport of dependents, RC § 2919.21.
Parentage —

Action objecting to order; finality of unchallenged order, RC § 3111.84.
Administrative order concerning support and health care, RC § 3111.81.
Methods of enforcing obligations of presumed father, RC § 3111.78.
Proceedings to enforce support obligation, RC § 3111.29.
Request to precede court action, jurisdiction of courts, RC § 3111.38.1.

Ohio Administrative Code

Department of job and family services, division of public assistance—
Administrative support order process. OAC 5101:1-32-03.
Parents' responsibility for support of unmarried minors' child(ren). OAC 5101:1-32-04.
Review and adjustment of IV-D court and administrative child support orders; initiation of action. OAC 5101:1-30-40.3.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 20.01 Statutory Duty to Support Children

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Obtaining Administrative Child Support Order, Ohio Transaction Guide: Family Law & Forms § 20.120

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County child support enforcement agency

A county child support enforcement agency has standing to bring an action in a juvenile court to obtain reimbursement for public support provided, even where parentage was never at issue: *State ex rel. Lamier v. Lamier*, 105 Ohio App. 3d 797, 664 N.E.2d 1384 (1995).

There is no statutory authority for a county support enforcement agency to bring a support action in its own name where the parents are married, do not dispute parentage and do not receive public assistance: *In re Owens*, 104 Ohio App. 3d 201, 661 N.E.2d 765 (1994).

Jurisdiction

When, in one county, a father's parentage was established and he was ordered to pay child support and then, in another county, he filed a complaint for child support because he had obtained custody of the child, without modifying the first court's orders, the two courts, under the terms of RC §§ 2151.23(B)(4) and 2151.231, appeared to have concurrent jurisdiction because the child was not a ward of another court and apparently resided with each of his parents at the times each of them sought child support, so the court in which an action was first filed had exclusive jurisdiction, and it was not error to dismiss the complaint filed in the second court. *Dazey v. Pollock*, 2006 Ohio App. LEXIS 4756, 2006 Ohio 4850, (2006).

Where a mother sought to preclude a juvenile court judge from exercising post-judgment jurisdiction over visitation and custody motions filed by the father of her child after the mother had filed her intent to relocate to North Carolina with the child, her claim that the judge no longer had jurisdiction over the matter lacked merit, as the juvenile court and the judge had general statutory authority over such issues pursuant to RC §§ 2151.23 and 2151.231. The mother also failed to show entitlement to the writ where she had an adequate remedy at law through either an appeal or a request to transfer the proceedings to North Carolina, pursuant to Ohio R. Juv. P. 11 and 39, such that dismissal of the complaint was warranted. *Rivers v. Ramsey*, 2006 Ohio App. LEXIS 1610, 2006 Ohio 1744, (2006).

State of Ohio

The state of Ohio has an interest in all child support actions by virtue of either the residential parent's assignment of rights as public assistance recipients or the interest in enforcing child support awards in order to protect and ensure the integrity of the public fisc: Cuyahoga County Support Enforcement Agency v. Lozada, 102 Ohio App. 3d 442, 657 N.E.2d 372 (1995).

[§ 2151.23.2] § 2151.232 Action for child support where acknowledgment is not yet final.

If an acknowledgment has been filed and entered into the birth registry pursuant to section 3111.24 of the Revised Code but has not yet become final, either parent who signed the acknowledgment may bring an action in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code under this section requesting that the court issue an order requiring a parent of the child to pay an amount for the support of the child in accordance with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

The parties to an action under this section may raise the issue of the existence or nonexistence of a parent-child relationship. If an action is commenced pursuant to this section and the issue of the existence or nonexistence of a parent-child relationship is raised, the court shall treat the action as an action commenced pursuant to sections 3111.01 to 3111.18 of the Revised Code. If the issue is raised, the court shall promptly notify the office of child support in the department of job and family services that it is conducting proceedings in compliance with sections 3111.01 to 3111.18 of the Revised Code. On receipt of the notice by the office, the acknowledgment of paternity signed by the parties and filed pursuant to section 3111.23 of the Revised Code shall be considered rescinded.

If the parties do not raise the issue of the existence or nonexistence of a parent-child relationship in the action and an order is issued pursuant to this section prior to the date the acknowledgment filed and entered on the birth registry becomes final, the acknowledgment shall be considered final as of the date of the issuance of the order. An order issued pursuant to this section shall not affect an acknowledgment that becomes final pursuant to section 3111.25 of the Revised Code prior to the issuance of the order.

HISTORY: 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 190. Eff 3-22-2001.

Cross-References to Related Sections

- Adoption; who must consent, when, RC § 3107.06.
- Assumption of parental duty of support, RC § 3103.03.1.
- Child support order without regard to marital status of parents, RC § 2151.23.1.
- Companionship or visitation rights where mother is unmarried, RC § 3109.12.
- Grandparent who is providing support to child born to unmarried and unemancipated minors may bring parentage or support action, RC § 3109.19.
- Interfering with action to issue or modify support order, RC § 2919.23.1.
- New birth record upon paternity finding or acknowledgment, RC § 3705.09.
- Nonsupport or contributing to nonsupport of dependents, RC § 2919.21.
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 - Action to rescind acknowledgment based on fraud, duress or material mistake of fact, RC § 3111.28.

Presumption of paternity, RC § 3111.03.

Rescission of acknowledgment, RC § 3111.27.

Request to precede court action, jurisdiction of courts, RC § 3111.38.1.

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Conditions for granting motion for relief from paternity determination or support order, RC § 3119.96.2.

Filing of motion for relief from paternity determination or support order, RC § 3119.96.1.

Ohio Administrative Code

Department of job and family services, division of public assistance —

Administrative support order process. OAC 5101:1-32-03.

Parents' responsibility for support of unmarried minors' child(ren). OAC 5101:1-32-04.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 1.21 Vital Statistics

Ohio Transaction Guide: Family Law & Forms § 4.21 Parent-Child Relationship

§ 2151.24 Separate room for hearings.

(A) Except as provided in division (B) of this section, the board of county commissioners shall provide a special room not used for the trial of criminal or adult cases, when available, for the hearing of the cases of dependent, neglected, abused, and delinquent children.

(B) Division (A) of this section does not apply to the case of an alleged delinquent child when the case is one in which the prosecuting attorney seeks a serious youthful offender disposition under section 2152.13 of the Revised Code.

HISTORY: GC § 1639-14; 117 v 520; Bureau of Code Revision, 10-1-53; 136 v H 55 (Eff 11-25-75); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Serious youthful offender defined, RC § 2152.02.

Ohio Rules

Detention and shelter care, JuvR 7.

[PROCEDURE IN CHILDREN'S CASES]

§ 2151.25 Amended and renumbered RC § 2152.03 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.26 Amended and renumbered RC § 2152.12 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.27 Complaint.

(A)(1) Subject to division (A)(2) of this section, any person having knowledge of a child who appears to have violated section 2151.87 of the Revised Code or to be a juvenile traffic offender or to be an unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the

county in which the child has a residence or legal settlement or in which the violation, unruliness, abuse, neglect, or dependency allegedly occurred. If an alleged abused, neglected, or dependent child is taken into custody pursuant to division (D) of section 2151.31 of the Revised Code or is taken into custody pursuant to division (A) of section 2151.31 of the Revised Code without the filing of a complaint and placed into shelter care pursuant to division (C) of that section, a sworn complaint shall be filed with respect to the child before the end of the next day after the day on which the child was taken into custody. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child committed the violation or is an unruly, abused, neglected, or dependent child, the complaint shall allege the particular facts upon which the allegation that the child committed the violation or is an unruly, abused, neglected, or dependent child is based.

(2) Any person having knowledge of a child who appears to be an unruly child for being an habitual truant may file a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend public school. The sworn complaint may be upon information and belief and shall contain the following allegations:

(a) That the child is an unruly child for being an habitual truant and, in addition, the particular facts upon which that allegation is based;

(b) That the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code and, in addition, the particular facts upon which that allegation is based.

(B) If a child, before arriving at the age of eighteen years, allegedly commits an act for which the child may be adjudicated an unruly child and if the specific complaint alleging the act is not filed or a hearing on that specific complaint is not held until after the child arrives at the age of eighteen years, the court has jurisdiction to hear and dispose of the complaint as if the complaint were filed and the hearing held before the child arrived at the age of eighteen years.

(C) If the complainant in a case in which a child is alleged to be an abused, neglected, or dependent child desires permanent custody of the child or children, temporary custody of the child or children, whether as the preferred or an alternative disposition, or the placement of the child in a planned permanent living arrangement, the complaint shall contain a prayer specifically requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement.

(D) Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by section 2151.23 of the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found.

(E) A public children services agency, acting pursuant to a complaint or an action on a complaint filed under this section, is not subject to the requirements of section 3127.23 of the Revised Code.

(F) Upon the filing of a complaint alleging that a child is an unruly child, the court may hold the complaint in

abeyance pending the child's successful completion of actions that constitute a method to divert the child from the juvenile court system. The method may be adopted by a county pursuant to divisions (D) and (E) of section 121.37 of the Revised Code or it may be another method that the court considers satisfactory. If the child completes the actions to the court's satisfaction, the court may dismiss the complaint. If the child fails to complete the actions to the court's satisfaction, the court may consider the complaint.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 140 v S 5 (Eff 9-26-84); 142 v S 89 (Eff 1-1-89); 144 v H 154 (Eff 7-31-92); 146 v S 2 (Eff 7-1-96); 146 v H 274, §§ 1, 4 (Eff 8-8-96); 146 v H 445 (Eff 9-3-96); 147 v H 484 (Eff 3-18-99); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 57, Eff 2-19-2002; 150 v S 185, § 1, eff. 4-11-05.

† The effective date of sections 1 and 2 of Sub. H.B. 57 (149 v —) differs from the effective date set for the sections by section 3 of the Act. See provisions of OConst art II, §§ 1c and d.

Analogous in part to former RC § 2151.27 (GC § 1639-23; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53; 127 v 547), repealed 133 v H 320, eff 11-19-69.

The provisions of § 3 of HB 57 (149 v —) read as follows:
SECTION 3. Sections 1 and 2 of this act shall take effect January 1, 2002.

The provisions of § 6 of HB 57 (149 v —) read as follows:
SECTION 6. Section 2151.27 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect on January 1, 2002.

Effect of Amendments

150 v S 185, effective April 11, 2005, corrected internal references.

Cross-References to Related Sections

Agreement for temporary custody or surrender of permanent custody, RC § 5103.15.
Apprehension, custody and detention of child, RC § 2151.31.
Detention or shelter care hearing, RC § 2151.31.4.
Case plan; general goals and priorities, RC § 2151.41.2.
County service coordination process, RC § 121.37.
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Department of job and family services, division of social services

Complaint by PCSA or PCPA requesting custody—

Acceptance of temporary custody by agreement and court-approved extensions. OAC 5101:2-42-08.

Obtaining permanent custody: termination of parental rights. OAC 5101:2-42-95.

Comparative Legislation

Procedure in children's cases:

CA—Cal Wel & Inst Code § 325 et seq

FL—Fla. Stat. § 985.301

IL—705 ILCS §§ 405/2-13, 405/3-15, 405/4-12

IN—Burns Ind. Code Ann. § 31-32-1-1 et seq

KY—KRS § 610.010 et seq

MI—MCLS § 712A.11 et seq

NY—NY CLS Family Ct Act § 165

PA—42 P.S. § 6334

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Adoption

The fact that the mother initially gave up her child for the purpose of adoption does not constitute such rejection of the child as to warrant a finding that the child is a neglected child: In re Robert O., 95 Ohio L. Ab. 101, 28 Ohio Op. 2d 165, 199 N.E.2d 765 (JC 1964).

A proceeding, instituted in the juvenile court under the provisions of RC § 2151.27, the so-called "neglected child" statute, may not be used by the complainant either to force an adoption or as a substitute for an adoption proceeding: In re Minton, 112 Ohio App. 361, 16 Ohio Op. 2d 283, 176 N.E.2d 252 (1960).

Case plan

Where a grandmother filed a dependency petition regarding a child pursuant to RC § 2151.27(A) and no children services agency provided services in the matter, the juvenile court did not commit any error in failing to comply with the case plan requirement of RC § 2151.412(A), as it had no applicability to the dependency action where the agency was not involved. In re Brown, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

Construction with other laws

Revised Code § 3109.04, relating to the custody of children of separated or divorced parents, is not applicable to a neglected-child proceeding under this section: In re Small, 114 Ohio App. 248, 19 Ohio Op. 2d 128, 181 N.E.2d 503 (1960).

Dismissal of complaint

Trial court properly dismissed a husband's complaint, pursuant to Ohio R. Civ. P. 12, alleging neglect and dependency on behalf of his children because the complaint alleged prospective and conclusory allegations, which were insufficient to support a claim under RC § 2151.27; it was noted that a claim that the children were not performing at appropriate age levels did not fall within

the definition of dependency pursuant to RC § 2151.04, neglect pursuant to RC § 2151.03, or abuse pursuant to RC § 2151.031. Louck v. Louck, 2003 Ohio App. LEXIS 5328, 2003 Ohio 5999, (2003).

Due process

In a dependency proceeding, GC §§ 1639-4, 1639-21, 1639-35 (RC §§ 2151.04, 2151.16, 2151.38) and this section, there must be legal service upon a minor parent and there must be a guardian ad litem to represent her as prerequisites to any order of dependency against her child in order to satisfy the requirements of due process: In re Hobson, 44 Ohio L. Ab. 85, 62 N.E.2d 510 (App 1945).

Guardian ad litem

It was error for an appointed guardian ad litem to present evidence alleging that the child that the guardian was appointed for was an abused or neglected child because the presentation contravened the statutory mandate from the general assembly; however, that did not affect the validity of the complaint because the guardian ad litem qualified as "any person" under the statute. In re Kheirkhah, 2004 Ohio App. LEXIS 444, 2004 Ohio 521, (2004).

Habeas corpus

An application for a writ of habeas corpus will be denied, where a complaint is duly filed in the county of legal residence, pursuant to this section, charging a child with being a dependent or neglected child, notwithstanding the court of common pleas of another county in this state, as a result of a divorce action there heard, gave custody of the child to the mother, who subsequently moved with the child to the county where the affidavit of dependency and neglect was filed: James v. Child Welfare Board, 9 Ohio App. 2d 299, 38 Ohio Op. 2d 347, 224 N.E.2d 358 (1967).

Jurisdiction

Grandmother's dependency petition and request for temporary custody of her grandchild pursuant to RC §§ 2151.27(A)(1) and 2151.04 was within the juvenile court's subject matter jurisdiction, as the grandmother qualified as "any person" pursuant to RC § 2151.27(A)(1), and RC §§ 2151.27(C) and 2151.353(A)(3) allowed her to seek custody. In re Brown, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

An Ohio juvenile court, in a dependency proceeding pursuant to RC § 2151.27 et seq., has no jurisdiction to interfere with a mother's legal custody of her children, in the absence of proof, and a finding, of unfitness of such parent, merely for the purpose of releasing such children to the officers of the court of a foreign state. The Ohio juvenile court need not give full faith and credit to a Michigan decree where that decree was obtained by the husband in an ex parte, custody determination, subsequent to a divorce decree, in which the Michigan court had no personal jurisdiction over the nonresident wife: In re Messner, 19 Ohio App. 2d 33, 48 Ohio Op. 2d 31, 249 N.E.2d 532 (1969).

Under the authority derived from RC §§ 2151.23, 2151.27 and 2151.35, the juvenile court has the authority to hear and determine the case of a neglected child notwithstanding the fact that the child is at the time within the continuing jurisdiction of the common pleas court by virtue of a divorce decree: In re Gail, 12 Ohio Misc. 251, 41 Ohio Op. 2d 341, 231 N.E.2d 253 (JC 1967).

The juvenile court having once waived jurisdiction to handle a case under the juvenile code must order further proceedings under the regular procedural provisions of the criminal law: In re Davis, 87 Ohio L. Ab. 222, 22 Ohio Op. 2d 108, 179 N.E.2d 198 (JC 1961).

Where a neglected-child proceeding is instituted in the juvenile court, pursuant to this section by a parent of such child, and a divorce action is later instituted by such parent, the juvenile court has exclusive original jurisdiction to determine whether the child is neglected, the power to determine his custody and the authority to place the child with a relative: In re Small, 114 Ohio App. 248, 19 Ohio Op. 2d 128, 181 N.E.2d 503 (1960).

Majority

A juvenile court retains jurisdiction over a person who was under the age of eighteen years at the time that he allegedly committed delinquency offenses, and over the age of twenty-one

years before the adjudicatory and dispositional hearings were conducted on the delinquency complaints: In re J.B., 71 Ohio Misc. 2d 63, 654 N.E.2d 216 (CP 1995).

The fact that the juvenile reached the age of eighteen on the day after the complaint was filed in juvenile court did not alone deprive that court of jurisdiction: In re Davis, 87 Ohio L. Ab. 222, 22 Ohio Op. 2d 108, 179 N.E.2d 198 (JC 1961).

Neglected child

In actions brought pursuant to RC §§ 2151.27 and 2151.03, the state's primary objective is not to decide conflicting claims to custody; its objective is to determine if a child is receiving proper parental care, and if that care is being provided by a relative pursuant to an agreement initiated by the child's parent, then the child is not a neglected child: In re Reese, 4 Ohio App. 3d 59, 4 Ohio B. 109, 446 N.E.2d 482 (1982).

In a proceeding in the juvenile court, instituted by the filing of a complaint under the provisions of RC § 2151.27, a finding by the court that a child is "neglected" in that it "lacked proper parental care because of the faults and habits of his parents" (RC § 2151.03[B]), and "dependent," in that its "condition and environment... is such as to warrant the court... in assuming his guardianship" (RC § 2151.04[C]), must be based on evidence with respect to whether the child was receiving proper parental care in a proper environment in its home at the time of the hearing: In re Minton, 112 Ohio App. 361, 16 Ohio Op. 2d 283, 176 N.E.2d 252 (1960).

New trial

Where an affidavit is filed in support of a motion for a new trial, alleging that the child was a neglected child within the meaning of the provisions of this section, on which charges a hearing was had, the juvenile court has jurisdiction in such matter and may grant a motion for new trial: State ex rel. Sparto v. Williams, 86 Ohio App. 377, 41 Ohio Op. 474, 86 N.E.2d 501 (1949), [affirmed, 153 Ohio St. 64.]

Pleadings

Pursuant to RC § 2151.27, in a juvenile action, the complaint shall allege the particular facts upon which the allegation that the child is a neglected, or dependent child is based, and, pursuant to RC § 2151.353(B) and Ohio R. Juv. P. 10(D), shall contain a prayer specifically requesting permanent custody if that is the relief sought by the complainant; a complaint that sought to adjudicate a father's child neglected and abused properly stated the claim against the father. In re I.M., 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

An objection based on a defect in the complaint must be heard before the adjudicatory hearing by a pre-hearing motion. Failure to make a timely objection constitutes a waiver: In re Dukes, 81 Ohio App. 3d 145, 610 N.E.2d 513 (1991).

In a parental rights termination proceeding, claims were sufficient to establish juvenile court jurisdiction and apprise mother of the nature of the claims even though they did not provide exact dates of where the alleged events occurred: In re Pieper Children, 74 Ohio App. 3d 714, 600 N.E.2d 317 (1991).

In proving its case in a neglect and dependency proceeding, the state is not limited to those faults and habits of the custodial parent which are specifically listed in the complaint. It is not the intent of JuvR 10(B) to force a complainant to state in the complaint every fact surrounding each incident described: In re Sims, 13 Ohio App. 3d 37, 13 Ohio B. 40, 468 N.E.2d 111 (1983).

A complaint under JuvR 10 and RC § 2151.27 alleging that a child is dependent must state the essential facts which bring the proceeding within the jurisdiction of the court: In re Hunt, 46 Ohio St. 2d 378, 75 Ohio Op. 2d 450, 348 N.E.2d 727 (1976).

Proceedings, wherein the juvenile court determines, in response to a motion, that a child is a neglected and dependent child and orders such child placed in the temporary custody of the county welfare board, are void ab initio for want of a complaint filed as prescribed by this section. Such proceedings cannot be the foundation for a determination of dependency or neglect necessary to support an order awarding custody of such child: Union County Child Welfare Board v. Parker, 7 Ohio App. 2d 79, 36 Ohio Op. 2d 162, 218 N.E.2d 757 (1964).

An allegation in a motion filed in juvenile court seeking to have

that court "determine and award the future care and custody" of a child, that "neither parent is a suitable person to have the care and custody of said child," does not constitute a charge that such child is "neglected" (RC § 2151.03) or "dependent" (RC § 2151.04) and is not sufficiently definite to constitute the "complaint" necessitated by RC § 2151.27: Union County Child Welfare Board v. Parker, 7 Ohio App. 2d 79, 36 Ohio Op. 2d 162, 218 N.E.2d 757 (1964).

Jurisdiction and procedure in complaints involving a child are defined and controlled by RC § 2151.27 et seq: State ex rel. Burchett v. Juvenile Court, 92 Ohio L. Ab. 357, 28 Ohio Op. 2d 116, 194 N.E.2d 912 (App 1962).

In a proceeding to establish the dependency of a child, GC § 1639-23 makes the complaint sufficiently definite by the simple use of the word "dependent": In re Duncan, 62 Ohio L. Ab. 173, 107 N.E.2d 256 (App 1951).

A complaint filed under this section which alleges that a child under twenty months of age is dependent is sufficiently definite: In re Anteau, 67 Ohio App. 117, 21 Ohio Op. 129, 36 N.E.2d 47 (1941).

Request for records

Pursuant to RC § 2151.14.1, when a complaint alleging abuse, neglect, or dependency of a child is filed under RC § 2151.27, a request directed to a public children services agency or the prosecuting attorney for "any records related to the child" must be granted or denied by following the procedures set forth in RC § 2151.14.1: OAG No. 91-003 (1991).

Venue

Under the provisions of this section jurisdiction of the juvenile court rests on either the residence of the child in the county where the complaint has been filed, or a showing that the acts constituting neglect or dependency of the minor child have occurred in that county: State ex rel. Burchett v. Juvenile Court, 92 Ohio L. Ab. 357, 28 Ohio Op. 2d 116, 194 N.E.2d 912 (App 1962).

Under this section, the juvenile court of the county in which acts constituting neglect or dependency of a minor child occur, has jurisdiction over complaints concerning such child, and it is immaterial whether the parent or minor child was a nonresident of the county in which the complaint is filed: In re Belk, 97 Ohio App. 114, 55 Ohio Op. 330, 123 N.E.2d 757 (1954).

[§ 2151.27.1] § 2151.271 Transfer to juvenile court of another county.

Except in a case in which the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code, if the child resides in a county of the state and the proceeding is commenced in a juvenile court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory, or dispositional hearing, for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes. The proceeding shall be so transferred if other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

Whenever a case is transferred to the county of the child's residence and it appears to the court of that county that the interests of justice and the convenience of the parties requires that the adjudicatory hearing be had in the county in which the complaint was filed, the court may return the proceeding to the county in which the complaint was filed for the purpose of the adjudicatory hearing. The court may thereafter proceed as to the transfer to the county of the child's legal residence as provided in this section.

Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

HISTORY: 133 v H 320 (Eff 11-19-69); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Residence or legal settlement of child, RC § 2151.06.

Serious youthful offender defined, RC § 2152.02.

Ohio Rules

Transfer, JuvR 11.

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Appeal

A common pleas court order transferring proceedings involving an unruly minor to a juvenile court of another county is not a final appealable order where the transferee court has not yet accepted or rejected jurisdiction. A temporary custody order is not a final order. *In re Devlin*, 78 Ohio App. 3d 543, 605 N.E.2d 467 (1992).

Applicability

Revised Code § 2151.27.1 does not encompass a transfer of the cause after a dispositional order has been made: *In re Sekulich*, 65 Ohio St. 2d 13, 19 Ohio Op. 3d 192, 417 N.E.2d 1014 (1981).

Discretion of court

The venue provisions of RC § 2151.27.1 and JuvR 11 are discretionary with the court: *In re Meyer*, 98 Ohio App. 3d 189, 648 N.E.2d 52 (1994).

Temporary custody orders

Temporary custody orders entered pursuant to JuvR 34 are final and appealable when they are entered, and failure to timely appeal the orders precludes any further consideration of the hearings conducted prior to those orders: *Ackerman v. Lucas Cty. Children Services Bd.*, 49 Ohio App. 3d 14, 550 N.E.2d 549 (1989).

§ 2151.28 Adjudicatory hearing; shelter care determination; summons.

(A) No later than seventy-two hours after the complaint is filed, the court shall fix a time for an adjudicatory hearing. The court shall conduct the adjudicatory hearing within one of the following periods of time:

(1) Subject to division (C) of section 2152.13 of the Revised Code and division (A)(3) of this section, if the complaint alleged that the child violated section 2151.87 of the Revised Code or is a delinquent or unruly child or a juvenile traffic offender, the adjudicatory hearing shall be held and may be continued in accordance with the Juvenile Rules.

(2) If the complaint alleged that the child is an abused, neglected, or dependent child, the adjudicatory hearing shall be held no later than thirty days after the complaint is filed, except that, for good cause shown, the court may continue the adjudicatory hearing for either of the following periods of time:

(a) For ten days beyond the thirty-day deadline to allow any party to obtain counsel;

(b) For a reasonable period of time beyond the thirty-day deadline to obtain service on all parties or any necessary evaluation, except that the adjudicatory hearing shall not be held later than sixty days after the date on which the complaint was filed.

(3) If the child who is the subject of the complaint is in detention and is charged with violating a section of the Revised Code that may be violated by an adult, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention extended.

(B) At an adjudicatory hearing held pursuant to division (A)(2) of this section, the court, in addition to determining whether the child is an abused, neglected, or dependent child, shall determine whether the child should remain or be placed in shelter care until the dispositional hearing. When the court makes the shelter care determination, all of the following apply:

(1) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child otherwise would remain or be placed in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(2) The court shall comply with section 2151.419 [2151.41.9] of the Revised Code.

(3) The court shall schedule the date for the dispositional hearing to be held pursuant to section 2151.35 of the Revised Code. The parents of the child have a right to be represented by counsel; however, in no case shall the dispositional hearing be held later than ninety days after the date on which the complaint was filed.

(C)(1) The court shall direct the issuance of a summons directed to the child except as provided by this section, the parents, guardian, custodian, or other person with whom the child may be, and any other persons that appear to the court to be proper or necessary parties to the proceedings, requiring them to appear before the court at the time fixed to answer the allegations of the complaint. The summons shall contain the name and telephone number of the court employee designated by the court pursuant to section 2151.314 [2151.31.4] of the Revised Code to arrange for the prompt appointment of counsel for indigent persons. A child alleged to be an abused, neglected, or dependent child shall not be summoned unless the court so directs. A summons issued for a child who is under fourteen years of age and who is alleged to be a delinquent child, unruly child, or a juvenile traffic offender shall be served on the parent, guardian, or custodian of the child in the child's behalf.

If the person who has physical custody of the child, or with whom the child resides, is other than the parent or guardian, then the parents and guardian also shall be summoned. A copy of the complaint shall accompany the summons.

(2) In lieu of appearing before the court at the time fixed in the summons and prior to the date fixed for appearance in the summons, a child who is alleged to have violated section 2151.87 of the Revised Code and that child's parent, guardian, or custodian may sign a waiver of appearance before the clerk of the juvenile court and pay a fine of one hundred dollars. If the child and that child's parent, guardian, or custodian do not waive the court appearance, the court shall proceed with the adjudicatory hearing as provided in this section.

(D) If the complaint contains a prayer for permanent custody, temporary custody, whether as the preferred or an alternative disposition, or a planned permanent living arrangement in a case involving an alleged abused, neglected, or dependent child, the summons served on the parents shall contain as is appropriate an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges, an explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or an explanation that the issuance of an order for a planned permanent living arrangement will cause the removal of the child from the legal custody of the parents if any of the conditions listed in divisions (A)(5)(a) to (c) of section 2151.353 [2151.35.3] of the Revised Code are found to exist.

(E)(1) Except as otherwise provided in division (E)(2) of this section, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(2) In cases in which the complaint alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school, the court shall endorse upon the summons an order directing the parent, guardian, or other person having care of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(F)(1) The summons shall contain a statement advising that any party is entitled to counsel in the proceedings and that the court will appoint counsel or designate a county public defender or joint county public defender to provide legal representation if the party is indigent.

(2) In cases in which the complaint alleges a child to be an abused, neglected, or dependent child and no hearing has been conducted pursuant to division (A) of section 2151.314 [2151.31.4] of the Revised Code with respect to the child or a parent, guardian, or custodian of the child does not attend the hearing, the summons also shall contain a statement advising that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of failure to comply with a journalized case plan.

(G) If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, that the child may abscond or be removed from the jurisdiction of the court,

or that the child will not be brought to the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer serve the summons and take the child into immediate custody and bring the child forthwith to the court.

(H) A party, other than the child, may waive service of summons by written stipulation.

(I) Before any temporary commitment is made permanent, the court shall fix a time for hearing in accordance with section 2151.414 [2151.41.4] of the Revised Code and shall cause notice by summons to be served upon the parent or guardian of the child and the guardian ad litem of the child, or published, as provided in section 2151.29 of the Revised Code. The summons shall contain an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges.

(J) Any person whose presence is considered necessary and who is not summoned may be subpoenaed to appear and testify at the hearing. Anyone summoned or subpoenaed to appear who fails to do so may be punished, as in other cases in the court of common pleas, for contempt of court. Persons subpoenaed shall be paid the same witness fees as are allowed in the court of common pleas.

(K) The failure of the court to hold an adjudicatory hearing within any time period set forth in division (A)(2) of this section does not affect the ability of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(L) If the court, at an adjudicatory hearing held pursuant to division (A) of this section upon a complaint alleging that a child is an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, determines that the child is a dependent child, the court shall incorporate that determination into written findings of fact and conclusions of law and enter those findings of fact and conclusions of law in the record of the case. The court shall include in those findings of fact and conclusions of law specific findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's determination that the child is a dependent child.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 136 v H 164 (Eff 1-13-76); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 180 (Eff 5-16-2002); 149 v H 393, Eff 7-5-2002.

Analogous in part to former RC § 2151.28 (GC § 1639-24; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53), repealed 133 v H 320, eff 11-19-69.

The provisions of § 3 of HB 180 (149 v —) read as follows:

SECTION 3. The General Assembly hereby requests the Supreme Court to promptly modify Rule 29 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments of this act to section 2151.28 of the Revised Code.

The General Assembly further requests the Supreme Court to promptly modify Rule 7 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments of this act to section 2151.31 of the Revised Code.

Cross-References to Related Sections

Agency may file motion requesting permanent custody, RC § 2151.41.3.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.
 Child without proper parental care, RC § 2151.05.
 Delinquent child, RC § 2152.02.
 Dependent child, RC § 2151.04.
 Juvenile traffic offender, RC § 2152.02.
 Neglected child, RC § 2151.03.
 Residence or legal settlement of child, RC § 2151.06.
 Unruly child, RC § 2151.02.2.
 Delinquent or unruly child may not participate in learnfare program, RC § 5107.28.1.
 Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.
 Hearing on motion for permanent custody; notice; determinations necessary for granting motion, RC § 2151.41.4.
 Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.
 Service of summons, RC § 2151.29.

Ohio Rules

Adjudicatory hearing, JuvR 29.
 Right to counsel, JuvR 3, 4, 15(B), 29(B).
 Service, JuvR 16.
 Summons, JuvR 15.

Ohio Administrative Code

Department of job and family services, division of social services—
 Children services definition of terms: adjudicatory hearing; abused, neglected or dependent child.. OAC 5101:2-1-01.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Abused child

During the adjudicatory phase of the proceedings to determine whether a child is an "abused child," the trial court does not have to find any fault on the part of a parent, guardian or custodian in order to conclude that the child is "abused" pursuant to RC § 2151.03.1. All that is necessary is that the child be a victim, regardless of who is responsible for the abuse: In re Pitts, 38 Ohio App. 3d 1, 525 N.E.2d 814 (1987).

Confessions

The confrontation clauses of OConst art I, § 10 and USConst amend VI are not violated by the admission of a nontestifying co-defendant's confession, where the confession is redacted to eliminate not only the defendant's name, but also any reference to his or her existence. (Richardson v. Marsh [1987], 481 US 200, approved and followed): In re Watson, 47 Ohio St. 3d 86, 548 N.E.2d 210 (1989).

In deciding whether a juvenile's confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality and prior criminal experience of the accused; the length, intensity, and frequency of

interrogation; and the existence of physical deprivation or inducement. (State v. Edwards [1976], 49 OS2d 31, 3 OO3d 18, 358 NE2d 1051, approved and followed): In re Watson, 47 Ohio St. 3d 86, 548 N.E.2d 210 (1989).

Consent to permanent surrender of custody

Jurisdiction of the juvenile court was proper in a proceeding to terminate parental rights despite the failure to serve the infant's mother when the mother had voluntarily executed a permanent surrender of the child to a private agency and had actual notice of the proceeding via service upon her husband, the legal father: In re Luallen, 27 Ohio App. 3d 29, 27 Ohio B. 30, 499 N.E.2d 358 (1985).

Juvenile Court jurisdiction to consent to an agreement surrendering permanent custody of a minor to a county children services board, pursuant to RC §§ 5103.15 and 5153.16(B), is not dependent upon service of process on the child and his parents as provided for in RC § 2151.28, nor upon appointment of a guardian ad litem as provided for in RC § 2151.28.1: In re Miller, 61 Ohio St. 2d 184, 15 Ohio Op. 3d 211, 399 N.E.2d 1262 (1980).

Due process

All fact-finding hearings in juvenile court must measure up to the essentials of due process, including adequate and timely notice so that the child and his parents have opportunity to respond. In hearings which may result in commitment, the child is entitled to counsel and must be informed of his legal rights, including privilege against self-incrimination, prior to a confession: In re Gault, 40 Ohio Op. 2d 378, 387 U.S. 1, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967).

By virtue of the provisions of this section, the parents of a minor child or children are entitled to notice, actual or constructive, in a proceeding instituted in the juvenile court upon a complaint of dependency of such children. Unless such notice is given to the parents, the jurisdiction of the court does not attach, and a judgment of commitment rendered in such proceeding is void: In re Corey, 145 Ohio St. 413, 31 Ohio Op. 35, 61 N.E.2d 892 (1945).

Hearings generally

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

Immediate custody order

Revised Code §§ 2151.28 and 2151.31, a part of the juvenile court act, do not require a hearing as a condition precedent to the taking of a child into custody, pursuant to order of a juvenile court, during pendency of an action in such court: In re Jones, 114 Ohio App. 319, 19 Ohio Op. 2d 286, 182 N.E.2d 631 (1961).

Jurisdiction

Mother did not have standing to challenge, under RC § 2151.28(C)(1), a trial court's lack of personal jurisdiction over a father in a dependency case because she could not show that she had been prejudiced by the alleged error. The mother's only allegation of prejudice, that she had been deprived of custody of the child, was not caused by a failure to properly serve the father. In re L.H., 2006 Ohio App. LEXIS 4045, 2006 Ohio 4116, (2006).

Where a hearing is held under the provisions of this section, the juvenile court may deal with the child as provided therein even to the point of making an order for permanent custody, notwithstanding that the child is a ward of another court of this state by virtue of custody order arising out of a divorce action: James v. Child Welfare Board, 9 Ohio App. 2d 299, 38 Ohio Op. 2d 347, 224 N.E.2d 358 (1967).

A court acquires jurisdiction over the person of a defendant either by service of process upon him, whereby he is brought into court against his will, or by his voluntary appearance and submission; an appearance for any purpose, except to object to the jurisdiction over the person, constitutes a submission to the jurisdiction of the court; appearance in court or participation in the trial subjects the defendant to the court's jurisdiction: Mobley v. Allaman, 89 Ohio L. Ab. 473, 184 N.E.2d 707 (PC 1961).

The notice provision of the code of the juvenile court must be complied with before the court acquires jurisdiction of any child

before it, and since parents are necessary parties to any proceedings concerning a child in the juvenile court they must either be served with the required citations or notices, or must enter their appearance in some other manner: *Mobley v. Allaman*, 89 Ohio L. Ab. 473, 184 N.E.2d 707 (PC 1961).

The parents of a minor child, in court by citation or notice, are parties to a proceeding before the juvenile court to determine whether such child is a neglected child and where the child is determined to be a neglected child and made a ward of the court and committed to the temporary custody of the county child welfare board, any resistance by the parents to the execution of such order, either active or passive, constitutes a contempt for which such parents may be punished by the court: *State v. Hershberger*, 77 Ohio L. Ab. 487, 150 N.E.2d 671 (JC 1958).

When [a parent] was made defendant in the divorce action in the domestic relations court and was duly served with summons in that action, he was bound with knowledge that the divorce court had jurisdiction to make disposition of the child of the parties to that action... [a]nd by his failure to appear in that action he is estopped from... claiming that the court was without jurisdiction to make the order here complained of: *In re McCoy*, 72 Ohio L. Ab. 519, 135 N.E.2d 638 (App 1954).

Where only the father and mother were cited to appear, the court acquired jurisdiction only of the parents and not of the children: *Pesta v. Pesta*, 45 Ohio L. Ab. 631, 68 N.E.2d 234 (App 1944).

Regular legal notice by service of process on the parent is an indispensable prerequisite to jurisdiction of the juvenile court to make commitment of a minor child charged with being delinquent: *In re Flickinger*, 33 Ohio L. Ab. 8, 20 Ohio Op. 224 (CP 1940).

Notice generally

Notice requirements for juvenile's adjudicatory hearing were met when the juvenile's guardian was served with the relevant process, and as a result, showed up at the juvenile's adjudicatory hearing; the juvenile could not claim error when his father was neither notified nor present at the hearing because the juvenile had been in the permanent custody of the county for 12 years and had a guardian who was not his father, which meant that the father was not a necessary party to the action. *State v. D.M.*, 2003 Ohio App. LEXIS 2901, 2003 Ohio 3228, (2003).

Parties

Trial court did not err in not joining a paternal grandmother to a parental rights termination proceeding involving the parents of 10 minor children, although the grandmother lived with the family, as she was not a necessary party pursuant to Ohio R. Juv. P. 2(Y) and RC § 2151.28(C)(1); she did not hold the title of legal custodian or guardian of any of the children, and she had actual notice of the proceedings. *In re Hilyard*, 2006 Ohio App. LEXIS 1808, 2006 Ohio 1977, (2006).

A father is a party to proceedings in a juvenile court in which his children are found to be neglected and in which temporary custody is given to the mother; and he is also a party to a subsequent proceeding in the same court modifying such temporary custody order and is entitled to appear in an appeal from such order and move to dismiss such appeal: *In re Rule*, 1 Ohio App. 2d 57, 30 Ohio Op. 2d 76, 203 N.E.2d 501 (1963).

Privilege against self-incrimination

A parent's privilege against self-incrimination precludes compelling the parent to testify in a dependency proceeding: *In re Billman*, 92 Ohio App. 3d 279, 634 N.E.2d 1050 (1993).

Reasonable efforts to reunify children

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Service of process

If the person to be served summons, notices, and subpoenas of the juvenile court is out of the state and his address is known, service of summons may be made by the sheriff by delivering a copy to him personally or mailing a copy to him by registered or certified mail: OAG No. 70-130 (1970).

In the event the juvenile court requests the summons, notices, or subpoenas to be served personally or whether the same is to be delivered by registered or certified mail, the sheriff's office is legally required to serve the same in accordance with the directions of the juvenile court: OAG No. 70-130 (1970).

The sheriff is required to serve summons, notices, and subpoenas which are directed to him by the juvenile court: OAG No. 70-130 (1970).

Temporary custody

Where the continuances granted by the trial court in the dependency case caused the temporary custody hearing to be pushed beyond the 90-day period for such a hearing under RC § 2151.28(B)(3) and RC § 2151.35(B)(1), the mother waived the statutory limitations period claim by failing to raise the claim before the trial court, and the trial court was within its discretion in granting continuances pursuant to Ohio R. Juv. P. 23. *In re Jessica M. B.*, 2004 Ohio App. LEXIS 926, 2004 Ohio 1040, (2004).

The court did not abuse its discretion by refusing to award temporary custody to the maternal grandmother where she did not show an interest in obtaining custody until she realized that the mother might lose custody permanently: *In re Travis Children*, 80 Ohio App. 3d 620, 609 N.E.2d 1356 (1992).

Time for hearings

Although the time requirements under RC §§ 2151.28(A)(2), (B)(3), and 2151.35(B)(1) were not complied with in holding adjudicatory and dispositional hearings regarding a child's dependency and an award of temporary custody to her grandmother and then her father, any objection thereto was waived by the mother's failure to raise the issue in a timely manner and by her continued participation in the proceedings. *In re Brown*, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

There was no error in refusing to dismiss the case because the father waived his right to an adjudication hearing and a dispositional hearing within the applicable statutory time periods, pursuant to RC § 2151.28, and failed to file his motion to dismiss in compliance with Ohio R. Juv. P. 22(E) since he did not file his motion to dismiss until the day of the hearing. *In re A.P.*, 2006 Ohio App. LEXIS 2551, 2006 Ohio 2717, (2006).

[§ 2151.28.1] § 2151.281 Guardian ad litem.

(A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:

(1) The child has no parent, guardian, or legal custodian.

(2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.

(B)(1) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to section 2151.414 [2151.41.4] of the Revised Code. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

(2) The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against any person who is required by division (A)(1) or (4) of section 2151.421 [2151.42.1] of the Revised Code to file a report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred if that person knows, or has reasonable cause to suspect or believe based on facts that would cause a reasonable person in a similar position to suspect or believe, as applicable, that the child for whom the guardian ad litem is appointed is the subject of child abuse or child neglect and does not file the required report and if the child suffers any injury or harm as a result of the child abuse or child neglect that is known or reasonably suspected or believed to have occurred or suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent.

(D) The court shall require the guardian ad litem to faithfully discharge the guardian ad litem's duties and, upon the guardian ad litem's failure to faithfully discharge the guardian ad litem's duties, shall discharge the guardian ad litem and appoint another guardian ad litem. The court may fix the compensation for the service of the guardian ad litem, which compensation shall be paid from the treasury of the county, subject to rules adopted by the supreme court.

(E) A parent who is eighteen years of age or older and not mentally incompetent shall be deemed *sui juris* for the purpose of any proceeding relative to a child of the parent who is alleged or adjudicated to be an abused, neglected, or dependent child.

(F) In any case in which a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of that parent shall be summoned to appear at any hearing respecting the child, who is alleged or adjudicated to be an abused, neglected, or dependent child.

(G) In any case involving an alleged or adjudicated abused or neglected child or an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with section 5103.15 of the Revised Code, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. In any case involving an alleged dependent child in which the parent of the child appears to be mentally incompetent or is under eighteen years of age, there is a conflict of interest between the child and the child's parents, guardian, or custodian, or the court believes that the parent of the child is not capable of representing the best interest of the child, the court shall appoint a guardian ad litem for the child. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;

(2) All dispositional orders relative to the child have terminated;

(3) The legal custody of the child is granted to a relative of the child, or to another person;

(4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;

(5) The child reaches the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired or the child reaches the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired;

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 140 v S 321 (Eff 4-9-85); 141 v H 529 (Eff 3-11-87); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 148 v H 471. Eff 7-1-2000; 151 v S 17, § 1, eff. 8-3-06; 151 v S 238, § 1, eff. 9-21-06.

The provisions of § 4 of 151 v S 238 read as follows:

SECTION 4. The General Assembly hereby respectfully requests that the Supreme Court adopt rules regarding the standards, qualifications, and service of guardians ad litem.

The effective date is set by section 12(A) of HB 471.

Effect of Amendments

151 v S 238, effective September 21, 2006, inserted "subject to rules adopted by the supreme court" in (A), (B)(1), and (D); in (H), added "Until the supreme court ... and as counsel," to the beginning of the second sentence; and, in (J)(1), inserted "or court appointed special advocate".

151 v S 17, effective August 3, 2006, rewrote (B)(2).

Comment, Legislative Service Commission

Section 2151.281 of the Revised Code is amended by Am. Sub. S.B. 238 and Am. Sub. S.B. 17 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Ohio Rules

Guardian ad litem, JuvR 2(O), 3, 4.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Practice Forms

Appointment and Answer of Guardian Ad Litem 1, 14 OH Forms of Pleading & Practice — Probate Form J4:2

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Generally

Magistrate did not commit plain error in awarding legal custody of a mother's child to legal custodians with the mother's consent, as she was represented by an attorney and a guardian ad litem during the adjudication of her child as dependent and during the custody determination, pursuant to RC § 2151.281(C); accordingly, the mother's interests were adequately protected. In re H.B., 2006 Ohio App. LEXIS 1969, 2006 Ohio 2124, (2006).

Trial court did not err in refusing to appoint guardians ad litem

for the twin boys regarding the father's motion for visitation as the authority that the mother cited in support of her argument for such appointments did not apply to the present case: RC § 2151.281 applied only if an alleged delinquent or unruly child was involved, and none was not involved in the current case; RC § 3109.04 applied only if the trial court was going to interview the children, which also did not occur; and Ohio R. Civ. P. 17(B) only applied if the child or children were parties, and they were not in the present proceeding. Putthoff v. Thompson, 2004 Ohio App. LEXIS 79, 2004 Ohio 76, (2004).

Any error associated with the guardian ad litem's questioning was not plain as the mother did not establish that the guardian ad litem's questioning of witnesses seriously affected the basic fairness, integrity, or public reputation of the judicial process. In re Curry, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

The trial court erred in considering the guardian ad litem's report and in failing to require the guardian ad litem fulfill her statutory duties; without an independent investigation into the home and personal lives of the children as required by RC § 2151.28.1(I), the guardian was not qualified to make a judgment regarding the best interests of the children: In re Thomas, 1998 Ohio App. LEXIS 5099 (3rd Dist. 1998).

Ohio statutory law requires that a guardian ad litem be appointed for the child in neglect and abuse proceedings. However, the appointment of a guardian ad litem is not required in dependency proceedings pursuant to RC § 2151.28.1: Davis v. Trumbull Cty. Children Serv. Bd., 24 Ohio App. 3d 180, 24 Ohio B. 270, 493 N.E.2d 1011 (1985).

Juvenile Court jurisdiction to consent to an agreement surrendering permanent custody of a minor to a county children services board, pursuant to RC §§ 5103.15 and 5153.16(B), is not dependent upon service of process on the child and his parents as provided for in RC § 2151.28, nor upon appointment of a guardian ad litem as provided for in RC § 2151.28.1: In re Miller, 61 Ohio St. 2d 184, 15 Ohio Op. 3d 211, 399 N.E.2d 1262 (1980).

Applicability

Statute providing for appointment of a guardian ad litem was inapplicable in a proceeding to terminate visitation where no abuse charges were ever filed against the noncustodial parent: Truitt v. Truitt, 65 Ohio App. 3d 126, 583 N.E.2d 331 (1989).

Attorney as guardian ad litem

When an attorney was appointed to represent a person and was also appointed guardian ad litem for that person, his first and highest duty was to zealously represent his client within the bounds of the law and to champion his client's cause, and if the attorney felt there was a conflict between his role as attorney and his role as guardian, he had to petition the court for an order allowing him to withdraw as guardian, and the court was not to hesitate to grant such request. In re Butler, 2006 Ohio App. LEXIS 4510, 2006 Ohio 4547, (2006).

Under Ohio R. Juv. P. 4(C) and RC § 2151.281(H), the same attorney could be appointed, in a dependency proceeding, as both counsel and guardian ad litem for a child, but, when the attorney advocated a position that was adverse to the child's wishes regarding his custody, the attorney had to withdraw, under § 2151.281(H), and she had to be replaced by a new guardian ad litem. In re Butler, 2006 Ohio App. LEXIS 4510, 2006 Ohio 4547, (2006).

Based on Ohio R. Juv. P. 4(A) and (B), as well as RC §§ 2151.281(H) and 2151.352, a trial court did not err in appointing a licensed attorney to represent 10 children in a parental rights termination proceeding as both their legal counsel and their guardian ad litem, as none of the children "repeatedly expressed a desire" to remain with the parents, and there was no apparent or actual conflict shown in the attorney's dual capacity role. In re Hilyard, 2006 Ohio App. LEXIS 1809, 2006 Ohio 1976, (2006).

Pursuant to RC § 2151.281, a court, not the county, appointed an attorney to serve as the children's guardian ad litem, and the county had no control over the attorney's actions. Avion v. Franklin County Prosecuting Atty's Office, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 11669 (S.D. Ohio June 14, 2005).

Where the trial court, in the modification of allocation of parental rights case, granted the father's motion to remove the

attorney, who was hired by the mother to represent the child and acted as co-counsel with the guardian ad litem, the trial court's order was proper; the guardian ad litem was to act as counsel for the child as well pursuant to RC § 2151.281(H) and Cuyahoga County, Ohio, Ct. C.P. Dom. Rel. Div. R. 35(G), and pursuant to Ohio R. Juv. P. 4(C)(2), absent a conflict of interest, of which there was no evidence in the instant case, the appointment of separate counsel as co-counsel with the guardian ad litem was unnecessary. *Jennings-Harder v. Yarnesch*, 2004 Ohio App. LEXIS 3605, 2004 Ohio 3960, (2004).

Absent an express dual appointment, courts should not presume a dual appointment merely because the appointed guardian ad litem is also an attorney. In *re Janie M.*, 131 Ohio App. 3d 637, 723 N.E.2d 191 (1999).

Where the guardian ad litem appointed for a parent who fled to China with a child was also an attorney, the court did not err by terminating parental rights without granting a continuance so that new counsel could be appointed for the parent to replace counsel who withdrew due to lack of communication with the parent. In *re Zhang*, 135 Ohio App. 3d 350, 734 N.E.2d 379 (1999).

When an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client's cause. If the attorney feels there is a conflict between his role as attorney and his role as guardian, he should petition the court for an order allowing him to withdraw as guardian. In *re Smith*, 77 Ohio App. 3d 1, 601 N.E.2d 45 (1991).

Where conflicting obligations arise, an attorney may not serve as both the guardian ad litem of a child and as the legal representative of the child. *Bawidamann v. Bawidamann*, 63 Ohio App. 3d 691, 580 N.E.2d 15 (1989).

An attorney should not serve as both guardian ad litem and appointed counsel where there is a conflict in such roles. In *re Baby Girl Baxter*, 17 Ohio St. 3d 229, 17 Ohio B. 469, 479 N.E.2d 257 (1985).

Attorney for child

There was no error in failing to appoint a separate attorney for the child in the permanent custody proceedings because there was no clear conflict of interest between what the child desired and what the guardian ad litem was recommending. Due to the child's extensive medical and cognitive issues, she was not able to participate at all in any decisions surrounding her best interests but her desires were taken into consideration. In *re P.S.*, 2005 Ohio App. LEXIS 3766, 2005 Ohio 4157, (2005).

Where a trial court appointed a guardian ad litem to protect the interests of a 29-month-old child in a parental rights termination proceeding, there was no showing that it was error for the trial court to have failed to appoint independent counsel for the child, pursuant to RC §§ 2151.281(B) and 2151.352, as there was no evidence that the guardian's role to protect the interests of the child conflicted with the child's interests. The father lacked standing to raise such an error on appeal, as there was no showing that the child's interests were aligned with those of the father. In *re M.W.*, 2005 Ohio App. LEXIS 1273, 2005 Ohio 1302, (2005), criticized by In *re A.S.*, 163 Ohio App. 3d 647, 2005 Ohio 5309, 839 N.E.2d 972, 2005 Ohio App. LEXIS 4830 (Ohio Ct. App., Summit County 2005), criticized by In *re A.B.*, 2005 Ohio 4936, 2005 Ohio App. LEXIS 4466 (Ohio Ct. App., Summit County Sept. 21, 2005).

Guardian ad litem and the child did not disagree, so the child did not require a separate appointed attorney for a planned permanent living arrangement hearing under RC § 2151.353(A)(5). In *re Holt*, 2003 Ohio App. LEXIS 4978, 2003 Ohio 5580, (2003).

Failure to appoint counsel to represent all of the allegedly abused children was rendered harmless because the court was not prevented from knowing the wishes of the children. In *re Joshua B.*, 2003 Ohio App. LEXIS 2797, 2003 Ohio 3096, (2003).

Children who were the subject of a proceeding for termination of parental rights were entitled to appointed counsel, especially where there were indications that they wanted to remain with the parents. The appointment of an attorney as the substitute guardian was not sufficient. In *re Stacey S.*, 136 Ohio App. 3d 503, 737 N.E.2d 92, 1999 Ohio 989, (1999).

Compensation and fees

Although the guardian ad litem (GAL) was entitled to the fees owed to him, it was possible that a portion of the amount owed represented an amount incurred while he attempted to collect his original fee. That would have constituted collection fees, which was a civil debt, rather than child support, and could have affected the contempt holding and the status of the mother's bankruptcy proceeding. In *re Thomas*, 2006 Ohio App. LEXIS 3237, 2006 Ohio 3324, (2006).

Where an attorney is appointed as a guardian ad litem, the court is not required to award fees at different rates for legal and non-legal services. *Robbins v. Ginese*, 93 Ohio App. 3d 370, 638 N.E.2d 627 (1994).

Where the county commissioners have set a maximum fee schedule for guardians ad litem, the court may not order additional payment for extraordinary services. In *re Shaw*, 1990 Ohio App. LEXIS 973 (5th Dist. 1990).

Where an action is brought against a minor and his parent for fire damage to a rental unit caused by the minor, and where the court finds the minor liable for the damages, but finds his parent not liable, the fees and expenses of the child's court-appointed guardian ad litem are properly chargeable to the indigent minor and not to his parent, as part of the court costs: *Nationwide Mut. Ins. Co. v. Wymer*, 33 Ohio App. 3d 318, 515 N.E.2d 987 (1986).

There is no statutory authority which authorizes the payment of guardian ad litem fees from county funds in a civil case involving the alleged negligent or intentional acts of an indigent minor in causing fire damage to a rental unit: *Nationwide Mut. Ins. Co. v. Wymer*, 33 Ohio App. 3d 318, 515 N.E.2d 987 (1986).

Conflict of interest

JuvR 4(B)(2) mandates that the possibility that interests may conflict is sufficient for the required appointment of a guardian ad litem. In the context of a delinquency proceeding, a parent's or a legal guardian's speaking out against the child's penal interest raises a colorable claim of conflict. In *re K.B.*, 170 Ohio App. 3d 121, 866 N.E.2d 66, 2007 Ohio 396, (2007).

Trial court abused its discretion where it failed to appoint a guardian ad litem or inquire whether one was necessary where there was a conflict of interest between the juvenile and his legal guardians. In *re Slider*, 160 Ohio App. 3d 159, 826 N.E.2d 356, 2005 Ohio 1457, (2005).

No conflict of interest existed for the guardian ad litem in the permanent custody hearing because, while his prior representation of the mother's husband's ex-wife did deal with a domestic violence incident involving the husband, the facts of that incident were before the court, and the position taken in his prior representation of the ex-wife was not inconsistent with his current position regarding the husband. Additionally, any confidential information gained through the guardian ad litem's representation of the ex-wife was covered under the attorney/client privilege. In *re Morgan*, 2004 Ohio App. LEXIS 3653, 2004 Ohio 4018, (2004).

Reversal and remand were required where the trial court erred failing to appoint a guardian ad litem to represent defendant juvenile when a conflict existed between the juvenile and his parents as the juvenile was accused of raping his half-sister; failure to appoint a guardian ad litem to oversee the juvenile's best interests was an abuse of discretion. In *re K. J. F.*, 2004 Ohio App. LEXIS 250, 2004 Ohio 263, (2004).

Where the transcript of juvenile proceedings revealed no anger or tension between a juvenile defendant and her mother, only that the mother requested a disposition more lenient than what defendant herself sought, the record did not reflect a situation in which the magistrate plainly erred by failing to appoint a guardian ad litem on the basis of a conflict of interest. In *re Harper*, 2003 Ohio App. LEXIS 5962, 2003 Ohio 6666, (2003).

The court was required to appoint a guardian ad litem where there was a strong possibility of conflict of interest between the guardian and the child. In *re Spradin*, 140 Ohio App. 3d 402, 747 N.E.2d 877, 2000 Ohio 2003, (2000).

A guardian ad litem should have been appointed for the alleged delinquent where his mother was the only person to appear with him and she was also the mother of the victim. In *re Miller*, 119 Ohio App. 3d 52, 694 N.E.2d 500 (1997).

When a parent speaks against a child's penal interest in a delinquency case, the court must inquire whether there is a

conflict of interest requiring appointment of a guardian ad litem: In re Howard, 119 Ohio App. 3d 201, 695 N.E.2d 1 (1997).

The court abused its discretion by not appointing a guardian ad litem where the record indicated a strong possibility of conflicting interests between the juvenile and his father, who represented him at the adjudicatory and dispositional hearing: In re Sappington, 123 Ohio App. 3d 448, 704 N.E.2d 339 (1997).

The court did not comply with RC § 2151.28.1 where it appointed the juvenile's grandmother, who happened to be at the hearing, as guardian, and she then damaged the juvenile's credibility and suggested a stiff penalty: In re Johnson, 106 Ohio App. 3d 38, 665 N.E.2d 247 (1995).

Delinquent child

Appointment of a guardian ad litem for an alleged delinquent child was not required under the circumstances: In re D.M., 158 Ohio App. 3d 780, 822 N.E.2d 433, 2004 Ohio 5858, (2004).

Discretion of court

Where a trial court denied a motion to appoint a guardian ad litem based solely upon the timeliness of the motion and did not hear evidence on the conflict of interest issue, the trial court abused its discretion under R.C. § 2151.281(A) and Ohio R. Juv. P. 4(B). Johnson v. Johnson, 2003 Ohio App. LEXIS 2931, 2003 Ohio 3278, (2003).

Due process

Juvenile court denied the mother due process in a custody matter by receiving a report of counsel appointed for her child without giving her a chance to review and challenge it, and erred by failing to hold a new permanent custody hearing with the participation of counsel for the child. In re Williams, 2003 Ohio App. LEXIS 3246, 2003 Ohio 3550, (2003), affirmed by 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Duties of guardian ad litem

Juvenile court did not err in failing to appoint a new guardian ad litem for the child of a custody modification battle, as the attorney who was appointed as the child's guardian ad litem was also an able legal representative in the juvenile court proceeding between the child's divorced parents where no conflict in serving in both capacities existed pursuant to Ohio R. Juv. P. 4(C)(1) and (2); there was no evidence that the guardian became an advocate for either party, and she acted within her authority under RC § 2151.281(I). In re Smith, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 812, 2007 Ohio 893, (Mar. 2, 2007).

Guardian ad litem for a child who was the subject of a parental rights termination proceeding sufficiently complied with her duties under RC § 2151.281(I), as she visited the home where the mother was living and determined that it was inappropriate for the child and the three adults who were living there, she met the child with each of the parents or foster parents, she reviewed prior agency records, and she then recommended that permanent custody be granted to the county social service agency. There was no showing as to how the guardian was lacking in her duties, and further, the mother failed to establish that she suffered any prejudice. In re West, 2005 Ohio App. LEXIS 2780, 2005 Ohio 2977, (2005).

It was error for an appointed guardian ad litem to present evidence alleging that the child that the guardian was appointed for was an abused or neglected child because the presentation contravened the statutory mandate from the general assembly. In re Kheirkhah, 2004 Ohio App. LEXIS 444, 2004 Ohio 521, (2004).

Guardian ad litem's failure to file a timely report was harmless error because his recommendation at the hearing was the same one he delivered in his written report subsequently filed with the trial court, and the recommendation was consistent with the evidence presented at the hearing and no new facts, evidence, or opinions were presented in the report. In re Ridenour, 2004 Ohio App. LEXIS 1703, 2004 Ohio 1958, (2004).

A guardian ad litem's report was defective for not containing a statement of the children's wishes as to custody in a termination of parental rights case because the children did not testify at the permanent custody hearing and the elder child consistently expressed a desire to remain with his mother. In re Williams, 2003

Ohio App. LEXIS 3246, 2003 Ohio 3550, (2003), affirmed by 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Role of the guardian ad litem at the dispositional hearing was to protect the interests of the child, and the guardian ad litem did so by filing a report that the children should not be returned to the parents; the guardian ad litem was not also required to use the specific words that the county welfare agency should be granted "permanent custody," especially since that recommendation was clear from the guardian ad litem's report. In re Myers, 2003 Ohio App. LEXIS 2492, 2003 Ohio 2776, (2003).

Immunity

A guardian ad litem has absolute immunity from actions arising out of the performance of duties mandated by his role as advocate for the child in judicial proceedings (Kurzawa v. Mueller, 732 F.2d 1456 [6th Cir. 1984] followed); Penn v. McMonagle, 60 Ohio App. 3d 149, 573 N.E.2d 1234 (1990).

Incompetent parent

Mother failed to demonstrate that the trial court erred for failing to sua sponte appoint a guardian ad litem, under RC § 2151.281(C) and Ohio R. Juv. P. 4 (B)(3), or that her trial counsel was ineffective for failing to request such an appointment because there was nothing in the record to suggest that the mother appeared incompetent at the time she voluntarily relinquished her parental rights. There was nothing in the record to indicate the extent to which, if at all, the mother's mental health issues impeded her ability to understand and participate in the proceedings and the record actually demonstrated that she took affirmative steps to attempt to assist in her case. In re D.C.H., 2005 Ohio App. LEXIS 3873, 2005 Ohio 4257, (2005).

There was no plain error, pursuant to Ohio R. Crim. P. 52(B), in a trial court's failure to appoint a guardian ad litem for a mother who had a "borderline to low average range of functioning" in a permanent custody proceeding by a county agency, pursuant to RC § 2151.281(C) and Ohio R. Juv. P. 4(B)(3), as the mother did not show that she was prejudiced by such failure of appointment, nor did she show how having a guardian ad litem would have altered the outcome of the proceeding. In re McHugh Children, 2005 Ohio App. LEXIS 2235, 2005 Ohio 2345, (2005).

Where neither appellant mother nor her attorney requested that the trial court appoint a guardian ad litem for the mother, the court did not violate Ohio R. Juv. P. 4(B) or RC § 2151.281(C) by failing to do so sua sponte, as the psychologist who examined the mother testified he was unable to conclude that she suffered from any mental illness; simply because she needed clarification of questions asked of her during the proceedings did not mean that she appeared mentally incompetent. In re K.P., 2004 Ohio App. LEXIS 1494, 2004 Ohio 1674, (2004), appeal denied by 102 Ohio St. 3d 1473, 2004 Ohio 2830, 809 N.E.2d 1159, 2004 Ohio LEXIS 1419 (2004).

Pursuant to RC § 2151.281(C) the court shall appoint a guardian ad litem in any action to adjudicate a child dependent where it appears to the court that one or both parents are mentally incompetent; where information regarding second-hand reports of the father's mental problems were ambiguous at best, failing sua sponte to appoint a guardian was not error. In re Isaac M., 2003 Ohio App. LEXIS 5569, 2003 Ohio 6197, (2003).

When the parent has been found mentally incompetent in the process of an adjudicatory hearing in juvenile court, the appointment of a guardian ad litem for the child is mandatory under the language of RC § 2151.28.1(C): In re Pledgure, 1998 Ohio App. LEXIS 298 (1998).

Removal of guardian ad litem

There was no merit to the mother's motion to remove the guardian ad litem (GAL) because the mother did not provide any details as to the "truly justifiable" reasons for which she alleged that the GAL should be removed. Nor did the mother point to any law supporting her contention that the vague incidents referred to amounted to a GAL failing to perform his duties. In re Thomas, 2006 Ohio App. LEXIS 3237, 2006 Ohio 3324, (2006).

Right to counsel, generally

RC § 2151.352 provides that indigent children, parents, custodians, or other persons in loco parentis are entitled to appointed

counsel in all proceedings conducted pursuant to RC § 2151. In re Holt, 2003 Ohio App. LEXIS 4978, 2003 Ohio 5580, (2003).

Individual's right to counsel in juvenile court proceedings not involving termination of parental rights is statutory, and is not derived from the United States or Ohio Constitutions. In re Holt, 2003 Ohio App. LEXIS 4978, 2003 Ohio 5580, (2003).

Temporary custody

When an emergency situation exists, the juvenile court may grant temporary custody of a child to the local Children Services Board in an ex parte proceeding: *Parker v. Children Services Bd. of Trumbull Cty.*, 21 Ohio App. 3d 115, 21 Ohio B. 123, 487 N.E.2d 341 (1984).

[§ 2151.28.2] § 2151.282 CASA/GAL study committee.

(A) There is hereby created the Ohio court appointed special advocate/guardian ad litem (CASA/GAL) study committee consisting of five members. One member shall be a representative of the Ohio court appointed special advocate/guardian ad litem association appointed by the governor and shall be the chairperson of the committee. One member shall be a member of the Ohio juvenile judges association, appointed by the president of the senate. One member shall be a member of the Ohio state bar association appointed by the speaker of the house of representatives. One member shall be a representative of the office of the state public defender appointed by the minority leader of the senate. One member shall be a representative of the Ohio county commissioner's association appointed by the minority leader of the house of representatives. The members of the committee shall be appointed within sixty days after the effective date of this section. The committee shall do all of the following:

(1) Compile available public data associated with state and local costs of advocating on behalf of children who have been found to be abused, neglected, or dependent children;

(2) Examine the costs in counties that have established and operated an Ohio CASA/GAL association program, and the costs in counties that utilize the county public defender, joint county public defender, or court-appointed counsel, to advocate on behalf of children who have been found to be abused, neglected, or dependent children;

(3) Analyze the total cost of advocating on behalf of children who have been found to be abused, neglected, or dependent children on a per county basis and a per child served basis;

(4) Analyze the cost benefit of having an Ohio CASA/GAL association versus utilizing the county public defender, joint county public defender, or court-appointed counsel to advocate on behalf of children who have been found to be abused, neglected, or dependent children;

(5) Analyze the advocacy services provided to abused children, neglected children, or dependent children by Ohio CASA/GAL association programs versus the advocacy services provided to abused, neglected, or dependent children by county public defenders, joint county public defenders, or court-appointed counsel.

(B) The Ohio CASA/GAL association shall provide staff for the Ohio CASA/GAL study committee and shall pay for any expenses incurred by the study committee. The study committee shall meet within thirty days after the appointment of the members to the study committee.

(C) The Ohio CASA/GAL study committee shall prepare a report containing all relevant data and information

that division (A) of this section requires the study committee to compile, examine, and analyze. The Ohio CASA/GAL study committee shall deliver a final copy of the report to the governor, the speaker of the house of representatives, and the president of the senate on or before July 1, 2007.

HISTORY: 151 v H 66, § 101.01, eff. 9-29-05.

The effective date is set by § 612.03 of 151 v H 66.

§ 2151.29 Service of summons and other documents.

Service of summons, notices, and subpoenas, prescribed by section 2151.28 of the Revised Code, shall be made by delivering a copy to the person summoned, notified, or subpoenaed, or by leaving a copy at the person's usual place of residence. If the juvenile judge is satisfied that such service is impracticable, the juvenile judge may order service by registered or certified mail. If the person to be served is without the state but the person can be found or the person's address is known, or the person's whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made by delivering a copy to the person personally or mailing a copy to the person by registered or certified mail.

Whenever it appears by affidavit that after reasonable effort the person to be served with summons cannot be found or the person's post-office address ascertained, whether the person is within or without a state, the clerk shall publish such summons once in a newspaper of general circulation throughout the county. The summons shall state the substance and the time and place of the hearing, which shall be held at least one week later than the date of the publication. A copy of the summons and the complaint, indictment, or information shall be sent by registered or certified mail to the last known address of the person summoned unless it is shown by affidavit that a reasonable effort has been made, without success, to obtain such address.

A copy of the advertisement, the summons, and the complaint, indictment, or information, accompanied by the certificate of the clerk that such publication has been made and that the summons and the complaint, indictment, or information have been mailed as required by this section, is sufficient evidence of publication and mailing. When a period of one week from the time of publication has elapsed, the juvenile court shall have full jurisdiction to deal with such child as provided by sections 2151.01 to 2151.99 of the Revised Code.

HISTORY: 133 v H 320 (Eff 11-19-69); 148 v S 179, § 3. Eff 1-1-2002.

Analogous in part to former RC § 2151.29 (GC § 1639-25; 121 v 557; Bureau of Code Revision, 10-1-53), repealed 133 v H 320, eff 11-19-69.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Hearing on motion for permanent custody; notice, RC § 2151.41.4.

Issuance of warrant, RC § 2151.30.

Summons, RC § 2151.28.

Ohio Rules

Service, JuvR 15, 16(A), 17(C), 20.

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Generally

Father was provided with appropriate notice of the permanent custody hearing, pursuant to RC § 2151.414(A)(1) and Ohio R. Juv. P. 20, because the record showed, and the father conceded, that he was personally served at the initial shelter care hearing with a summons and a copy of the permanent custody complaint. The complaint set forth the dates of the pretrial, trial, and subsequent review dates, the father was present at the pretrial hearing, and the trial court's entry noted the father's presence and reiterated the date of the permanent custody hearing on the entry. In re Zurfley/Chatman/Black Children, 2006 Ohio App. LEXIS 602, 2006 Ohio 683, (2006).

Although a father of a minor child had previously appeared in a pretrial matter in a termination of parental rights proceeding, he was entitled to notice of a permanent custody hearing pursuant to RC § 2151.29, as well as pursuant to his due process rights; failure to provide such notice resulted in a reversal of the termination order. In re Th.W, 2005 Ohio App. LEXIS 2681, 2005 Ohio 2852, (2005).

Where the mother asserted on appeal in the permanent custody case that she received insufficient notice, the claim failed; notice of the permanent custody hearing was given in compliance with RC § 2151.414(A)(1), as the mother received personal service of the motion for permanent custody and notice of the initial permanent custody hearing in accordance with RC § 2151.29, Ohio R. Juv. P. 16(A), and Ohio R. Juv. P. 12(A), (B), and the mother's counsel gave the mother notice of the final permanent custody hearing. In re Keith Lee P., 2004 Ohio App. LEXIS 1719, 2004 Ohio 1976, (2004).

Where the trial court record indicated that a mother was personally served approximately six months after the filing of a motion by a social services agency to modify its temporary custody to permanent custody, which was seven months prior to the hearing thereon, the mandates of RC §§ 2151.414(A)(1) and 2151.29 were met; in a motion seeking permanent custody of a minor, RC § 2151.414(A)(1) requires that a parent receive notice of a hearing thereon, and pursuant to RC § 2151.29, service of the necessary papers shall be made by leaving a copy at the parent's usual place of residence. In re R.K., 2003 Ohio App. LEXIS 5675, 2003 Ohio 6333, (2003).

In order to be valid, such notice must be served sufficiently in advance of the hearing to give the person to be notified a reasonable time to obtain counsel and prepare for participation in such hearing. In re Frinzel, 152 Ohio St. 164, 39 Ohio Op. 456, 87 N.E.2d 583 (1949).

A juvenile court is without jurisdiction to make permanent a temporary commitment of a dependent or delinquent child unless notice of the time and place of the hearing upon such matter is served on the parent or guardian of such child either by delivering a copy to the person to be notified, by leaving a copy at his usual place of residence, by service by registered mail, or by publication, as provided and directed by this section: In re Frinzel, 152 Ohio St. 164, 39 Ohio Op. 456, 87 N.E.2d 583 (1949).

Knowledge by a mother that her daughter was being held and that a complaint probably would be made is not sufficient notice, because this section specifically requires that service of citations, notices and subpoenas shall be made personally by delivery of the attested copies thereof to the persons cited: In re Flickinger, 30 Ohio L. Ab. 8, 20 Ohio Op. 224 (CP 1940).

An order of a juvenile court declaring a minor child to be a dependent child and awarding its custody to a stranger, obtained

without service upon the parent, the guardian, or a person having the custody of such child by operation of law or awarded by a judicial order, judgment, or decree, confers upon such stranger no power to consent to the adoption of such child by any one: Rarey v. Schmidt, 115 Ohio St. 518, 154 N.E. 914 (1926).

Where a minor child has neither legal guardian nor a custodian created by operation of law or by judicial order, judgment, or decree, other than a parent, and the residence of such parent is known, service, actual or constructive, must be had upon such parent before a juvenile court has jurisdiction to declare such child a dependent child: Rarey v. Schmidt, 115 Ohio St. 518, 154 N.E. 914 (1926).

Jurisdiction

Where the only notice given to the mother of an adjudged dependent child, of a hearing to change such child's temporary commitment to a permanent one, was served on the mother within an hour before such hearing and she had no opportunity between the time of being served with the notice and the time of the hearing, to either prepare for such hearing or to engage counsel to represent her, such notice is insufficient in law and an order for permanent custody made at such hearing is void for want of jurisdiction of the court in making it, and an attack made upon it by an application for a writ of habeas corpus is direct and not collateral and is proper even though the judgment appears to be regular and valid upon its face [Paragraph four of the syllabus in Lewis v. Reed, 117 OS 152, approved and followed]: In re Frinzel, 152 Ohio St. 164, 39 Ohio Op. 456, 87 N.E.2d 583 (1949).

Service by publication

Service by publication was sufficient where mother had a history of sporadic conduct and was unable to obtain stable housing or provide the county children services board with an address to send notices: In re Cowling, 72 Ohio App. 3d 499, 595 N.E.2d 470 (1991).

Service by publication, under JuvR 16(A), requires that any notice published in a newspaper of general circulation include, among other things, the last known address of the party whose present whereabouts are unknown and a summary statement of the object of the complaint. Service by publication is a method of last resort and the requirements thereof, as specified in JuvR 16(A), are mandatory and will be strictly enforced. A failure to include such information in the publication-notice will result in defective service. (JuvR 16[A], construed.): In re Wilson, 21 Ohio App. 3d 36, 21 Ohio B. 38, 486 N.E.2d 152 (1984).

Support orders

Pursuant to R.C. 2151.23(A), the Probate and Juvenile Division of the Muskingum County Court of Common Pleas has exclusive original jurisdiction to issue orders of support in cases brought under R.C. 2151.27 to R.C. 2151.331, including orders complying with R.C. 2151.33(B)(2)(a). The language of R.C. 2301.03(AA) establishing the powers and duties of the judge of the Domestic Relations Division of the Muskingum County Court of Common Pleas does not modify or restrict the exclusive original jurisdiction of the juvenile court in this regard. Opinion No. 2005-003 (2005).

§ 2151.30 Issuance of warrant.

In any case when it is made to appear to the juvenile judge that the service of a citation under section 2151.29 of the Revised Code will be ineffectual or the welfare of the child requires that he be brought forthwith into the custody of the juvenile court, a warrant may be issued against the parent, custodian, or guardian, or against the child himself.

HISTORY: GC § 1639-26; 117 v 520; Bureau of Code Revision. Eff 10-1-53.

Ohio Rules

Warrant, JuvR 13(A), 15(D)-(E), 16(B).

§ 2151.31 Apprehension, custody, and detention.

(A) A child may be taken into custody in any of the following ways:

(1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of section 2930.05 of the Revised Code;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 of the Revised Code, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

(4) By an enforcement official, as defined in section 4109.01 of the Revised Code, under the circumstances set forth in section 4109.08 of the Revised Code;

(5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

(a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

(b) A complaint has been filed with respect to the child under section 2151.27 or 2152.021 [2152.02.1] of the Revised Code or the child has been indicted under division (A) of section 2152.13 of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.

(c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

(d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

(B)(1) The taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.

(2) Except as provided in division (C) of section 2151.311 [2151.31.1] of the Revised Code, a child taken into custody shall not be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held.

(C)(1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in

a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2152.04 of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

(D) Upon receipt of notice from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of the child into custody if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after the judge or referee determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.

(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than seventy-two hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, it shall order the child released to the custody of the child's parents, guardian, or custodian. If the court determines at the hearing that there is probable cause for the issuance

of the emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

(1) Ensure that a complaint is filed or has been filed;

(2) Comply with section 2151.419 [2151.41.9] of the Revised Code;

(3) Hold a hearing pursuant to section 2151.314 [2151.31.4] of the Revised Code to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of section 2151.031 [2151.03.1] of the Revised Code, the court may do any of the following:

(1) Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;

(2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;

(3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

HISTORY: 133 v H 320 (Eff 11-19-69); 137 v H 883 (Eff 1-12-79); 142 v S 89 (Eff 1-1-89); 143 v H 166 (Eff 2-14-90); 145 v H 571 (Eff 10-6-94); 147 v H 408 (Eff 10-1-97); 147 v H 484 (Eff 3-18-99); 148 v H 176 (Eff 10-29-99); 148 v H 3 (Eff 11-22-99); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 180. Eff 5-16-2002.

Analogous in part to former RC § 2151.31 (GC § 1639-27; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53), repealed, 133 v H 320, eff 11-19-69.

See provisions, § 3 of HB 180 (149 v —), following RC § 2151.28.

Cross-References to Related Sections

Apprehension of supervised release violators, RC § 5139.52.

Complaint against child, RC § 2151.27.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Serious youthful offender, RC § 2152.02.

Unruly child, RC § 2151.02.2.

Detention or shelter care hearing, RC § 2151.31.4.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Foster caregivers to receive information concerning certain delinquent children, RC § 2152.72.

Original jurisdiction of juvenile court, RC § 2151.23.

Procedure upon apprehension, RC § 2151.31.1.

Temporary custody orders, RC § 2151.33.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: ex parte emergency order. OAC 5101:2-1-01.

Substitute care: information to be provided to caregivers, etc., and to be included in individual child care agreement. OAC 5101:2-42-90.

Ohio Rules

Custody and detention, JuvR 6, 7.

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Constitutionality

Pretrial detention of juveniles presenting a serious risk of committing an offense was constitutional: *Schall v. Martin*, 467 US 253, 104 S Ct 2403, 81 L Ed2d 207 (1984).

Generally

Under Ohio law, unless matters of public safety are involved, a child alleged to be abused, neglected, or dependent may be removed from his home by court order only upon a judicial determination that continuation in the home would be contrary to the child's best interests: OAG No. 87-105 (1987).

Authority of police officer

A police officer may take a child into protective custody without process where he has reasonable grounds to believe said child to be a delinquent, neglected or dependent child, and it is not necessary that the child be committing a misdemeanor in the officer's presence or that probable cause exist for the officer to believe that the child has been involved in the commission of a felony: *In re L.*, 25 Ohio Op. 2d 369, 194 N.E.2d 797 (JC 1963).

Bail

A juvenile court may admit a juvenile to bail in a case where the state has moved for a bindover. RC § 2151.31 and JuvR 7, taken together, amount to a presumption against detention: *In re K.G.*, 89 Ohio Misc. 2d 16, 693 N.E.2d 1186 (CP 1997).

False imprisonment

In an action for damages for false imprisonment, the plaintiff has the burden to prove that the detention or restraint caused by the defendant was an unreasonable detention or restraint and was not accidental or incidental to the welfare of the plaintiff: *Garland v. Dustman*, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

Immunity

A police officer was not entitled to summary judgment based on immunity where an arrest may not have been objectively reasonable: *Hicks v. Leffler*, 119 Ohio App. 3d 424, 695 N.E.2d 777 (1997).

A juvenile judge and the quasi-judicial officers of a juvenile court are immune from liability for causing the detention of juveniles when they are acting within the scope of their jurisdiction, and public policy will not justify or sanction liability in damages for false imprisonment against enforcement officers acting in good faith under the direct orders of such juvenile authorities: *Garland v. Dustman*, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

Under the provisions of RC §§ 2151.14 and 2151.31, it is the manifest duty of enforcement officers to co-operate with and assist the juvenile authorities in the performance of their duties when such officers are specifically requested to do so by the juvenile authorities; and such officers may avoid liability in an action for false imprisonment by showing that they were justified

in the detention or restraint of the juvenile made under the specific direction and order of the juvenile authorities: *Garland v. Dustman*, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

Parole violation

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful: *In re Gillespie*, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

Place of detention or care

If a peace officer determines that the detention or shelter care of a child appears to be required as provided in RC § 2151.31(C) and JuvR 7(A), the peace officer is required by RC § 2151.31.1(A) and JuvR 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child: OAG No. 96-061 (1996).

Reasonable efforts to reunify family

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

[§ 2151.31.1] § 2151.311 Procedure upon apprehension.

(A) A person taking a child into custody shall, with all reasonable speed and in accordance with division (C) of this section, either:

(1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code;

(2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

(B) If a parent, guardian, or other custodian fails, when requested by the court, to bring the child before the court as provided by this section, the court may issue its warrant directing that the child be taken into custody and brought before the court.

(C)(1) Before taking any action required by division (A) of this section, a person taking a child into custody may hold the child for processing purposes in a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held for either of the following periods of time:

(a) For a period not to exceed six hours, if all of the following apply:

(i) The child is alleged to be a delinquent child for the commission of an act that would be a felony if committed by an adult;

(ii) The child remains beyond the range of touch of all adult detainees;

(iii) The child is visually supervised by jail or workhouse personnel at all times during the detention;

(iv) The child is not handcuffed or otherwise physically secured to a stationary object during the detention.

(b) For a period not to exceed three hours, if all of the following apply:

(i) The child is alleged to be a delinquent child for the commission of an act that would be a misdemeanor if committed by an adult, is alleged to be a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or is alleged to be an unruly child or a juvenile traffic offender;

(ii) The child remains beyond the range of touch of all adult detainees;

(iii) The child is visually supervised by jail or workhouse personnel at all times during the detention;

(iv) The child is not handcuffed or otherwise physically secured to a stationary object during the detention.

(2) If a child has been transferred to an adult court for prosecution for the alleged commission of a criminal offense, subsequent to the transfer, the child may be held as described in division (F) of section 2152.26 or division (B) of section 5120.16 of the Revised Code.

(D) As used in division (C)(1) of this section, "processing purposes" means all of the following:

(1) Fingerprinting, photographing, or fingerprinting and photographing the child in a secure area of the facility;

(2) Interrogating the child, contacting the child's parent or guardian, arranging for placement of the child, or arranging for transfer or transferring the child, while holding the child in a nonsecure area of the facility.

HISTORY: 133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 134 v S 445 (Eff 6-29-72); 143 v H 166 (Eff 2-14-90); 145 v H 571 (Eff 10-6-94); 146 v H 480 (Eff 10-16-96); 146 v H 124 (Eff 3-31-97); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3, Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Apprehension, custody and detention of child, RC § 2151.31.

Confinement of minors, RC § 341.11.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Detention or shelter care hearing, RC § 2151.31.4.

Place of detention, RC § 2152.26.

Places where neglected, abused, dependent or unruly child may or may not be held, RC § 2151.31.2.

Ohio Rules

Custody, JuvR 6.

Initial procedure, JuvR 7(B)-(D).

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Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Confessions

Detention

Search and seizure

Confessions

The fact that the police did not immediately take defendant to a juvenile facility did not render his statements inadmissible: *State v. Bobo*, 65 Ohio App. 3d 685, 585 N.E.2d 429 (1989).

Confessions were admissible in evidence, even though the accused were not taken immediately before the juvenile court as directed by this section: *State v. Lowder*, 79 Ohio App. 237, 34 Ohio Op. 568, 72 N.E.2d 785 (1946).

Detention

If a peace officer determines that the detention or shelter care of a child appears to be required as provided in RC § 2151.31(C) and JuvR 7(A), the peace officer is required by RC § 2151.31.1(A) and JuvR 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child: OAG No. 96-061 (1996).

Revised Code §§ 2151.31.1(A)(1), 2151.31.4(A), and JuvR 7(B) do not authorize the release of a child to the peace officer who took the child into custody: OAG No. 96-061 (1996).

Search and seizure

The matter of unlawful search and seizure under the USConst amend IV applies to juveniles; and the burden of proving unlawful search and seizure is upon the one who filed the motion to suppress evidence: *In re Morris*, 29 Ohio Misc. 71, 58 Ohio Op. 2d 126, 278 N.E.2d 701 (JC 1971).

§ 2151.31.2 § 2151.312 Places where neglected, abused, dependent or unruly child may or may not be held.

(A) A child alleged to be or adjudicated an unruly child may be held only in the following places:

(1) A certified family foster home or a home approved by the court;

(2) A facility operated by a certified child welfare agency;

(3) Any other suitable place designated by the court.

(B)(1) Except as provided under division (C)(1) of section 2151.311 [2151.31.1] of the Revised Code, a child alleged to be or adjudicated a neglected child, an abused child, a dependent child, or an unruly child may not be held in any of the following facilities:

(a) A state correctional institution, county, multi-county, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;

(b) A secure correctional facility.

(2) Except as provided under sections 2151.26 to 2151.61 of the Revised Code and division (B)(3) of this section, a child alleged to be or adjudicated an unruly child may not be held for more than twenty-four hours in a detention facility. A child alleged to be or adjudicated a neglected child, an abused child, or a dependent child shall not be held in a detention facility.

(3) A child who is alleged to be or adjudicated an unruly child and who is taken into custody on a Saturday, Sunday, or legal holiday, as listed in section 1.14 of the Revised Code, may be held in a detention facility until the next succeeding day that is not a Saturday, Sunday, or legal holiday.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

Not analogous to former RC § 2151.31.2, amended and renumbered RC § 2152.26 in 148 v S 179, eff 1-1-2002.

The effective date is set by section 5 of SB 179.

The provisions of § 11 of SB 179 (148 v —) read, in part, as follows:

SECTION 11. * * * Section 2151.312 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 332, Sub. H.B. 448, and Am. Sub. S.B. 181, all of the 123rd General Assembly, with the new language of none of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Cross-References to Related Sections

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Disposition of unruly child, RC § 2151.35.4.

Procedure upon apprehension, RC § 2151.31.1.

Ohio Administrative Code

Department of job and family services, division of social services—

Child care agencies. OAC ch. 5101:2-5.

Childrens residential facilities. OAC ch. 5101:2-9

Foster care. OAC ch. 5101:2-7.

Department of youth services—

Community juvenile corrections facilities. OAC ch. 5139-61 et seq.

Community residential centers (CRC). OAC ch. 5139-35.

Detention centers. OAC ch. 5139-37.

Ohio Rules

Separation from adults, JuvR 7(H).

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Constitutionality

Generally

Appointment of counsel

Constitutionality

Juveniles sent to an adult jail and detained in a facility unequipped to provide individual treatment and counseling are deprived of due process. Such incarceration made for the sole purpose of frightening them and directing them away from a life of crime violates their eighth amendment rights: *Doe v. McFaul*, 599 F. Supp. 1421 (N.D. Ohio 1984).

Generally

There is no authority for a juvenile court to commit a delinquent juvenile to a jail for adult offenders, absent a finding that housing in an appropriate juvenile facility is unavailable, or that the public safety and protection so require: *State v. Grady*, 3 Ohio App. 3d 174, 3 Ohio B. 199, 444 N.E.2d 51 (1981).

The commitment of a fifteen year old to a state institution pursuant to RC § 2151.26 for the purpose of examination is not an act for which a writ of prohibition will issue: *State ex rel. Harris v. Common Pleas Court*, 25 Ohio App. 2d 78, 54 Ohio Op. 2d 115, 266 N.E.2d 589 (1970).

A child who is alleged to be delinquent because of a domestic violence offense may be placed in any setting authorized by RC § 2151.31.2(A): OAG No. 96-061 (1996).

Amended House Bill No. 1196, effective August 9, 1976, does

not operate to prohibit the commingling of pre-adjudicated and post-adjudicated youth confined in a district detention home. The Ohio Youth Commission may pursuant to RC § 5139.28.1 adopt a rule requiring the separation of an adjudicated delinquent where extraordinary circumstances make such separation necessary for the care, treatment or training of such youth, or where necessary to insure the safety of that youth, or any other youth in the detention home: OAG No. 77-066 (1977).

If the county adult detention facility is designed with a space which is enclosed on all sides, that is distinct, set apart and disconnected so that no child over the age of fifteen placed in that space will come in contact or communication with any adult convicted of or arrested for a crime and the public interest and safety require the detention of such child when a delinquent detention facility is not available, the use of such adult facility is authorized by the Revised Code: OAG No. 70-015 (1970).

Appointment of counsel

The court did not err by appointing counsel for a grandparent seeking visitation rights: *Holley v. Higgins*, 86 Ohio App. 3d 240, 620 N.E.2d 251 (1993).

[§ 2151.31.3] § 2151.313 Fingerprints, photographs, and related arrest or custody records.

(A)(1) Except as provided in division (A)(2) of this section and in sections 109.57, 109.60, and 109.61 of the Revised Code, no child shall be fingerprinted or photographed in the investigation of any violation of law without the consent of the juvenile judge.

(2) Subject to division (A)(3) of this section, a law enforcement officer may fingerprint and photograph a child without the consent of the juvenile judge when the child is arrested or otherwise taken into custody for the commission of an act that would be an offense, other than a traffic offense or a minor misdemeanor, if committed by an adult, and there is probable cause to believe that the child may have been involved in the commission of the act. A law enforcement officer who takes fingerprints or photographs of a child under division (A)(2) of this section immediately shall inform the juvenile court that the fingerprints or photographs were taken and shall provide the court with the identity of the child, the number of fingerprints and photographs taken, and the name and address of each person who has custody and control of the fingerprints or photographs or copies of the fingerprints or photographs.

(3) This section does not apply to a child to whom either of the following applies:

(a) The child has been arrested or otherwise taken into custody for committing, or has been adjudicated a delinquent child for committing, an act that would be a felony if committed by an adult or has been convicted of or pleaded guilty to committing a felony.

(b) There is probable cause to believe that the child may have committed an act that would be a felony if committed by an adult.

(B)(1) Subject to divisions (B)(4), (5), and (6) of this section, all fingerprints and photographs of a child obtained or taken under division (A)(1) or (2) of this section, and any records of the arrest or custody of the child that was the basis for the taking of the fingerprints or photographs, initially may be retained only until the expiration of thirty days after the date taken, except that the court may limit the initial retention of fingerprints and photographs of a child obtained under division (A)(1) of this section to a shorter period of time and except that, if the child is adjudicated a delinquent child for the

commission of an act described in division (B)(3) of this section or is convicted of or pleads guilty to a criminal offense for the commission of an act described in division (B)(3) of this section, the fingerprints and photographs, and the records of the arrest or custody of the child that was the basis for the taking of the fingerprints and photographs, shall be retained in accordance with division (B)(3) of this section. During the initial period of retention, the fingerprints and photographs of a child, copies of the fingerprints and photographs, and records of the arrest or custody of the child shall be used or released only in accordance with division (C) of this section. At the expiration of the initial period for which fingerprints and photographs of a child, copies of fingerprints and photographs of a child, and records of the arrest or custody of a child may be retained under this division, if no complaint, indictment, or information is pending against the child in relation to the act for which the fingerprints and photographs originally were obtained or taken and if the child has neither been adjudicated a delinquent child for the commission of that act nor been convicted of or pleaded guilty to a criminal offense based on that act subsequent to a transfer of the child's case for criminal prosecution pursuant to section 2152.12 of the Revised Code, the fingerprints and photographs of the child, all copies of the fingerprints and photographs, and all records of the arrest or custody of the child that was the basis of the taking of the fingerprints and photographs shall be removed from the file and delivered to the juvenile court.

(2) If, at the expiration of the initial period of retention set forth in division (B)(1) of this section, a complaint, indictment, or information is pending against the child in relation to the act for which the fingerprints and photographs originally were obtained or the child either has been adjudicated a delinquent child for the commission of an act other than an act described in division (B)(3) of this section or has been convicted of or pleaded guilty to a criminal offense for the commission of an act other than an act described in division (B)(3) of this section subsequent to transfer of the child's case, the fingerprints and photographs of the child, copies of the fingerprints and photographs, and the records of the arrest or custody of the child that was the basis of the taking of the fingerprints and photographs may further be retained, subject to division (B)(4) of this section, until the earlier of the expiration of two years after the date on which the fingerprints or photographs were taken or the child attains eighteen years of age, except that, if the child is adjudicated a delinquent child for the commission of an act described in division (B)(3) of this section or is convicted of or pleads guilty to a criminal offense for the commission of an act described in division (B)(3) of this section, the fingerprints and photographs, and the records of the arrest or custody of the child that was the basis for the taking of the fingerprints and photographs, shall be retained in accordance with division (B)(3) of this section.

Except as otherwise provided in division (B)(3) of this section, during this additional period of retention, the fingerprints and photographs of a child, copies of the fingerprints and photographs of a child, and records of the arrest or custody of a child shall be used or released only in accordance with division (C) of this section. At the expiration of the additional period, if no complaint, indictment, or information is pending against the child in relation to the act for which the fingerprints originally

were obtained or taken or in relation to another act for which the fingerprints were used as authorized by division (C) of this section and that would be a felony if committed by an adult, the fingerprints of the child, all copies of the fingerprints, and all records of the arrest or custody of the child that was the basis of the taking of the fingerprints shall be removed from the file and delivered to the juvenile court, and, if no complaint, indictment, or information is pending against the child concerning the act for which the photographs originally were obtained or taken or concerning an act that would be a felony if committed by an adult, the photographs and all copies of the photographs, and, if no fingerprints were taken at the time the photographs were taken, all records of the arrest or custody that was the basis of the taking of the photographs shall be removed from the file and delivered to the juvenile court. In either case, if, at the expiration of the applicable additional period, such a complaint, indictment, or information is pending against the child, the photographs and copies of the photographs of the child, or the fingerprints and copies of the fingerprints of the child, whichever is applicable, and the records of the arrest or custody of the child may be retained, subject to division (B)(4) of this section, until final disposition of the complaint, indictment, or information, and, upon final disposition of the complaint, indictment, or information, they shall be removed from the file and delivered to the juvenile court, except that, if the child is adjudicated a delinquent child for the commission of an act described in division (B)(3) of this section or is convicted of or pleads guilty to a criminal offense for the commission of an act described in division (B)(3) of this section, the fingerprints and photographs, and the records of the arrest or custody of the child that was the basis for the taking of the fingerprints and photographs, shall be retained in accordance with division (B)(3) of this section.

(3) If a child is adjudicated a delinquent child for violating section 2923.42 of the Revised Code or for committing an act that would be a misdemeanor offense of violence if committed by an adult, or is convicted of or pleads guilty to a violation of section 2923.42 of the Revised Code, a misdemeanor offense of violence, or a violation of an existing or former municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to section 2923.42 of the Revised Code or any misdemeanor offense of violence, both of the following apply:

(a) Originals and copies of fingerprints and photographs of the child obtained or taken under division (A)(1) of this section, and any records of the arrest or custody that was the basis for the taking of the fingerprints or photographs, may be retained for the period of time specified by the juvenile judge in that judge's grant of consent for the taking of the fingerprints or photographs. Upon the expiration of the specified period, all originals and copies of the fingerprints, photographs, and records shall be delivered to the juvenile court or otherwise disposed of in accordance with any instructions specified by the juvenile judge in that judge's grant of consent. During the period of retention of the photographs and records, all originals and copies of them shall be retained in a file separate and apart from all photographs taken of adults. During the period of retention of the fingerprints, all originals and copies of them may be maintained in the files of fingerprints taken of adults. If the juvenile judge who grants consent for the taking of fingerprints and photographs under division (A)(1) of this

section does not specify a period of retention in that judge's grant of consent, originals and copies of the fingerprints, photographs, and records may be retained in accordance with this section as if the fingerprints and photographs had been taken under division (A)(2) of this section.

(b) Originals and copies of fingerprints and photographs taken under division (A)(2) of this section, and any records of the arrest or custody that was the basis for the taking of the fingerprints or photographs, may be retained for the period of time and in the manner specified in division (B)(3)(b) of this section. Prior to the child's attainment of eighteen years of age, all originals and copies of the photographs and records shall be retained and shall be kept in a file separate and apart from all photographs taken of adults. During the period of retention of the fingerprints, all originals and copies of them may be maintained in the files of fingerprints taken of adults. Upon the child's attainment of eighteen years of age, all originals and copies of the fingerprints, photographs, and records shall be disposed of as follows:

(i) If the juvenile judge issues or previously has issued an order that specifies a manner of disposition of the originals and copies of the fingerprints, photographs, and records, they shall be delivered to the juvenile court or otherwise disposed of in accordance with the order.

(ii) If the juvenile judge does not issue and has not previously issued an order that specifies a manner of disposition of the originals and copies of the fingerprints not maintained in adult files, photographs, and records, the law enforcement agency, in its discretion, either shall remove all originals and copies of them from the file in which they had been maintained and transfer them to the files that are used for the retention of fingerprints and photographs taken of adults who are arrested for, otherwise taken into custody for, or under investigation for the commission of a criminal offense or shall remove them from the file in which they had been maintained and deliver them to the juvenile court. If the originals and copies of any fingerprints of a child who attains eighteen years of age are maintained in the files of fingerprints taken of adults or if pursuant to division (B)(3)(b)(ii) of this section the agency transfers the originals and copies of any fingerprints not maintained in adult files, photographs, or records to the files that are used for the retention of fingerprints and photographs taken of adults who are arrested for, otherwise taken into custody for, or under investigation for the commission of a criminal offense, the originals and copies of the fingerprints, photographs, and records may be maintained, used, and released after they are maintained in the adult files or after the transfer as if the fingerprints and photographs had been taken of, and as if the records pertained to, an adult who was arrested for, otherwise taken into custody for, or under investigation for the commission of a criminal offense.

(4) If a sealing or expungement order issued under sections 2151.356 [2151.35.6] to 2151.358 [2151.35.8] of the Revised Code requires the sealing or destruction of any fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section or of the records of an arrest or custody of a child that was the basis of the taking of the fingerprints or photographs prior to the expiration of any period for which they otherwise could be retained under division (B)(1), (2), or (3) of this section, the fingerprints, photographs, and arrest or custody records that are subject to the order and all

copies of the fingerprints, photographs, and arrest or custody records shall be sealed or destroyed in accordance with the order.

(5) All fingerprints of a child, photographs of a child, records of an arrest or custody of a child, and copies delivered to a juvenile court in accordance with division (B)(1), (2), or (3) of this section shall be destroyed by the court, provided that, if a complaint is filed against the child in relation to any act to which the records pertain, the court shall maintain all records of an arrest or custody of a child so delivered for at least three years after the final disposition of the case or after the case becomes inactive.

(6)(a) All photographs of a child and records of an arrest or custody of a child retained pursuant to division (B) of this section and not delivered to a juvenile court shall be kept in a file separate and apart from fingerprints, photographs, and records of an arrest or custody of an adult. All fingerprints of a child retained pursuant to division (B) of this section and not delivered to a juvenile court may be maintained in the files of fingerprints taken of adults.

(b) If a child who is the subject of photographs or fingerprints is adjudicated a delinquent child for the commission of an act that would be an offense, other than a traffic offense or a minor misdemeanor, if committed by an adult or is convicted of or pleads guilty to a criminal offense, other than a traffic offense or a minor misdemeanor, all fingerprints not maintained in the files of fingerprints taken of adults and all photographs of the child, and all records of the arrest or custody of the child that is the basis of the taking of the fingerprints or photographs, that are retained pursuant to division (B) of this section and not delivered to a juvenile court shall be kept in a file separate and apart from fingerprints, photographs, and arrest and custody records of children who have not been adjudicated a delinquent child for the commission of an act that would be an offense, other than a traffic offense or a minor misdemeanor, if committed by an adult and have not been convicted of or pleaded guilty to a criminal offense other than a traffic offense or a minor misdemeanor.

(C) Until they are delivered to the juvenile court or sealed, transferred in accordance with division (B)(3)(b) of this section, or destroyed pursuant to a sealing or expungement order, the originals and copies of fingerprints and photographs of a child that are obtained or taken pursuant to division (A)(1) or (2) of this section, and the records of the arrest or custody of the child that was the basis of the taking of the fingerprints or photographs, shall be used or released only as follows:

(1) During the initial thirty-day period of retention, originals and copies of fingerprints and photographs of a child, and records of the arrest or custody of a child, shall be used, prior to the filing of a complaint or information against or the obtaining of an indictment of the child in relation to the act for which the fingerprints and photographs were originally obtained or taken, only for the investigation of that act and shall be released, prior to the filing of the complaint, only to a court that would have jurisdiction of the child's case under this chapter. Subsequent to the filing of a complaint or information or the obtaining of an indictment, originals and copies of fingerprints and photographs of a child, and records of the arrest or custody of a child, shall be used or released during the initial thirty-day period of retention only as provided in division (C)(2)(a), (b), or (c) of this section.

(2) Originals and copies of fingerprints and photographs of a child, and records of the arrest or custody of a child, that are retained beyond the initial thirty-day period of retention subsequent to the filing of a complaint or information or the obtaining of an indictment, a delinquent child adjudication, or a conviction of or guilty plea to a criminal offense shall be used or released only as follows:

(a) Originals and copies of photographs of a child, and, if no fingerprints were taken at the time the photographs were taken, records of the arrest or custody of the child that was the basis of the taking of the photographs, may be used only as follows:

(i) They may be used for the investigation of the act for which they originally were obtained or taken; if the child who is the subject of the photographs is a suspect in the investigation, for the investigation of any act that would be an offense if committed by an adult; and for arresting or bringing the child into custody.

(ii) If the child who is the subject of the photographs is adjudicated a delinquent child for the commission of an act that would be a felony if committed by an adult or is convicted of or pleads guilty to a criminal offense that is a felony as a result of the arrest or custody that was the basis of the taking of the photographs, a law enforcement officer may use the photographs for a photo line-up conducted as part of the investigation of any act that would be a felony if committed by an adult, whether or not the child who is the subject of the photographs is a suspect in the investigation.

(b) Originals and copies of fingerprints of a child, and records of the arrest or custody of the child that was the basis of the taking of the fingerprints, may be used only for the investigation of the act for which they originally were obtained or taken; if a child is a suspect in the investigation, for the investigation of another act that would be an offense if committed by an adult; and for arresting or bringing the child into custody.

(c) Originals and copies of fingerprints, photographs, and records of the arrest or custody that was the basis of the taking of the fingerprints or photographs shall be released only to the following:

(i) Law enforcement officers of this state or a political subdivision of this state, upon notification to the juvenile court of the name and address of the law enforcement officer or agency to whom or to which they will be released;

(ii) A court that has jurisdiction of the child's case under Chapters 2151. and 2152. of the Revised Code or subsequent to a transfer of the child's case for criminal prosecution pursuant to section 2152.12 of the Revised Code.

(D) No person shall knowingly do any of the following:

(1) Fingerprint or photograph a child in the investigation of any violation of law other than as provided in division (A)(1) or (2) of this section or in sections 109.57, 109.60, and 109.61 of the Revised Code;

(2) Retain fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of fingerprints or photographs of that nature, or records of the arrest or custody that was the basis of the taking of fingerprints or photographs of that nature other than in accordance with division (B) of this section;

(3) Use or release fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of fingerprints or photographs of that nature, or records of the arrest or custody that was the

basis of the taking of fingerprints or photographs of that nature other than in accordance with division (B) or (C) of this section.

HISTORY: 133 v H 320 (Eff 11-19-69); 135 v S 1 (Eff 1-1-74); 137 v H 315 (Eff 3-15-78); 140 v H 258 (Eff 9-26-84); 144 v H 198 (Eff 10-6-92); 146 v H 1 (Eff 1-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 124 (Eff 3-31-97); 147 v H 2 (Eff 1-1-99); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3, Eff 1-1-2002; 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

The effective date is set by section 5 of SB 179.

Effect of Amendments

151 v H 137, effective October 12, 2006, corrected internal references and made minor stylistic changes.

Cross-References to Related Sections

Penalties, RC § 2151.99.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Fingerprints, photographs, or other descriptive information of child, duties re—

Sheriffs and police chiefs, RC § 109.60.

Superintendent of the bureau of criminal identification and investigation, RC § 109.57.

Ohio Rules

Detention and shelter care, JuvR 7.

Comparative Legislation

Fingerprinting and photographing juveniles:

18 USCS § 5038

CA—Cal Wel & Inst Code § 204

FL—Fla. Stat. § 985.212

IL—705 ILCS § 405/1-7

IN—Burns Ind. Code Ann. § 31-39-5-1 et seq

KY—KRS § 610.220

MI—MCLS §§ 712A.11, 712A.18

NY—NY CLS Family Ct Act §§ 306.1, 306.2, 351.1

PA—42 P.S. §§ 6308, 6309

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Generally

Revised Code § 2151.31.3(A)(1) permits a juvenile court judge to order fingerprinting of a juvenile not in custody or under arrest without a finding of probable cause, when the juvenile court judge determines that: (1) there is an articulable and specific basis in fact for suspecting criminal activity; (2) the intrusion is justified by substantial law enforcement interests; and (3) the intrusion is limited in scope, purpose and duration: In re Order Requiring Fingerprinting of a Juvenile, 42 Ohio St. 3d 124, 537 N.E.2d 1286 (1989).

Although a violation of RC § 2151.31.3 warrants the criminal prosecution of the violator under RC § 2151.99(B), it does not compel the exclusion of evidence pertaining to the taking of a

minor's fingerprints: State v. Davis, 56 Ohio St. 2d 51, 10 Ohio Op. 3d 87, 381 N.E.2d 641 (1978).

The nature of the card upon which fingerprints or photograph is placed has nothing to do with their authenticity. The purpose of this section is not to determine their admissibility into evidence but rather to conform to the theory that juvenile proceedings are not criminal in nature: State v. Carder, 9 Ohio St. 2d 1, 38 Ohio Op. 2d 1, 222 N.E.2d 620 (1966).

If a law enforcement officer or other authorized person takes photographs and fingerprints of a juvenile taken into custody for a first-time drug or alcohol offense, records of that custody and of the photographs and fingerprints may be disclosed only as permitted by RC § 2151.31.3: OAG No. 87-010 (1987).

There is not statutory authority, in cases where juveniles are fingerprinted with the consent of the juvenile court under this section, which would permit or require local police officers to forward the fingerprint impressions so made to the state bureau of criminal identification for inclusion in the bureau's permanent files; nor is the bureau authorized, under GC § 1841-15 (RC § 5149.03), to procure and file for record the fingerprints of juveniles who are in any place of confinement under a commitment by a juvenile court on a charge of delinquency: 1952 OAG No. 1771 (1952).

Identification evidence

Where testimony is offered for the purpose of identifying the accused as the perpetrator of a crime, but such is based in part on illegally obtained evidence, it will not be excluded if the totality of circumstances manifests an effective identification apart from and independent of the tainted procedure: State v. Jones, 49 Ohio App. 2d 170, 3 Ohio Op. 3d 222, 359 N.E.2d 1386 (1976).

Public records law

If, pursuant to RC § 2151.31.3, a law enforcement officer or other authorized person takes fingerprints or photographs of a juvenile arrested or taken into custody, the fingerprints, photographs and other records relating to that arrest or custody of the juvenile are not public records: OAG No. 90-101 (1990).

[§ 2151.31.4] § 2151.314 Detention or shelter care hearing.

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that the child's detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

If the child is not so released, a complaint under section 2151.27 or 2152.021 [2152.02.1] or an information under section 2152.13 of the Revised Code shall be filed or an indictment under division (B) of section 2152.13 of the Revised Code shall be sought and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention or shelter care hearing shall be given to the child and, if they can be found, to the child's parents, guardian, or custodian. In cases in which the complaint alleges a child to be an abused, neglected, or dependent child, the notice given the parents, guardian, or custodian shall inform them that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of the failure to comply with a journalized case plan.

Prior to the hearing, the court shall inform the parties of their right to counsel and to appointed counsel or to the services of the county public defender or joint county

public defender, if they are indigent, of the child's right to remain silent with respect to any allegation of delinquency, and of the name and telephone number of a court employee who can be contacted during the normal business hours of the court to arrange for the prompt appointment of counsel for any party who is indigent. Unless it appears from the hearing that the child's detention or shelter care is required under the provisions of section 2151.31 of the Revised Code, the court shall order the child's release as provided by section 2151.311 [2151.31.1] of the Revised Code. If a parent, guardian, or custodian has not been so notified and did not appear or waive appearance at the hearing, upon the filing of an affidavit stating these facts, the court shall rehear the matter without unnecessary delay.

(B) When the court conducts a hearing pursuant to division (A) of this section, all of the following apply:

(1) The court shall determine whether an alleged abused, neglected, or dependent child should remain or be placed in shelter care;

(2) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child would otherwise be placed or retained in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as temporary custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and to the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(3) The court shall comply with section 2151.419 [2151.41.9] of the Revised Code.

(C) If a child is in shelter care following the filing of a complaint pursuant to section 2151.27 or 2152.021 [2152.02.1] of the Revised Code, the filing of an information, or the obtaining of an indictment or following a hearing held pursuant to division (A) of this section, any party, including the public children services agency, and the guardian ad litem of the child may file a motion with the court requesting that the child be released from shelter care. The motion shall state the reasons why the child should be released from shelter care and, if a hearing has been held pursuant to division (A) of this section, any changes in the situation of the child or the parents, guardian, or custodian of the child that have occurred since that hearing and that justify the release of the child from shelter care. Upon the filing of the motion, the court shall hold a hearing in the same manner as under division (A) of this section.

(D) Each juvenile court shall designate at least one court employee to assist persons who are indigent in obtaining appointed counsel. The court shall include in each notice given pursuant to division (A) or (C) of this section and in each summons served upon a party pursuant to this chapter, the name and telephone number at which each designated employee can be contacted during the normal business hours of the court to arrange for prompt appointment of counsel for indigent persons.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 164 (Eff 1-13-76); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 147 v H 484 (Eff 3-18-99); 148 v H 176 (Eff 10-29-99); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Adjudicatory hearing; shelter care determination; summons, RC § 2151.28.

Apprehension, custody and detention of child, RC § 2151.31.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Hearing on motion for permanent custody; notice, RC § 2151.41.4.

Ohio Rules

Detention or shelter care hearing, JuvR 7(E)-(G).

Right to counsel, JuvR 3, 4, 15(B), 29(B).

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Consent to temporary custody of agency

Revised Code § 2151.31.4, which requires a court hearing within seventy-two hours after a child is placed in detention, is not applicable where temporary custody of the child is voluntarily given to a children services agency by the parents: *In re Pachin*, 50 Ohio App. 3d 44, 552 N.E.2d 655 (1988).

Parent to be informed of rights

Any failure to inform a parent at the initial shelter-care hearing of the possible consequences of failing to conform to the case plan was cured well before his parental rights were terminated: *In re Moore*, 153 Ohio App. 3d 641, 795 N.E.2d 149, 2003 Ohio 4250, (2003).

Placement with relatives

RC § 2151.314(B)(2) did not require that legal custody of a nephew be awarded to an aunt and uncle (relatives) over the nephew's foster parents as the relatives were not suitable for placement when the nephew was removed from his parents because they resided in Texas and the juvenile court had no way of knowing if their home was suitable for the nephew. *In re Halstead*, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Reasonable efforts to reunify family

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Release to officer

Revised Code §§ 2151.31.1(A)(1), 2151.31.4(A), and JuvR 7(B) do not authorize the release of a child to the peace officer who took the child into custody: OAG No. 96-061 (1996).

Right to counsel

Father did not receive ineffective assistance of counsel during the permanent custody proceedings because the father waived his right to counsel since he did not apply for counsel prior to the hearing and he failed to assert any prejudice deriving from his lack of counsel at the shelter care hearing. Also, counsel's withdrawal of the motion seeking payment for anger management counseling appeared to be a tactical decision within the realm of reasonable professional judgment and fails to establish ineffective assistance of counsel. In re E. T., 2006 Ohio App. LEXIS 2308, 2006 Ohio 2413, (2006).

[§ 2151.31.5] § 2151.315 Amended and renumbered RC § 2152.74 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.32 Selection of custodian.

In placing a child under any guardianship or custody other than that of its parent, the juvenile court shall, when practicable, select a person or an institution or agency governed by persons of like religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents.

HISTORY: GC § 1639-33; 117 v 520(531); Bureau of Code Revision. Eff 10-1-53.

§ 2151.33 Temporary care; emergency medical treatment; reimbursement.

(A) Pending hearing of a complaint filed under section 2151.27 of the Revised Code or a motion filed or made under division (B) of this section and the service of citations, the juvenile court may make any temporary disposition of any child that it considers necessary to protect the best interest of the child and that can be made pursuant to division (B) of this section. Upon the certificate of one or more reputable practicing physicians, the court may summarily provide for emergency medical and surgical treatment that appears to be immediately necessary to preserve the health and well-being of any child concerning whom a complaint or an application for care has been filed, pending the service of a citation upon the child's parents, guardian, or custodian. The court may order the parents, guardian, or custodian, if the court finds the parents, guardian, or custodian able to do so, to reimburse the court for the expense involved in providing the emergency medical or surgical treatment. Any person who disobeys the order for reimbursement may be adjudged in contempt of court and punished accordingly.

If the emergency medical or surgical treatment is furnished to a child who is found at the hearing to be a nonresident of the county in which the court is located and if the expense of the medical or surgical treatment cannot be recovered from the parents, legal guardian, or custodian of the child, the board of county commissioners of the county in which the child has a legal settlement shall reimburse the court for the reasonable cost of the emergency medical or surgical treatment out of its general fund.

(B)(1) After a complaint, petition, writ, or other document initiating a case dealing with an alleged or adju-

dicated abused, neglected, or dependent child is filed and upon the filing or making of a motion pursuant to division (C) of this section, the court, prior to the final disposition of the case, may issue any of the following temporary orders to protect the best interest of the child:

(a) An order granting temporary custody of the child to a particular party;

(b) An order for the taking of the child into custody pursuant to section 2151.31 of the Revised Code pending the outcome of the adjudicatory and dispositional hearings;

(c) An order granting, limiting, or eliminating parenting time or visitation rights with respect to the child;

(d) An order requiring a party to vacate a residence that will be lawfully occupied by the child;

(e) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;

(f) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(2) Prior to the final disposition of a case subject to division (B)(1) of this section, the court shall do both of the following:

(a) Issue an order pursuant to Chapters 3119. to 3125. of the Revised Code requiring the parents, guardian, or person charged with the child's support to pay support for the child.

(b) Issue an order requiring the parents, guardian, or person charged with the child's support to continue to maintain any health insurance coverage for the child that existed at the time of the filing of the complaint, petition, writ, or other document, or to obtain health insurance coverage in accordance with sections 3119.29 to 3119.56 of the Revised Code.

(C)(1) A court may issue an order pursuant to division (B) of this section upon its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it. Any notice sent by the court as a result of a motion pursuant to this division shall contain a notice that any party to a juvenile proceeding has the right to be represented by counsel and to have appointed counsel if the person is indigent.

(2) If a child is taken into custody pursuant to section 2151.31 of the Revised Code and placed in shelter care, the public children services agency or private child placing agency with which the child is placed in shelter care shall file or make a motion as described in division (C)(1) of this section before the end of the next day immediately after the date on which the child was taken into custody and, at a minimum, shall request an order for temporary custody under division (B)(1)(a) of this section.

(3) A court that issues an order pursuant to division (B)(1)(b) of this section shall comply with section 2151.419 [2151.41.9] of the Revised Code.

(D) The court may grant an ex parte order upon its own motion or a motion filed or made pursuant to division (C) of this section requesting such an order if it appears to the court that the best interest and the welfare of the child require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to the parents, guardian, or custodian of the child who is the subject of the request. If the court issues an ex

parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action and shall appoint a guardian ad litem for the child prior to the hearing.

The written notice shall be given by all means that are reasonably likely to result in the party receiving actual notice and shall include all of the following:

- (1) The date, time, and location of the hearing;
- (2) The issues to be addressed at the hearing;
- (3) A statement that every party to the hearing has a right to counsel and to court-appointed counsel, if the party is indigent;
- (4) The name, telephone number, and address of the person requesting the order;
- (5) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.

If the court does not grant an ex parte order pursuant to a motion filed or made pursuant to division (C) of this section or its own motion, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed. The court shall give notice of the hearing to all affected parties in the same manner as set forth in the Juvenile Rules.

(E) The court, pending the outcome of the adjudicatory and dispositional hearings, shall not issue an order granting temporary custody of a child to a public children services agency or private child placing agency pursuant to this section, unless the court determines and specifically states in the order that the continued residence of the child in the child's current home will be contrary to the child's best interest and welfare and the court complies with section 2151.419 [2151.41.9] of the Revised Code.

(F) Each public children services agency and private child placing agency that receives temporary custody of a child pursuant to this section shall maintain in the child's case record written documentation that it has placed the child, to the extent that it is consistent with the best interest, welfare, and special needs of the child, in the most family-like setting available and in close proximity to the home of the parents, custodian, or guardian of the child.

(G) For good cause shown, any court order that is issued pursuant to this section may be reviewed by the court at any time upon motion of any party to the action or upon the motion of the court.

HISTORY: GC § 1639-28; 117 v 520; 119 v 731; 121 v 557; Bureau of Code Revision, 10-1-53; 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 147 v H 352 (Eff 1-1-98); 147 v H 484 (Eff 3-18-99); 148 v H 176 (Eff 10-29-99); 148 v S 180 (Eff 3-22-2001); 149 v H 657. Eff 12-13-2002.

Cross-References to Related Sections

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Hearing procedure and records; dispositional hearing, RC § 2151.35.

Information concerning certain delinquent children, RC § 2152.72.

Interfering with action to issue or modify support order, RC § 2919.23.1.

Nonsupport or contributing to nonsupport of dependents, RC § 2919.21.

Parent killing other parent, custody order defined, RC § 3109.41.

Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.

Ohio Rules

Temporary care and medical treatment, JuvR 7(I), 13, 32.

Ohio Administrative Code

Department of job and family services, division of social services—

Acceptance of temporary custody by agreement and court-ordered extensions. OAC 5101:2-42-08.

Procedural requirements regarding change of placement or visitation plan; advance court approval. OAC 5101:2-42-93.

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Constitutionality

This section is not unconstitutional: In re Clark, 90 Ohio L. Ab. 21, 21 Ohio Op. 2d 86, 185 N.E.2d 128 (CP 1962).

Applicability

Revised Code §§ 2151.41.2 and 2151.41.4 are applicable only where the child or children have previously been determined dependent, neglected or abused, their temporary custody has been committed to a children services board, a welfare department or a certified organization, and an order is sought changing temporary to permanent custody. These sections are not applicable where the original request was for permanent custody, and an order of temporary custody was issued pending hearing on the complaint as provided by RC § 2151.33: In re Covert, 17 Ohio App. 3d 122, 17 Ohio B. 185, 477 N.E.2d 678 (1984).

Consent to treatment

Where a physician or surgeon seeks to avoid potential liability in tort for the administration, without the patient's consent, of medical or surgical treatment to a minor child receiving care from a child welfare board, the question, in particular cases, of what person, organization or authority is competent to give such consent on behalf of such child, so as effectively to protect him from incurring such liability, is ultimately one for decision by the physician or surgeon concerned, upon advice of private counsel: 1951 OAG No. 898 (1951).

Where a child is being cared for by a county welfare depart-

ment or board of child welfare, by agreement with the parents or guardian of such child, only such parents or guardian may properly consent, upon competent medical advice, to medical or surgical treatment of such child: 1951 OAG No. 898 (1951).

Dependency determination

Trial court improperly awarded permanent custody (RC § 2151.414 and RC § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In re Nibert, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

Emergency treatment

When a child's right to live and his parents' religious belief collide, the former is paramount, and the religious doctrine must give way: In re Clark, 90 Ohio L. Ab. 21, 21 Ohio Op. 2d 86, 185 N.E.2d 128 (CP 1962).

Where a child's life is concerned, the juvenile court has not only the right but the duty to act in the child's behalf first, and give the parents their day in court later: In re Clark, 90 Ohio L. Ab. 21, 21 Ohio Op. 2d 86, 185 N.E.2d 128 (CP 1962).

A juvenile court may summarily give the medical staff of a hospital authority to administer blood transfusions to a child suffering serious burns, whose blood condition is deteriorating, although the child's parents refused to give permission because of religious beliefs: In re Clark, 90 Ohio L. Ab. 21, 21 Ohio Op. 2d 86, 185 N.E.2d 128 (CP 1962).

When a complaint or application for care concerning a child has been filed with the juvenile court, such court may, pending service of a citation on the child's parents, guardian or custodian, order the provision of emergency medical or surgical treatment upon the certificate of one or more reputable practicing physicians, as provided in this section: 1951 OAG No. 898 (1951).

Reasonable efforts to reunify family

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. In re R.A.M., 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Support orders

Pursuant to R.C. 2151.23(A), the Probate and Juvenile Division of the Muskingum County Court of Common Pleas has exclusive original jurisdiction to issue orders of support in cases brought under R.C. 2151.27 to R.C. 2151.331, including orders complying with R.C. 2151.33(B)(2)(a). The language of R.C. 2301.03(AA) establishing the powers and duties of the judge of the Domestic Relations Division of the Muskingum County Court of Common Pleas does not modify or restrict the exclusive original jurisdiction of the juvenile court in this regard. Opinion No. 2005-003 (2005).

[§ 2151.33.1] § 2151.331 Placement options for alleged or adjudicated abused, neglected, dependent or unruly child.

A child alleged to be or adjudicated an abused, neglected, dependent, or unruly child or a juvenile traffic offender may be detained after a complaint is filed in a certified foster home for a period not exceeding sixty days or until the final disposition of the case, whichever comes first. The court also may arrange with a public children services agency or private child placing agency to receive, or with a private noncustodial agency for temporary care of, the child within the jurisdiction of the court. A child alleged to be or adjudicated an unruly child also may be assigned to an alternative diversion program established by the court for a period not exceeding sixty days after a

complaint is filed or until final disposition of the case, whichever comes first.

If the court arranges for the board of a child temporarily detained in a certified foster home or arranges for the board of a child through a private child placing agency, the board of county commissioners shall pay a reasonable sum, which the court shall fix, for the board of the child. In order to have certified foster homes available for service, an agreed monthly subsidy may be paid in addition to a fixed rate per day for care of a child actually residing in the certified foster home.†

HISTORY: 146 v H 265 (Eff 3-3-97); 148 v H 448 (Eff 10-5-2000); 148 v H 332. Eff 1-1-2001.

† The amendments made by HB 448 (148 v —), effective 10-5-2000 and HB 332 (148 v —), effective 1-1-2001 are the same. The word "family" before "foster home" is deleted in both amendments.

The effective date is set by section 5 of HB 332.

[DISTRICT DETENTION HOMES]

§ 2151.34 Amended and renumbered RC § 2152.41 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2151.34.1] § 2151.341 Amended and renumbered RC § 2152.43 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2151.34.2] § 2151.342 Repealed, 148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned district detention home may receive donations and bequests.

The effective date is set by section 5 of SB 179.

[§ 2151.34.3] § 2151.343 Amended and renumbered RC § 2152.44 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2151.34.4] § 2151.344 Repealed, 148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned meetings.

The effective date is set by section 5 of SB 179.

[§ 2151.34.5] § 2151.345 Repealed, 148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned superintendent of district detention home; duties.

The effective date is set by section 5 of SB 179.

[§ 2151.34.6] § 2151.346 Repealed, 148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned district detention homes operated in same manner as county detention homes.

The effective date is set by section 5 of SB 179.

[§ 2151.34.7] § 2151.347 Repealed,
148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned selection of site.

The effective date is set by section 5 of SB 179.

[§ 2151.34.8] § 2151.348 Repealed,
148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned each county shall be represented on board of trustees.

The effective date is set by section 5 of SB 179.

[§ 2151.34.9] § 2151.349 Repealed,
148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned removal of trustees.

The effective date is set by section 5 of SB 179.

[§ 2151.34.10] § 2151.3410 Repealed,
148 v S 179, § 4 [128 v 1211; 129 v 582(738)]. Eff 1-1-2002.

This section concerned interim powers of board of trustees.

The effective date is set by section 5 of SB 179.

[§ 2151.34.11] § 2151.3411 Repealed,
148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned joint board of county commissioners; powers and duties.

The effective date is set by section 5 of SB 179.

[§ 2151.34.12] § 2151.3412 Repealed,
148 v S 179, § 4 [128 v 1211; 134 v H 258; 136 v H 1196; 142 v H 365]. Eff 1-1-2002.

This section concerned appraisal of district detention home's site and buildings; funding of expenses.

The effective date is set by section 5 of SB 179.

[§ 2151.34.13] § 2151.3413 Repealed,
148 v S 179, § 4 [128 v 1211; 134 v H 258]. Eff 1-1-2002.

This section concerned withdrawal by county from detention home district; continuity of district tax levy.

The effective date is set by section 5 of SB 179.

[§ 2151.34.14] § 2151.3414 Repealed,
148 v S 179, § 4 [128 v 1211; 134 v H 258; 135 v H 1033]. Eff 1-1-2002.

This section concerned designation of fiscal officer of detention home district; adjustment of accounts.

The effective date is set by section 5 of SB 179.

[§ 2151.34.15] § 2151.3415 Repealed,
148 v S 179, § 4 [128 v 1211]. Eff 1-1-2002.

This section concerned board of county commissioners; expenses.

The effective date is set by section 5 of SB 179.

[§ 2151.34.16] § 2151.3416 Repealed,
148 v S 179, § 4 [133 v H 1135; 139 v H 440]. Eff 1-1-2002.

This section concerned financial assistance for home.

The effective date is set by section 5 of SB 179.

§ 2151.35 Hearing procedure; recording of proceedings; dispositional hearing.

(A)(1) Except as otherwise provided by division (A)(3) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed.

Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants and except as otherwise provided in section 2152.13 of the Revised Code, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except cases involving serious youthful offenders under section 2152.13 of the Revised Code.

If a complaint alleges a child to be a delinquent child, unruly child, or juvenile traffic offender, the court shall require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

If the court finds from clear and convincing evidence that the child violated section 2151.87 of the Revised Code, the court shall proceed in accordance with divisions (F) and (G) of that section.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 [2151.35.3] of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 [2151.35.4] or Chapter 2152. of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper

disposition to be made in regard to the child under division (C)(1) of section 2151.354 [2151.35.4] of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 [2151.35.4] of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent child for being a chronic truant or for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or that the child is a delinquent child for either of those reasons and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (A)(7)(a) of section 2152.19 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (A)(7)(b) of section 2152.19 of the Revised Code.

If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

(2) A record of all testimony and other oral proceedings in juvenile court shall be made in all proceedings that are held pursuant to section 2151.414 [2151.41.4] of the Revised Code or in which an order of disposition may be made pursuant to division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code, and shall be made upon request in any other proceedings. The record shall be made as provided in section 2301.20 of the Revised Code.

(3) The authority of a juvenile court to exclude the general public from its hearings that is provided by division (A)(1) of this section does not limit or affect any right of a victim of a crime or delinquent act, or of a victim's representative, under Chapter 2930. of the Revised Code.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The court, upon the request of any party or the guardian ad litem of the child, may continue a dispositional hearing for a reasonable time not to exceed the time limits set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed.

If the dispositional hearing is not held within the period of time required by this division, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

(2) The dispositional hearing shall be conducted in accordance with all of the following:

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(3) After the conclusion of the dispositional hearing, the court shall enter an appropriate judgment within seven days and shall schedule the date for the hearing to be held pursuant to section 2151.415 [2151.41.5] of the Revised Code. The court may make any order of disposition that is set forth in section 2151.353 [2151.35.3] of the Revised Code. A copy of the judgment shall be given to each party and to the child's guardian ad litem. If the judgment is conditional, the order shall state the conditions of the judgment. If the child is not returned to the child's own home, the court shall determine which school district shall bear the cost of the child's education and shall comply with section 2151.36 of the Revised Code.

(4) As part of its dispositional order, the court may issue any order described in division (B) of section 2151.33 of the Revised Code.

(C) The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules.

(D) If the court issues an order pursuant to division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code committing a child to the permanent custody of a public children services agency or a private child placing agency, the parents of the child whose parental rights were terminated cease to be parties to the action upon the issuance of the order. This division is not intended to eliminate or restrict any right of the parents to appeal the permanent custody order issued pursuant to division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code.

(E) Each juvenile court shall schedule its hearings in accordance with the time requirements of this chapter.

(F) In cases regarding abused, neglected, or dependent children, the court may admit any statement of a child that the court determines to be excluded by the hearsay rule if the proponent of the statement informs the adverse party of the proponent's intention to offer the statement and of the particulars of the statement, including the name of the declarant, sufficiently in advance of the hearing to provide the party with a fair opportunity to prepare to challenge, respond to, or defend against the statement, and the court determines all of the following:

(1) The statement has circumstantial guarantees of trustworthiness;

(2) The statement is offered as evidence of a material fact;

(3) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts;

(4) The general purposes of the evidence rules and the interests of justice will best be served by the admission of the statement into evidence.

(G) If a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition. On motion of the prosecuting attorney, guardian ad litem, or any party, or in its own discretion, the court may order that the deposition be videotaped. Any deposition taken under this division shall be taken with a judge or referee present.

If a deposition taken under this division is intended to be offered as evidence at the hearing, it shall be filed with the court. Part or all of the deposition is admissible in evidence if counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination and the judge determines that there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of participating at the hearing.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 142 v S 89 (Eff 1-1-89); 146 v H 1 (Eff 1-1-96); 146 v H 274 (Eff 8-8-96); 146 v H 124 (Eff 3-31-97); 148 v S 181 (Eff 9-4-2000); 148 v S 218 (Eff 3-15-2001); 148 v S 179, § 1 (Eff 4-9-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400, Eff 4-3-2003.

Analogous in part to former RC § 2151.35 (GC § 1639-30; 117 v 520; 119 v 731; 121 v 557; Bureau of Code Revision, 10-1-53; 125 v 324; 127 v 547; 130 v 621; 130 v 623; 132 v S 278; 133 v S 49 (eff 8-13-69)) repealed in 133 v H 320, § 2, eff 11-19-69.

The provisions of § 3 of HB 400 (149 v —) read as follows:

SECTION 3. Section 2151.35 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. Section 2152.19 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by both Sub. H.B. 247 and Sub. H.B. 393 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

Cross-References to Related Sections

Adjudicatory hearing; shelter care determination; summons, RC § 2151.28.

Closing the taking of a deposition, RC § 2152.81.

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination by juvenile judge that truant child is dependent or delinquent, RC § 3321.22.

Failure to send child to school, RC § 3321.38.

Juvenile court proceedings, RC § 3321.22.

Hearing on motion for permanent custody, RC § 2151.41.4.

Juvenile court records generally, RC § 2151.18.

Motion requesting disposition order upon expiration of temporary custody order, RC § 2151.41.5.

Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.

Ohio Rules

Hearing procedures, JuvR 27, 29, 34.

Records, JuvR 34(C), 37.

Right to counsel, JuvR 3, 4, 15(B), 29(B).

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: dispositional hearing, OAC 5101:2-1-01.

Procedural requirements regarding change of placement or visitation plan; advance court approval. OAC 5101:2-42-93.

Comparative Legislation

Hearing procedure:

18 USCS § 5037

CA—Cal Wel & Inst Code §§ 345 et seq, 675 et seq

FL—Fla. Stat. § 985.301 et seq

IL—705 ILCS §§ 405/2-22, 405/3-23, 405/4-20

IN—Burns Ind. Code Ann. § 31-37-19-1

KY—KRS § 610.070 et seq

MI—MCLCS §§ 712A.12, 712A.17

NY—NY CLS Family Ct Act §§ 165, 340.1 et seq, 350.1 et seq, 622 et seq, 711 et seq, 832 et seq, 1041 et seq

PA—42 P.S. § 6336

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Constitutionality

The confrontation clause of USConst amend VI does not apply to dependency and neglect proceedings in juvenile courts: In re Burchfield, 51 Ohio App. 3d 148, 555 N.E.2d 325 (1988).

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A pretrial order enjoining the news media from disseminating the identity of a juvenile in any manner in connection with juvenile proceedings violates the first amendment where members of the press were present at an initial hearing with full knowledge of and without objection by the court and defense and

prosecution counsel: *Oklahoma Publishing Co. v. District Court*, 439 U.S. 308, 97 S. Ct. 1045, 51 L. Ed. 2d 355 (1976).

Trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement: *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971).

Delinquency proceedings in juvenile court do not require indictment or trial by jury under the USConst amend V, VI and XIV or under OConst art I, §§ 5 and 10: *In re Agler*, 19 Ohio St. 2d 70, 48 Ohio Op. 2d 85, 249 N.E.2d 808 (1969).

Federal constitutional guarantees accompanying ordinary criminal proceedings are applicable to state juvenile court proceedings where possible commitment to a state institution is involved: *In re Whittington*, 45 Ohio Op. 2d 31, 391 U.S. 341, 20 L. Ed. 2d 625, 88 S. Ct. 1507 (1968).

The provisions of this section relating to the hearing and commitment of a delinquent child without an indictment or a jury trial are not violative of OConst art I, § 5 or § 10: *In re Darnell*, 173 Ohio St. 335, 19 Ohio Op. 2d 269, 182 N.E.2d 321 (1962).

Generally

Proceedings in the juvenile court are civil in nature and not criminal. This section implies protection for the minor and not punishment: *Cope v. Campbell*, 175 Ohio St. 475, 26 Ohio Op. 2d 88, 196 N.E.2d 457 (1964).

Proceedings instituted in a juvenile court are not criminal in nature nor are they conducted with the objective of convicting a minor of a crime and punishing him therefor; they are informal hearings through a medium of the juvenile court to determine whether the child needs intervention of the state as guardian and protector of his person: *In re L.*, 25 Ohio Op. 2d 369, 194 N.E.2d 797 (JC 1963).

Proceedings instituted in a juvenile court are not criminal in nature nor are they conducted with the object of convicting a minor of a crime and punishing him therefor; they are informal hearings through the medium of the juvenile court to determine whether the child needs intervention of the state as guardian and protector of his person: *State v. Shardell*, 107 Ohio App. 338, 8 Ohio Op. 2d 262, 153 N.E.2d 510 (1958).

Abused, neglected, or dependent child

Review of RC § 2151.35(B)(1) showed that it was inconsistent with Ohio R. Juv. P. 34(A) as RC § 2151.35(B)(1) allowed a trial court to hold a dispositional hearing for an adjudicated dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing, while Ohio R. Juv. P. 34(A) was stricter because it also required that all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing, and it was well-established that in instances of procedural conflict the Ohio Rules of Juvenile Procedure, which were prepared and submitted by the Ohio Supreme Court to the legislature, controlled over inconsistent statutory provisions purporting to govern procedural matters. *In re J.H.*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 3151, 2006 Ohio 3237, (June 26, 2006).

Findings of neglect and dependency were not supported by clear and convincing evidence. The testimony concerning domestic violence between the parents was conflicting: *In re Alexander C.*, 164 Ohio App. 3d 540, 843 N.E.2d 211, 2005 Ohio 6134, (2005).

There was clear and convincing evidence under RC § 2151.35(A) to support a finding by a magistrate, which was adopted by the trial court, that a mother's children were abused and dependent, pursuant to RC §§ 2151.031(B) and (C), and 2151.04(D), respectively, where there was expert testimony that the mother's 19-day-old child had abusive grab marks, and the mother admitted that she may have caused those marks when she grabbed her child. *In re Butcher*, 2005 Ohio App. LEXIS 3510, 2005 Ohio 3816, (2005).

When a child was removed from the hospital shortly after birth, the child was properly found to be dependent by clear and convincing evidence, under RC §§ 2151.04(D) and 2151.35(A), even though she had not actually lived in a household in which another child was found to have been abused or neglected, because there was evidence that had the child not been removed from the hospital, the child would have lived in a home in which

her half sibling was found to be abused, due to Munchausen's Syndrome by proxy, her siblings were found to be dependent, and her parents refused to acknowledge the problem which caused the finding that the half sibling was abused, indicating that there continued to be a risk to the child if she was placed in that home. *In re Hortsmann*, 2005 Ohio App. LEXIS 2089, 2005 Ohio 2168, (2005).

Trial court had sufficient evidence to come to a firm belief or conclusion that a father sexually abused a victim, his daughter, where both the father and the victim testified at the hearing, where the trial court found that the victim's testimony was more credible, where the victim's mother corroborated certain parts of the victim's testimony and two caseworkers reported that the victim's story was virtually identical to her testimony at the hearing; the father's assertion that the lack of any physical evidence was conclusive proof that his testimony was more credible than the victim's was unfounded. *In re Moonshower*, 2004 Ohio App. LEXIS 3654, 2004 Ohio 4024, (2004).

There was insufficient evidence to support a juvenile court's findings that children were neglected or dependent based on an incident where their mother had appeared intoxicated as a chaperone for a school field trip taken by one of the children. The mother had made arrangements for the children to have been cared for by their grandmother, and the appellate court found that the family services department failed to present clear and convincing proof that the children lacked adequate parental care, as there was no showing that either child was ever deprived of adequate food or clothing, the children were never subjected to the mother's sole parental supervision on the day of the field trip, and there was no showing that the mother's problems with substance abuse were such that it deprived her children of adequate or proper parental care. *In re C.M.*, 2004 Ohio App. LEXIS 2041, 2004 Ohio 2294, (2004).

Evidence that the parties needed intervention for counseling to be effective supported removing a minor child from an unstable and abusive environment temporarily. *In re Day*, 2003 Ohio App. LEXIS 3253, 2003 Ohio 3544, (2003).

Where a home had no electricity, the children lacked food and/or supervision, and where the mother refused to accept help or follow advice, the children were neglected pursuant to RC §§ 2151.03(A)(2), 2151.011(B)(1), and 2151.05; therefore, the RC § 2151.35(A) determination of neglect was proper. *In re Browne Children*, 2003 Ohio App. LEXIS 3293, 2003 Ohio 3637, (2003).

In an action to place a child in the temporary care and custody of a county department of human services on the ground that the child had been abused, a journal entry of the jury's verdict that the child's stepfather was guilty of endangering her pursuant to RC § 2919.22 is admissible: *In re Boyce*, 37 Ohio App. 3d 105, 523 N.E.2d 900 (1987).

The unfitness of a parent, guardian or custodian can be predicted by past history. The child does not first have to be put into a particular environment before the court can determine that that environment is unhealthy or unsafe: *In re Bishop*, 36 Ohio App. 3d 123, 521 N.E.2d 838 (1987).

Where the parents of an alleged dependent child have filed a praecipe for a subpoena duces tecum of a children services board (the party filing the complaint) seeking to obtain or view the agency's records, it is error for the court to sustain a motion to quash the subpoena on the basis that the records are privileged and confidential; the court should allow counsel for the parents reasonable access to the files in order to use the parts which are relevant to the issues being presented to the court: *Davis v. Trumbull Cty. Children Serv. Bd.*, 24 Ohio App. 3d 180, 24 Ohio B. 270, 493 N.E.2d 1011 (1985).

The conduct of a parent is relevant under the terms of RC § 2151.35 solely insofar as that parent's conduct forms a part of the environment of the child. As a part of the child's environment such conduct is only significant if it can be demonstrated to have an adverse impact upon the child sufficient to warrant state intervention. That impact cannot be simply inferred in general, but must be specifically demonstrated in a clear and convincing manner: *In re Burrell*, 58 Ohio St. 2d 37, 12 Ohio Op. 3d 43, 388 N.E.2d 738 (1979).

Authority of agency

An agency of the state may not seize a person's child and then be the sole judge at how much of the evidence in respect to the agency's conduct it will refuse to divulge: *Davis v. Trumbull Cty. Children Serv. Bd.*, 24 Ohio App. 3d 180, 24 Ohio B. 270, 493 N.E.2d 1011 (1985).

Bindover for prosecution

A two-stage proceeding is required where a motion to transfer a child for prosecution as an adult is filed. The preliminary hearing is presumptively open to the public, while the amenability hearing is presumptively closed: *In re D.R.*, 63 Ohio Misc. 2d 273, 624 N.E.2d 1120 (CP 1993).

Child's testimony via closed circuit TV

In civil abuse, neglect or dependency hearings, allowing a child victim of alleged sexual abuse to testify live via two-way closed circuit television does not violate due process or the confrontation clause of USConst amend VI: *In re Burchfield*, 51 Ohio App. 3d 148, 555 N.E.2d 325 (1988).

Competency evaluation

The standard enunciated in RC § 2945.37(A) governs competency evaluations of juveniles, so long as it is applied in light of juvenile rather than adult norms: *In re Williams*, 116 Ohio App. 3d 237, 687 N.E.2d 507 (1997).

Confessions, statements

An eleven-year-old's confession was admissible where his Miranda rights were fully explained to him and his mother and there was no coercive police conduct: *In re Goins*, 137 Ohio App. 3d 158, 738 N.E.2d 385 (1999).

The juvenile's responses at the scene to an officer were admissible where the questions were based on valid public safety concerns. The juvenile's statements at the interview with the juvenile and his mother were voluntary under the circumstances: *In re Travis*, 110 Ohio App. 3d 684, 675 N.E.2d 36 (1996).

Alleged waivers by minors of their Miranda rights must be scrutinized closely since the validity of the waiver is affected by the factors of age, emotional stability and mental capacity: *In re Smalley*, 62 Ohio App. 3d 435, 575 N.E.2d 1198 (1989).

Consent to permanent surrender of rights

An agreement by a parent with the welfare department for permanent surrender of a child prior to consent of the juvenile court is not only revocable by the parent prior to consent of the juvenile court, but such revocation also operates to dissolve the offer to surrender: *In re Williams*, 7 Ohio App. 3d 324, 7 Ohio B. 421, 455 N.E.2d 1027 (1982).

Construction with other laws

Revised Code § 2151.41.3 does not provide the only method of obtaining permanent custody. RC § 2151.35 also allows the court to grant the agency permanent custody on the initial complaint of the agency. A complaint seeking shelter care pending adjudication allows the agency to subsequently file an amended complaint seeking permanent custody and the amended complaint will relate back as though the agency had initially sought permanent custody as allowed by RC § 2151.35: *In re Massengill*, 76 Ohio App. 3d 220, 601 N.E.2d 206 (1991).

Revised Code § 3109.04, which permits the court to allow the choice of a child of fourteen years of age or more to determine with which parent he will live, is applicable to a proceeding for change of custody under the juvenile court act: *In re Smelser*, 22 Ohio Misc. 41, 51 Ohio Op. 2d 31, 257 N.E.2d 769 (JC 1969).

Death of child

Court of common pleas, juvenile division, erred when it determined that the court lacked jurisdiction to adjudicate the issue of abuse when the child was deceased; the technicality of death did not rob children of statutory protection as the statutory protections afforded siblings extended to afterborn children. *In re Darling*, 2003 Ohio App. LEXIS 6640, 2003 Ohio 7184, (2003).

Delinquency

Juvenile court's determination that defendant, a juvenile, was a delinquent pursuant to RC § 2151.35(A) and Ohio R. Juv. P. 29(E)(4) for committing a robbery, in violation of RC

§ 2911.02(A)(2), was not against the manifest weight of the evidence, as the identification of defendant as the perpetrator was supported by testimony from the victim which was deemed reliable, and there was sufficient evidence that money was taken from the victim's pocket during the criminal incident. *In re Lower*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1581, 2007 Ohio 1735, (Apr. 5, 2007).

In a delinquency proceeding, a trial judge had to find, based on the evidence produced at an adjudicatory hearing, whether the State proved delinquency beyond a reasonable doubt, under RC § 2151.35(A) and Ohio R. Juv. P. 29(E), so it was error for him to consider, in a rape trial, comments made by his wife about feminine hygiene. *In re K.B.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1501, 2007 Ohio 1647, (Apr. 9, 2007).

Where the State initiated formal proceedings against a juvenile who was charged with being a delinquent under RC § 2151.35(A) due to his alleged commission of multiple criminal offenses, the trial court erred in addressing the matter informally under Ohio R. Juv. P. 9, as it was not appropriate in the circumstances. As the juvenile's dismissal motion was only based on his alleged lack of competency to communicate effectively with his counsel, and not on any issues regarding his culpability or his ability to have formed the requisite intent, the trial court's dismissal upon a determination that the State would be unable to prove beyond a reasonable doubt that the juvenile had the requisite intent to have committed any of the offenses was error because no evidence on that issue had been submitted. *In re Kovalchik*, 2006 Ohio App. LEXIS 5987, 2006 Ohio 6049, (2006).

Upon a determination during reviewing hearings held pursuant to RC § 2151.417 and Ohio R. Juv. P. 36(A) that a juvenile was not benefiting from a residential treatment program that he was originally committed to upon being declared a delinquent pursuant to RC § 2151.35(A)(1) and that he was acting out, a juvenile court's placement of the juvenile with the Department of Youth Services was not error pursuant to RC § 2151.354(5) and (6); the juvenile was not amenable to treatment or rehabilitation due to his conduct at the residential treatment facility. *In re D.B.*, 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

Defendant juvenile's adjudication of delinquency for the act of arson (RC § 2909.02(A)) was against the manifest weight of the evidence as the State failed to prove that defendant knowingly (RC § 2901.22(B)) started or accelerated the fire. The conclusion was based on the improbability of the timeline for the sequence of events that the State presented; the illogical conclusions of the State's expert testimony; and statements and omissions by defendant's stepmother, which logically could only have been construed to support defendant's contention that the fire was accidental. *In re Horton*, 2005 Ohio App. LEXIS 3249, 2005 Ohio 3502, (2005).

Where a juvenile charged with violating RC § 2913.02 (theft) is tried by a referee, and the referee intervenes on behalf of the prosecution to help it prove the enhancement portion of the charge, and where the referee then sua sponte declares a mistrial based upon her own intervention, with a retrial to follow, the juvenile cannot be retried on the enhanced "felony," i.e., the juvenile may only be retried on the underlying petit theft charge: *In re Williams*, 31 Ohio App. 3d 241, 31 Ohio B. 525, 510 N.E.2d 832 (1986).

The due process clause protects a juvenile against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged: *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

Dependent child

Finding that the child was dependent was not against the manifest weight of the evidence because the mother suffered from a mental condition rendering her unable to adequately care for her son; she suffered from delusions in the form of hallucinations. She testified that she saw spirits and believed that people could be possessed by them, that the spirits could hurt her son by, for example, entering a body and slapping him or throwing things at him, and that, if a spirit possessed her son, her boyfriend would help her drive the spirit out of his body and that there would be some pain associated with the procedure. *In re Anderson*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1159, 2007 Ohio 1233, (Mar. 15, 2007).

Clear and convincing evidence, as required by RC

§ 2151.35(A)(1) and Ohio R. Juv. P. 29(E)(4), supported a trial court's decision that a child was dependent, under RC § 2151.04(B) and (C) because (1) the child's mother admitted that her mental state prevented her from adequately caring for the child, (2) she testified that the child's father was inconsistent in being willing to help her care for the child, (3) she testified the father's epilepsy caused him to "zone out" at times, (4) she accused the father of physically abusing the child but did not seek proper treatment for the child for weeks, (5) her claims of physical abuse, if true, showed the child suffered actual harm in the home and was not given appropriate treatment, and, if false, showed the mother's inability to make appropriate decisions about the child's care. In re S.J.J., 2006 Ohio App. LEXIS 6318, 2006 Ohio 6354, (2006).

Clear and convincing evidence pursuant to RC § 2151.35 and Ohio R. Juv. P. 29(E)(4) supported a trial court's determination that a child was dependent pursuant to RC § 2151.04(C), as she was diagnosed with mental health issues, she had homicidal and suicidal tendencies, and had run away from home to avoid auditory hallucinations telling her to kill herself and her family; the parents' conduct adversely impacted the child and the severity of her condition, and it created a risk to her safety. In re E. R., 2006 Ohio App. LEXIS 4745, 2006 Ohio 4816, (2006).

Finding that the children were dependent under RC § 2151.04(D) was supported by clear and convincing evidence, pursuant to RC § 2151.35(A), because the father punched the mother with a closed fist and threw her down the stairs, the mother told a police officer that the father physically abused her several times a month, and the evidence showed that the mother still had some level of relationship and interaction with the father, which in the past had led inevitably to alcohol usage and domestic violence, causing the removal of their other children from their custody. The same economic and home environment issues that imperiled the children's siblings were putting the children at issue in danger as well. In re G.S., 2006 Ohio App. LEXIS 2389, 2006 Ohio 2530, (2006).

Based on prior adjudications of abuse of a child's siblings and a continued threat to the child's safety, the child was properly deemed dependent under RC §§ 2151.04(D), 2151.35(A). Transfer to the Cherokee Nation pursuant to 25 U.S.C.S. § 1911(B), 1914 was not required where the Cherokee Nation merely asked for continued notification and the right to participate. In re Hortsmann, 2005 Ohio App. LEXIS 2091, 2005 Ohio 2172, (2005).

Where a county children service agency filed a dependency complaint, and a dispositional hearing was held by a magistrate within 90 days thereof, the time requirements of Ohio R. Juv. P. 34(A) and RC § 2151.35(B)(1) were met. The mother's claim on appeal that she did not present evidence at the hearing was waived where she stipulated to her daughters' dispositions, and she did not object to her son's disposition, nor did she attempt to present witnesses, and the magistrate had the right to conduct an informal hearing, pursuant to § 2151.35(A)(1) and Ohio R. Juv. P. 27(A). In re Ohm, 2005 Ohio App. LEXIS 3245, 2005 Ohio 3500, (2005).

Because the trial court, before accepting the parents' admissions that their children were dependent, did not address them to ensure that they understood the nature of the allegations or the consequences of the admissions as required by Ohio R. Juv. P. 29(A), it committed plain error in finding the children to be dependent based on those admissions. In re Elliott, 2004 Ohio App. LEXIS 2461, 2004 Ohio 2770, (2004).

Clear and convincing evidence supported the juvenile court's finding that the first and second daughters of the mother were dependent children whose best interests were fulfilled by taking custody of them from the mother and placing them with the mother's parents, as the evidence showed the mother had harmed the first daughter in the past and had thoughts of doing more harm to the first daughter in the future. In re Hauenstein, 2004 Ohio App. LEXIS 2550, 2004 Ohio 2915, (2004).

Where the mother had few financial resources, had been unable to find employment, did not get routine medical treatment for her children, depended upon others for her own maintenance and was on the verge of losing her residence, and psychological tests indicated a lack of efficacy and a lack of independence, there was sufficient evidence presented to the trial court from which it

could find by clear and convincing evidence that the minor child was a dependent child. In re Barker, 2003 Ohio App. LEXIS 5758, 2003 Ohio 6406, (2003).

The court found that a child was a dependent child as a result of the method by which parent and live-in companion administered corporal punishment. In re Jandrew, 1997 Ohio App. LEXIS 5999 (4th Dist. 1997).

The fact of dependency must be proved by clear and convincing evidence. In re Bishop, 36 Ohio App. 3d 123, 521 N.E.2d 838 (1987).

The fact of dependency must be proven by clear and convincing evidence (RC § 2151.35, applied): In re Green, 18 Ohio App. 3d 43, 18 Ohio B. 155, 480 N.E.2d 492 (1984).

The fact of dependency must be proved by clear and convincing evidence. RC § 2151.35: In re Bibb, 70 Ohio App. 2d 117, 24 Ohio Op. 3d 159, 435 N.E.2d 96 (1980).

Due process

Where a juvenile has received the following essentials of due process and fair treatment, (1) written notice of the specific charge or factual allegations, given to the juvenile and his parents or guardian sufficiently in advance of the hearing to permit preparation; (2) notification to the juvenile and his parents of the juvenile's right to be represented by counsel retained by them, or, if they are unable to afford counsel, that counsel will be appointed to represent the juvenile; (3) application of the constitutional privileges against self-incrimination; and (4), absent a valid confession, a determination of delinquency and an order of commitment based only on sworn testimony subjected to the opportunity for cross-examination in accordance with constitutional requirements, such juvenile has not been deprived of due process under either the Constitution of the United States or the Constitution of the state of Ohio: In re Baker, 18 Ohio App. 2d 276, 47 Ohio Op. 2d 411, 248 N.E.2d 620 (1969).

In the absence of a valid confession, a juvenile can be committed only upon sworn testimony subject to cross-examination. In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Due process in a juvenile proceeding must include adequate written notice; advice as to the right to counsel, retained or appointed; confrontation and cross-examination of witnesses; and the privilege against self-incrimination. In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Evidence generally

Where the hearsay evidence concerned only the issue of abuse and the court found in the parents' favor on that issue, its admission into evidence was not prejudicial. The prohibition concerning the introduction of "dispositional" evidence into adjudicatory proceedings is not so much the nature of the evidence as for what purpose it is admitted: In re S., 102 Ohio App. 3d 338, 657 N.E.2d 307 (1995).

Exclusion of general public, media

When appellant, a juvenile, moved a trial court to exclude the press, close the courtroom, order non-disclosure of information from the police to the press, and non-disclosure of personal information of the juvenile parties to appellant's trial for gross sexual imposition and unlawful restraint, it was not an abuse of discretion, under Ohio R. Juv. P. 27 and RC § 2151.35, for the trial court to deny the motion because it properly considered potential harm to appellant, the benefits of public access, and ordered a reasonable alternative when it ordered that the media could not disclose the identities of appellant or his parents and barred the use of video or photographs of appellant. In re K.J.B., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1533, 2007 Ohio 1677, (Apr. 9, 2007).

Prohibition may be granted to prevent a judge from closing juvenile court proceedings without conducting an evidentiary hearing and without making the required findings. When a party requests that a juvenile court proceeding be closed, but the court fails to hold an appropriate evidentiary hearing and make the required findings before closing the proceeding, a person or entity successfully challenging that practice is not automatically entitled to release of the transcript of the improperly closed proceeding. Instead, the person or entity challenging the im-

proper closure is entitled to a writ of mandamus to compel the judge to conduct the closure hearing that should have been held in order to determine if release of the transcript is warranted. Mandamus may be granted to compel a juvenile court to make publicly available notice of (1) motions to close proceedings, (2) when hearings on closure motions will be held, and (3) court rulings on closure motions: *State ex rel. Plain Dealer Publ. Co. v. Floyd*, 111 Ohio St. 3d 56, 855 N.E.2d 35, 2006 Ohio 4437, (2006).

The court abused its discretion by closing a detention hearing to the media without a motion for closure and without holding a hearing or making the required findings: *State ex rel. Dispatch Printing Co. v. Loudon*, 91 Ohio St. 3d 61, 741 N.E.2d 517, 2001 Ohio 268, (2001).

The public does not have a qualified constitutional right of access to juvenile delinquency proceedings. Such proceedings are not presumed open or presumed closed. The burden of proof is on a party seeking closure: *State ex rel. Plain Dealer Publ'g Co. v. Geauga County Court of Common Pleas*, 90 Ohio St. 3d 79, 734 N.E.2d 1214, 2000 Ohio 35, (2000).

A juvenile court should not summarily deny closure of a hearing where no party objects to closure and evidence is likely to be presented that will be psychologically damaging to an abused child if made public: *In re Joanne M.*, 103 Ohio App. 3d 447, 659 N.E.2d 864 (1995).

Unless summarily denied, a motion of a party to a juvenile court proceeding ("proceeding") requesting that the proceeding be closed to the press and public, requires the juvenile court to conduct an evidentiary hearing ("closure hearing") to determine whether closure of the proceeding is warranted. Closure of the proceeding may be warranted upon a showing by the juvenile court that it has followed the standards set forth in *In re T.R.* (1990), 52 OS3d 6, 556 NE2d 439, paragraph three of the syllabus, and that there are no reasonable alternatives to closure. When a party to a juvenile court proceeding asserts that a closure hearing itself should be closed, the juvenile court must conduct an in camera inspection to determine if closure of the closure hearing is appropriate. Any party urging the closure of a proceeding must present to the juvenile court, for its in camera inspection, a written or recorded summary of any testimony sought to be excluded from the public domain. Such summary must contain sufficient information for the juvenile court to make an informed decision, pursuant to the standards set forth in *T.R.*, as to whether any or all of the testimony sought to be excluded from public disclosure should be excluded: *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St. 3d 497, 628 N.E.2d 1368, 1994 Ohio 335, (1994).

The public has an interest in access to delinquency proceedings which corresponds to the public's interest in criminal matters. However, the public's right of access must be weighed against the unique confidentiality concerns of a juvenile court. Any limitations on access must be narrowly drawn: *In re N.H.*, 63 Ohio Misc. 2d 285, 626 N.E.2d 697 (CP 1992).

Proceedings in juvenile court to determine if a child is abused, neglected, or dependent, or to determine custody of a minor child, are neither presumptively open nor presumptively closed to the public. The juvenile court may restrict public access to these proceedings pursuant to *JuvR* 27 and RC § 2151.35 if the court finds, after hearing evidence and argument on the issue, (1) that there exists a reasonable and substantial basis for believing that public access could harm the child or endanger the fairness of the adjudication, and (2) the potential for harm outweighs the benefits of public access: *In re T.R.*, 52 Ohio St. 3d 6, 556 N.E.2d 439 (1990).

Prohibition will not issue to require the court to exclude the media and the public from a hearing on transfer of jurisdiction: *State ex rel. Fyffe v. Pierce*, 40 Ohio St. 3d 8, 531 N.E.2d 673 (1988).

Hearings generally

Although the time requirements under RC §§ 2151.28(A)(2), (B)(3), and 2151.35(B)(1) were not complied with in holding adjudicatory and dispositional hearings regarding a child's dependency and an award of temporary custody to her grandmother and then her father, any objection thereto was waived by the mother's failure to raise the issue in a timely manner and by her continued

participation in the proceedings. *In re Brown*, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

Department of Children and Family Services, the minor child's aunt, and the child's foster parents were entitled to a dispositional hearing, on their motion to modify a prior custody order, and the trial court was required to provide notice to the guardian ad litem of said motion; although the burden rested with the movants to set forth the evidence in support of their motion, and no error could be attributed to the trial court for the movants failing to meet this burden, the movants should not have been precluded from presenting such evidence, if desired. *In re G.R.*, 2004 Ohio App. LEXIS 886, 2004 Ohio 999, (2004).

Where neither attorney objected to the combining of the adjudicatory and dispositional hearings by the judge, any claimed error concerning bifurcation was waived: *In re Williams*, 2000 Ohio App. LEXIS 455 (8th Dist. 2000).

Juvenile Rule 37 and RC § 2151.35 state that a juvenile hearing may, but need not be, held in an informal manner: *In re Corcoran*, 68 Ohio App. 3d 213, 587 N.E.2d 957 (1990).

The authority granted the court by this section to "conduct its hearings in an informal manner" does not abrogate the right of a minor defendant to a separate trial: *In re Allen*, 10 Ohio App. 2d 120, 39 Ohio Op. 2d 200, 226 N.E.2d 135 (1967).

Hearsay

There was no error in permitting the testimony of the social worker regarding the removal of the child in the permanent custody proceeding because RC § 2151.35(B)(2)(b) permitted the trial court to admit any evidence that was material and relevant. Even if hearsay had been barred, under either exception to hearsay, Ohio R. Evid. 803(6) (business records) or Ohio R. Evid. 803(8) (public records), the social worker's testimony concerning statements made during the course of the agency's investigation were admissible since the contents of her file, including the statement by the cousin, had been compiled as part of the social worker's activities. *In re Z.T.*, 2007 Ohio App. LEXIS 759, 2007 Ohio 827, (2007).

Revised Code § 2151.35(F) is inconsistent with Article VIII of the Ohio Rules of Evidence and, as such, has no force or effect: *In re Coy*, 67 Ohio St. 3d 215, 616 N.E.2d 1105, 1993 Ohio 202, (1993).

In a dependency proceeding, since a report containing social history information is hearsay, it may be used to clarify allegations in the complaint; however, it may not be used as proof or evidence of those allegations: *Davis v. Trumbull Cty. Children Serv. Bd.*, 24 Ohio App. 3d 180, 24 Ohio B. 270, 493 N.E.2d 1011 (1985).

Indigency

An indigent parent has a right to a transcript of proceedings for purposes of appealing from a state-instituted permanent custody action: *State ex rel. Howard v. Ferreri*, 70 Ohio St. 3d 587, 639 N.E.2d 1189 (1994).

Oath of witness

Although a juvenile court may conduct a hearing in an informal manner, witnesses should be placed under oath before testifying: *In re Ramsey*, 102 Ohio App. 3d 168, 656 N.E.2d 1311 (1995).

Polygraph

Where the parties stipulated to the admissibility of polygraph results, the magistrate was bound to consider them: *In re Burton S.*, 136 Ohio App. 3d 386, 736 N.E.2d 928 (1999).

Privileges

In an action seeking a determination of dependency and neglect and an order of permanent custody of a child, the statutes of Ohio make no exception to the privilege attaching to the communications between psychiatrist and patient, psychologist and patient (or client), and to the privilege, if it exists, between social workers employed in the office of the psychiatrist and psychologist and client: *In re Decker*, 20 Ohio App. 3d 203, 20 Ohio B. 248, 485 N.E.2d 751 (1984).

Protective supervision order

There was no indication the trial court requested the protective supervision order (PSO) in contemplation of a dispositional hearing because the plain language of the magistrate's decision

indicated that rather than being submitted for dispositional issues, the PSO was being considered as an alternative to a contested trial. Furthermore, while the letter from the doctor was attached to the PSO and contained the medical reasoning behind his opinion as to why he did not believe that the children being at home with their biological parents was in their best interest, the presence of language alone did not lead to the inevitable conclusion that the magistrate considered the letter for the purpose of disposition. In *re* Vecchia, 2006 Ohio App. LEXIS 6035, 2006 Ohio 6095, (2006).

Records

Revised Code § 1347.04 does not operate to exempt juvenile courts from the provisions of RC Chapter 1347, with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from RC Chapter 1347, under RC § 1347.04(A)(1)(e). Under RC § 1347.08, a juvenile court must permit a juvenile or duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under RC § 1347.04(A)(1)(e) or 1347.08(C) or (E)(2). Under JuvR 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court: OAG No. 84-077 (1984).

Recusal of judge

The judge was not required to recuse himself based on knowledge gained in presiding over the disposition of a co-defendant: In *re* Daniel E., 122 Ohio App. 3d 139, 701 N.E.2d 408 (1997).

Temporary custody to agency

A prospective finding of dependency is appropriate where children have not been in the custody of the mother, but circumstances demonstrate that to allow the mother to have custody of her children would threaten their health and safety. A court is justified in awarding temporary custody to the children services board where the father has already been found to have abused the children and the mother, who is contesting the award, is planning a sham separation in order to gain custody and flee the jurisdiction: In *re* Pieper, 85 Ohio App. 3d 318, 619 N.E.2d 1059 (1993).

In an action seeking temporary custody of a child who is alleged to be a "dependent child" pursuant to RC § 2151.04(C), the standard of proof in the adjudicatory portion of the proceedings is by clear and convincing evidence and the standard of proof in the dispositional portion of the proceedings is by a preponderance of the evidence (RC § 2151.35 and JuvR 29[E][4], applied): In *re* Willmann, 24 Ohio App. 3d 191, 24 Ohio B. 313, 493 N.E.2d 1380 (1986).

Termination of parental rights

Where no notices of the juvenile court's judgment granting permanent custody of children to an agency were sent to either parent, contrary to Ohio R. Civ. P. 58(B), their appeal was deemed timely under Ohio R. App. P. 4(A), even though filed more than 30 days after the judgment and even though they had actual knowledge of the judgment. In *re* Elliott, 2004 Ohio App. LEXIS 2461, 2004 Ohio 2770, (2004).

Pursuant to RC § 2151.414(B)(1) and (2), a juvenile court must find clear and convincing evidence of both prongs of a two-prong test prior to terminating parental rights; in an action to terminate parental rights, the trial court found in a RC § 2151.35 hearing that the first prong of a permanent custody test was satisfied because a minor child had been in county custody for more than 12 of the 24 months prior to the hearing, the second prong was satisfied because it was in the best interest of the child as the father had failed to foster a positive relationship with his daughter. In *re* T. S., 2004 Ohio App. LEXIS 13, 2004 Ohio 32, (2004).

In a proceeding for termination of parental rights, the parent should have been permitted to rebut the testimony of the guardian ad litem. Public agencies should assist a parent in implementing a reunification plan: In *re* Sadiku, 139 Ohio App. 3d 263, 743 N.E.2d 507 (2000).

The right of an incarcerated parent to attend a permanent

custody hearing is within the sound discretion of the court: *State ex rel. Vanderlaan v. Pollex*, 96 Ohio App. 3d 235, 644 N.E.2d 1073 (1994).

Pursuant to OConst art IV, § 5(B), JuvR 2(1) prevails over RC § 2151.35, making a hearing under RC § 2151.41.4 an adjudicatory hearing. Hearsay is ordinarily inadmissible in an adjudicatory proceeding, but the exception provided in RC § 2151.35(F) is applicable to RC § 2151.41.4: In *re* Brofford, 83 Ohio App. 3d 869, 615 N.E.2d 1120 (1992).

In proceedings where parental rights are subject to termination, both the Juvenile Rules and the Revised Code prescribe that such proceedings be bifurcated into separate adjudicatory and dispositional hearings (RC § 2151.35 and JuvR 29 and 34, construed and applied): In *re* Baby Girl Baxter, 17 Ohio St. 3d 229, 17 Ohio B. 469, 479 N.E.2d 257 (1985).

Time limits

Where the continuances granted by the trial court in the dependency case caused the temporary custody hearing to be pushed beyond the 90-day period for such a hearing under RC § 2151.28(B)(3) and RC § 2151.35(B)(1), the mother waived the statutory limitations period claim by failing to raise the claim before the trial court, and the trial court was within its discretion in granting continuances pursuant to Ohio R. Juv. P. 23. In *re* Jessica M. B., 2004 Ohio App. LEXIS 926, 2004 Ohio 1040, (2004).

Trial court did not fail to conduct the permanent custody dispositional hearing within 30 days of the adjudication hearing as required by Ohio R. Juv. P. 34 because the father implicitly waived his right to invoke the statute to have the case dismissed for exceeding the statutory time limits. The father participated in the scheduling of the dispositional hearing, failed to object when the hearing was continued, and filed his own motion to continue the dispositional hearing. In *re* Burton, 2004 Ohio App. LEXIS 3652, 2004 Ohio 4021, (2004), appeal denied by 103 Ohio St. 3d 1495, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2584 (2004).

Revised Code § 2151.35 requires a juvenile court to dismiss without prejudice, on its own motion, when it cannot hold a timely dispositional hearing, i.e., within ninety days of the filing of a complaint: In *re* Olah, 142 Ohio App. 3d 176, 754 N.E.2d 1271 (2000).

The seven-day time limit set forth in RC § 2151.35(B)(3) is directory, not mandatory, and failure to comply with it will not deprive a court of jurisdiction: In *re* Davis, 84 Ohio St. 3d 520, 705 N.E.2d 1219, 1999 Ohio 419, (1999).

The judgment must be reversed where, due to the inordinate delay between the filing of the motion for permanent custody and the issuance of the judgment, the court lost its authority to issue an order terminating parental rights: In *re* Omosun Children, 106 Ohio App. 3d 813, 667 N.E.2d 431 (1995).

Where the dispositional hearing was scheduled and held within ninety days, its completion beyond that time was proper and the court was not deprived of jurisdiction: In *re* Brown, 96 Ohio App. 3d 306, 644 N.E.2d 1117 (1994).

Revised Code § 2151.35(B)(1) requires the dispositional hearing to commence no more than thirty days after the adjudication hearing has concluded and within 90 days after the complaint was filed. Continuances may be granted for good cause shown: In *re* Dixon, 1992 Ohio App. LEXIS 5175 (6th Dist. 1992).

Motions for a continuance waived the 90-day limit under RC § 2151.35(B)(1): In *re* Kutzli, 71 Ohio App. 3d 843, 595 N.E.2d 1026 (1991).

The seven-day period for entry of judgment set forth in RC § 2151.35(B)(3) and JuvR 34(C) is mandatory. The proper remedy for the court's failure to comply is to file a writ of procedendo in the court of appeals: In *re* Fleming, 76 Ohio App. 3d 30, 600 N.E.2d 1112 (1991).

The seven-day period under RC § 2151.35(B)(3) and JuvR 34(C) for entry of final judgment is mandatory. However, non-compliance does not deprive the court of jurisdiction: In *re* Galloway, 77 Ohio App. 3d 61, 601 N.E.2d 83 (1991).

Transcript

Pursuant to RC § 2151.35(A), a transcript is not required unless requested: In *re* East, 105 Ohio App. 3d 221, 663 N.E.2d 983 (1995).

In cases not involving permanent custody, the court is required to make a transcript of oral proceedings only on the request of a party: *In re Wright*, 88 Ohio App. 3d 539, 624 N.E.2d 347 (1993).

Voluntary placement with relatives

Children were not dependent or neglected where the parent with custody voluntarily placed them with relatives, pursuant to an informal agreement, prior to the involvement of DJFS, and the children were receiving proper care from the relatives: *In re Stoll*, 165 Ohio App. 3d 226, 845 N.E.2d 581, 2006 Ohio 346, (2006).

[§ 2151.35.1] § 2151.351 Repealed, 146 v H 265, § 2 [139 v H 440]. Eff 3-3-97.

This section concerned confinement of non-delinquent children. See now RC §§ 2151.33.1, 2151.35.3 and 2151.35.4.

[§ 2151.35.2] § 2151.352 Right to counsel.

A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to Chapter 120. of the Revised Code except in civil matters in which the juvenile court is exercising jurisdiction pursuant to division (A)(2), (3), (9), (10), (11), (12), or (13); (B)(2), (3), (4), (5), or (6); (C); (D); or (F)(1) or (2) of section 2151.23 of the Revised Code. If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. The court may continue the case to enable a party to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

Section 2935.14 of the Revised Code applies to any child taken into custody. The parents, custodian, or guardian of a child taken into custody, and any attorney at law representing them or the child, shall be entitled to visit the child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of the hearing.

Any report or part of a report concerning the child, which is used in the hearing and is pertinent to the hearing, shall for good cause shown be made available to any attorney at law representing the child and to any attorney at law representing the parents, custodian, or guardian of the child, upon written request prior to any hearing involving the child.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 164 (Eff 1-13-76); 148 v S 179, § 3. Eff 1-1-2002; 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 9-29-05.

The effective date is set by § 612.03 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v —).

Effect of Amendments

151 v H 66, effective September 29, 2005, rewrote the first paragraph.

H.B. 95, Acts 2003, effective September 26, 2003, made minor stylistic changes.

Cross-References to Related Sections

Adjudicatory hearing, RC § 2151.28.

Hearing procedures, RC § 2151.35.

Ohio Rules

Right to counsel, JuvR 3, 4, 15(B), 29(B).

Telephone and visitation rights, JuvR 7(J).

Practice Manuals and Treatises

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Constitutionality

In actions instituted by the state to force the permanent, involuntary termination of parental rights, the United States and Ohio Constitutions' guarantees of due process and equal protection of the law require that indigent parents be provided with counsel and a transcript at public expense for appeals as of right: *State ex rel. Heller v. Miller*, 61 Ohio St. 2d 6, 15 Ohio Op. 3d 3, 399 N.E.2d 66 (1980).

Generally

Juvenile's constitutional right to counsel was violated where he indicated at the arraignment that he wanted an attorney, but the issue was never raised or considered again in the proceedings: *In re R.B.*, 166 Ohio App. 3d 626, 852 N.E.2d 1219, 2006 Ohio 264, (2006).

Father's contention that the trial court erred in failing to appoint counsel for his children to represent them in a permanent custody proceeding was without merit. The father waived his right to complain of the alleged error on appeal by his failure to raise the issue before the trial court, and even so, the record indicated that the trial court appointed an individual as both guardian ad litem and counsel for all three children. *In re Salsberry*, 2006 Ohio App. LEXIS 3191, 2006 Ohio 3273, (2006).

Based on Ohio R. Juv. P. 4(A) and (B), as well as RC §§ 2151.281(H) and 2151.352, a trial court did not err in appointing a licensed attorney to represent 10 children in a parental rights termination proceeding as both their legal counsel and their guardian ad litem, as none of the children "repeatedly expressed a desire" to remain with the parents, and there was no

apparent or actual conflict shown in the attorney's dual capacity role. In re Hilyard, 2006 Ohio App. LEXIS 1809, 2006 Ohio 1976, (2006).

When the father of appellant, a juvenile, participated in appellant's adjudicatory hearing before the juvenile court, this did not obviate appellant's right to counsel under a sentence of RC § 2151.352, providing that counsel had to be provided for a child not represented by the child's parent, guardian, or custodian, because (1) no statute could override appellant's constitutional right to counsel, (2) if this provision were so interpreted, it would conflict with other provisions of § 2151.352 giving appellant the right to counsel at all stages of the proceedings and requiring a court to ascertain if appellant knew of his right to counsel and his right to be provided with counsel if he was indigent. In re R.B., 166 Ohio App. 3d 626, 852 N.E.2d 1219, 2006 Ohio 264, (2006).

When, at the arraignment of appellant, a juvenile, he responded affirmatively to a question asking if he wanted counsel, and the issue was not further discussed throughout his proceedings before the trial court, his constitutional right to counsel, also provided in RC § 2151.352 and Ohio R. Juv. P. 29(B)(3), was violated, as it could not be inferred from the record that appellant, at any time, knowingly and intelligently waived his right to counsel. In re R.B., 166 Ohio App. 3d 626, 852 N.E.2d 1219, 2006 Ohio 264, (2006).

With respect to the appointment of independent counsel since the children's wishes appeared to be in conflict with the attorney/guardian ad litem's recommendation, the mother had the opportunity at the permanent custody hearing to timely assert the children's rights, and therefore her derivative rights, but she chose not to. In re T.E., 2006 Ohio App. LEXIS 204, 2006 Ohio 254, (2006).

Although the mother was present at the show cause hearing, she did not represent or advise the juvenile. As a victim, she may have had interests adverse to the juvenile. The juvenile did not voluntarily waive the right to counsel. In re William B., 163 Ohio App. 3d 201, 837 N.E.2d 414, 2005 Ohio 4428, (2005).

There was no error in the failure to appoint an attorney to represent the mother in the adjudicatory phase of the dependency proceeding because the mother was advised of her right to request counsel but failed to make any such request. In re T.V., 2005 Ohio App. LEXIS 3884, 2005 Ohio 4280, (2005).

Where one of four children expressed a desire to live with her father, while the other three were in favor of termination of parental rights, that child was entitled to separate counsel. In re Sherman, 162 Ohio App. 3d 73, 832 N.E.2d 797, 2005 Ohio 3444, (2005), vacated by, substituted opinion at 2005 Ohio 5888, 2005 Ohio App. LEXIS 5312 (Ohio Ct. App., Hancock County Nov. 7, 2005).

Trial court did not err in granting a grandmother's appointed counsel's motion for leave to withdraw in a parental rights termination proceeding, as the grandmother was a party to the action, pursuant to Ohio R. Juv. P. 2(Y), and she was accordingly entitled to be represented by counsel, but she was not entitled to appointed counsel under RC § 2151.352; Ohio R. Juv. P. 4(A) was not applicable to the circumstances, as the right to counsel emanated from RC § 2151.352. In re Denisha Michelle T., 2005 Ohio App. LEXIS 1041, 2005 Ohio 1032, (2005).

Pursuant to RC § 2151.352 and Ohio R. Juv. P. 4(F), the trial court committed plain error in allowing the father's counsel to withdraw her representation immediately prior to the dispositional hearing regarding the father's parental rights because the father did not waive his right to counsel. The trial court could not reasonably have concluded that the failure of counsel's communication with the father, whether reasonable or not, resulted in the inability of counsel to ascertain the father's wishes because counsel, herself, informed the trial court that it was the father's desire to have custody of the child. In re Tyler Jo S., 2005 Ohio App. LEXIS 1214, 2005 Ohio 1225, (2005).

Although neither the court nor the guardian ad litem ever had any direct interaction with the two children in a proceeding by a children's services agency seeking permanent custody, the court properly considered their wishes pursuant to RC § 2151.414(D) by being made aware of the older child's desire to be placed with his mother, through testimony of the mother and a caseworker, and accordingly, any error on that issue was deemed harmless. The Ohio Supreme Court had previously relied on its prior

decisions, RC § 2151.352, and Ohio R. Juv. P. 4(A) and 2(Y) in determining that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and is entitled to independent counsel in certain circumstances. In re Lane, 2004 Ohio App. LEXIS 2486, 2004 Ohio 2798, (2004).

There was no evidence regarding the son's wishes or level of maturity on which the juvenile court could have made any decision regarding the appointment of counsel; the juvenile court did not appoint counsel for the children, did not expressly appoint the guardian ad litem to act as their counsel, and did not make any determination as to whether any of the children lacked the maturity to benefit from the appointment of counsel. In re Ridenour, 2004 Ohio App. LEXIS 1703, 2004 Ohio 1958, (2004).

Trial court was not obligated to ascertain whether the mother knew of her right to counsel because no hearing was held on the initial date due to a continuance and the mother failed to appear for the actual permanent custody hearing, and since there was no indication the mother ever demonstrated a desire to have counsel appointed, the trial court could not engage in the dialogue set forth in former RC § 2151.352. In re Williams, 2004 Ohio App. LEXIS 592, 2004 Ohio 678, (2004).

Individual's right to counsel in juvenile court proceedings not involving termination of parental rights is statutory, and is not derived from the United States or Ohio Constitutions. In re Holt, 2003 Ohio App. LEXIS 4978, 2003 Ohio 5580, (2003).

Juvenile court denied the mother due process in a custody matter by receiving a report of counsel appointed for her child without giving her a chance to review and challenge it, and erred by failing to hold a new permanent custody hearing with the participation of counsel for the child. In re Williams, 2003 Ohio App. LEXIS 3246, 2003 Ohio 3550, (2003), affirmed by 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

An order terminating parental rights may be reversed where the parents did not have counsel at the dispositional hearing. Permitting counsel for a parent to withdraw at the hearing based on a lack of communication with the parent did not justify the court in proceeding with the hearing. In re Alyssa Nicole C., 153 Ohio App. 3d 10, 790 N.E.2d 803, 2003 Ohio 2673, (2003).

An adjudication proceeding cannot go forward unless the juvenile is represented by counsel or there has been a valid waiver. Delegating the task of hiring counsel to the juvenile is inappropriate. In re Johnston, 142 Ohio App. 3d 314, 755 N.E.2d 457 (2001).

Under RC § 2151.35.2, indigent children, parents, custodians, or other persons in loco parentis are entitled to appointed counsel in all juvenile court proceedings. State ex rel. Asberry v. Payne, 82 Ohio St. 3d 44, 693 N.E.2d 794, 1998 Ohio 596, (1998).

Collectively advising a group of juveniles of their right to consult an attorney and then handing a juvenile a statement of rights form did not satisfy RC § 2151.35.2 and JuvR 29(B). In re Miller, 119 Ohio App. 3d 52, 694 N.E.2d 500 (1997).

The mother was not denied her right to counsel where she was notified of the proceedings, but did not contact the public defender's office until after the children had been adjudicated abused. In re Ramsey, 102 Ohio App. 3d 168, 656 N.E.2d 1311 (1995).

The court did not commit prejudicial error by failing to appoint separate counsel where there was no evidence of a conflict of interest. The parents' counsel did not provide ineffective assistance. In re Brodbeck, 97 Ohio App. 3d 652, 647 N.E.2d 240 (1994).

Neither RC § 2151.35.2 nor JuvR 4 requires appointment of counsel for a natural parent who has notice of the custody proceedings and disavows any interest in obtaining custody. In re Whaley, 86 Ohio App. 3d 304, 620 N.E.2d 954 (1993).

A parent who has executed an invalid surrender of parental rights is entitled to appointed counsel if the parent is indigent. State ex rel. Lunsford v. Buck, 88 Ohio App. 3d 425, 623 N.E.2d 1356 (1993).

The procedures enunciated in *Anders v. California* (1967), 386 US 738, are applicable to appeals involving the termination of parental rights (*Freels v. Hills* [6th Cir., 1988], 843 F.2d 958, 961, followed); *Morris v. Lucas Cty. Children Serv. Bd.*, 49 Ohio App. 3d 86, 550 N.E.2d 980 (1989).

When the record fails to establish that the trial court fulfilled its RC § 2151.35.2 duty to advise a juvenile defendant of his right to appointed counsel, if indigent, and that a determination was made on the subject of indigency, if claimed, the juvenile defendant's statutory right to representation of counsel has been violated and his adjudication as a juvenile traffic offender pursuant to RC § 2151.02.1 must be vacated: *In re Kriak*, 30 Ohio App. 3d 83, 30 Ohio B. 140, 506 N.E.2d 556 (1986).

An indigent child is entitled pursuant to RC § 2151.35.2 and JuvR 4(A) to be represented by the county public defender in all juvenile court proceedings pertaining to a complaint alleging the child to be a juvenile traffic offender, regardless of whether the outcome of the proceeding could result in a loss of liberty, except when the right to counsel is waived or the juvenile court pursuant to RC § 120.16(E) appoints counsel other than the county public defender or allows an indigent child to select his own personal counsel to represent him (1984 OAG No. 84-023, approved and followed): OAG No. 97-040 (1997).

Pursuant to RC § 2151.35.2, a child, his parents, custodian, or other persons in loco parentis, if indigent, is entitled to be represented in all juvenile proceedings by a public defender in accordance with the comprehensive system set forth in RC Chapter 120., regardless of whether the outcome of the proceeding could result in a loss of liberty: OAG No. 84-023 (1984).

There is no provision under the statutes which permits the juvenile court to authorize compensation to attorneys appointed to represent indigents: OAG No. 67-068 (1967).

Juvenile courts have inherent power to appoint counsel for indigents: OAG No. 67-068 (1967).

Applicability

Revised Code § 2151.35.2 applies only to status cases involving delinquency, unruliness, juvenile traffic offenders, dependency, abuse and neglect. There are no statutory or constitutional provisions providing for the appointment of counsel, for an indigent parent, in a companionship action brought pursuant to RC § 3109.12(A): *Bloom v. Stevens*, 1997 Ohio App. LEXIS 4924 (5th Dist. 1997).

A party who has a right to appointed counsel in a juvenile court action for child support is also entitled to counsel on the issues of custody and visitation: *McKinney v. McClure*, 102 Ohio App. 3d 165, 656 N.E.2d 1310 (1995).

Child's right to counsel

Trial court erred in failing to determine whether appellant child knowingly and voluntarily waived his right to an attorney. The trial court should have explained the elements and seriousness of the charge against him and should have determined that appellant child was not being coerced or pressured into waiving his right to counsel, addressed his parents to ensure there was no conflict of interest and that the parents also understood the proceedings. *In re Mills*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 882, 2007 Ohio 924, (Mar. 5, 2007).

As a juvenile was over the age of 18 years old at the time of his parole-revocation hearing, the requirement that counsel be appointed for him due to the lack of representation by his parent, guardian, or custodian was not applicable. *In re Andrew*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 927, 2007 Ohio 1021, (Mar. 9, 2007).

Trial court, at a minimum, was required to interview the child, on the record, to determine if she was of sufficient maturity to benefit from separate counsel in the permanent custody proceeding, but failed to do so. There was a clear conflict because the guardian ad litem recommended to the trial court that the mother's parental rights be terminated but the agency case supervisor for the child testified at the permanent custody hearing that the child ultimately wanted to be with her mom. *In re Roque*, 2006 Ohio App. LEXIS 6961, 2006 Ohio 7007, (2006).

Trial court did not err in not appointing an attorney to represent a mother's children in a permanent custody proceeding since the statements by the two older children that they loved their mother and missed her did not constitute evidence that they had an affirmative desire to live with their mother on a permanent basis that was in conflict with their guardian ad litem's recommendation that permanent custody be granted to the agency. Moreover, the second oldest son lacked maturity to understand

the proceedings. *In re A. T.*, 2006 Ohio App. LEXIS 3883, 2006 Ohio 3919, (2006).

Trial court erred by failing to appoint the child's guardian ad litem to act as her attorney and did not make any determination as to whether the child possessed the competency and maturity to express her own wishes. However, the error did not require reversal because the child's wishes were evidenced by the guardian ad litem's report and witness testimony and were consistent with the guardian ad litem's recommendation. *In re Kangas*, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

Under the circumstances, appointment of counsel for the children in the permanent custody proceeding was not required because the children lacked the necessary maturity to give any credible testimony to the court about their wishes with regard to custody. *In re Shrider*, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Trial court erred by failing to appoint counsel after a possible conflict became known between the child's wishes and the recommendation of the guardian ad litem during the permanent custody hearing and thus, the child was entitled to counsel pursuant to RC § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). An attorney would have been required to provide zealous representation for his client and make every legitimate effort to secure an order allowing the child to have continued contact with her father, which the guardian ad litem could not do and remain consistent with his recommendation. *In re H.R.*, 2006 Ohio App. LEXIS 1472, 2006 Ohio 1595, (2006).

There was no error in failing to commence the permanent custody hearing (RC § 2151.414) anew after counsel was appointed for the children, pursuant to Ohio R. Juv. P. 4 and RC § 2151.352, because the conflict between the guardian ad litem's recommendation and the children's wishes only became apparent after the hearing had commenced; the error was waived since the mother failed to object, pursuant to Ohio R. Juv. P. 40(3)(a)(i); the attorney declined the opportunity to call other witnesses who had testified at the earlier hearing, with full knowledge of what those witnesses had said, because the attorney was provided a transcript of that earlier hearing; and after the attorney was appointed to represent the children, the mother could no longer claim standing to object that the children's rights in the subsequent proceedings were violated. *In re R.E.*, 2006 Ohio App. LEXIS 1145, 2006 Ohio 1256, (2006).

Trial court did not err in failing to appoint counsel for three children who were the subject of a termination of parental rights proceeding where: (1) the children were older and of a higher maturity level, (2) the guardian ad litem's (GAL) recommendation did not conflict with the wishes of the children to not be returned to the mother's care, (3) the children's counselors also indicated that the children did not want to return to the mother, and (4) the juvenile court had an in-camera interview with the children and their statements in that interview conformed to the statements made by the GAL and the counselors. *In re Nelson*, 2005 Ohio App. LEXIS 5926, 2005 Ohio 6600, (2005).

Without any evidence of the children's wishes before it (in the permanent custody hearing pursuant to RC § 2151.414), the trial court did not make, and could not have made, the meaningful determination required as to whether the children needed separate counsel, pursuant to RC § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). The guardian ad litem's report, which was filed during the hearing, did not take a position on what the best interest of the children was. *In re T.V.*, 2005 Ohio App. LEXIS 3884, 2005 Ohio 4280, (2005).

Where a trial court appointed a guardian ad litem to protect the interests of a 29-month-old child in a parental rights termination proceeding, there was no showing that it was error for the trial court to have failed to appoint independent counsel for the child, pursuant to RC §§ 2151.281(B) and 2151.352, as there was no evidence that the guardian's role to protect the interests of the child conflicted with the child's interests. The father lacked standing to raise such an error on appeal, as there was no showing that the child's interests were aligned with those of the father. *In re M.W.*, 2005 Ohio App. LEXIS 1273, 2005 Ohio 1302, (2005), criticized by *In re A.S.*, 163 Ohio App. 3d 647, 2005 Ohio 5309, 839 N.E.2d 972, 2005 Ohio App. LEXIS 4830 (Ohio Ct. App., Summit County 2005), criticized by *In re A.B.*, 2005 Ohio 4936,

2005 Ohio App. LEXIS 4466 (Ohio Ct. App., Summit County Sept. 21, 2005).

There was no error in the trial court's decision not to inquire further into appointment of separate counsel for the children in the permanent custody proceeding, because no conflict existed between the recommendation of the guardian ad litem and the wishes of the children; moreover, the guardian ad litem was able to ascertain the wishes of the children through the lay guardian. *In re Miller*, 2005 Ohio App. LEXIS 900, 2005 Ohio 897, (2005).

Holding in *In re Williams* may be applied retroactively. The trial court should have conducted an investigation into whether children who were the subject of a proceeding to terminate parental rights were entitled to counsel. The mother's failure to raise the issue in the trial court did not waive the children's rights: *In re Moore*, 158 Ohio App. 3d 679, 821 N.E.2d 1039, 2004 Ohio 4544, (2004).

Pursuant to RC § 2151.352, as clarified by JuvR 4(A) and JuvR 2(Y), a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances: *In re Williams*, 101 Ohio St. 3d 398, 805 N.E.2d 1110, 2004 Ohio 1500, (2004).

The permanent custody hearing was procedurally deficient where the children's right to counsel was violated: *In re Clark*, 141 Ohio App. 3d 55, 749 N.E.2d 833, 2001 Ohio 4126, (2001).

Juvenile Rules 4(A) and 29(B) and RC § 2151.35.2 entitle a juvenile to be represented by counsel at all stages of the proceedings. However, that right may be waived: *In re East*, 105 Ohio App. 3d 221, 663 N.E.2d 983 (1995).

Consent to permanent surrender of rights

Approval by the court of the permanent surrender of a child is purely an administrative matter, and not in the nature of an adversary proceeding; the court has no duty to advise the mother of her right to counsel or to appoint a lawyer for her in the event of indigency: *In re Anne K.*, 31 Ohio Misc. 218, 60 Ohio Op. 2d 134, 282 N.E.2d 370 (JC 1972).

Delinquency

Where a juvenile in a delinquency proceeding appeared at the disposition hearing without his counsel and there was on indication on the record why counsel was absent, nor was there any waiver as to counsel's appearance by the juvenile, such was error under Ohio R. Juv. P. 29(B)(4) and RC § 2151.352. *In re B.M.S.*, 165 Ohio App. 3d 609, 847 N.E.2d 506, 2006 Ohio 981, (2006).

Because the record did not show that counsel had been appointed on a juvenile defendant's behalf, as required by RC § 2151.352, and there was no evidence in the transcript that the defendant waived the right to have counsel present, defendant's delinquency adjudication and sexual predator commitment were vacated. *In re C.F.*, 2005 Ohio App. LEXIS 2121, 2005 Ohio 2190, (2005).

The juvenile's rights to counsel and due process were violated where the court accepted her admissions while addressing almost all of its remarks to the juvenile's mother: *In re Rogers*, 124 Ohio App. 3d 392, 706 N.E.2d 390 (1997).

A minor charged with delinquency in a juvenile court proceeding has the right to be represented by an attorney at law in such proceeding: *State v. Shardell*, 107 Ohio App. 338, 8 Ohio Op. 2d 262, 153 N.E.2d 510 (1958).

In the juvenile court in respect to proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child: OAG No. 67-068 (1967).

Discovery

Juvenile Rule 24(B) provides that discovery may be limited where it may impede criminal prosecution of a minor as an adult or of an adult involved in the same occurrence: *National Am. Ins. Co. v. Clermont County Bd. of Comm'rs*, 65 Ohio Misc. 2d 5, 640 N.E.2d 616 (1994).

Guardian ad litem as counsel

In proceedings that granted a motion filed by a county children's services agency for permanent custody of a mother's

three children under RC § 2151.414(B)(1), a trial court did not err in failing to appoint an attorney for each child. The appointment of separate attorneys was required only when a conflict existed between the role of guardian ad litem and that of attorney under Ohio R. Juv. P. 4(C)(2), and no evidence was presented to show that a conflict existed between the performance of the children's attorney as their appointed counsel under RC § 2151.352 and her role as their guardian ad litem. *In re Parks*, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

In a permanent custody proceeding, a trial court did not fail to appoint counsel for the subject children when it appointed their guardian ad litem as their counsel, as this was provided for in RC § 2151.352, and it was not claimed that the guardian ad litem's dual role resulted in a conflict of interest. *In re Salsberry*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 3185, 2006 Ohio 3274, (June 19, 2006).

Where there was no evidence of a conflict of interest between a court-appointed guardian ad litem's role on behalf of children in a permanent custody proceeding and his additional role as their attorney, there was no need for the trial court to have appointed a separate individual to serve as their counsel pursuant to Ohio R. Juv. P. 4(C)(2) and RC § 2151.352. *In re McHugh Children*, 2005 Ohio App. LEXIS 2235, 2005 Ohio 2345, (2005).

Trial court did not err when it denied the father's request to appoint a separate attorney and separate guardian ad litem, in the permanent custody proceeding, because the father presented no evidence to establish that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. *In re Miller*, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

Although the guardian ad litem was an attorney, the court could not presume dual appointment, as the roles of guardian ad litem and attorney are different: *In re Amos*, 154 Ohio App. 3d 434, 797 N.E.2d 568, 2003 Ohio 5014, (2003).

Absent an express dual appointment, courts should not presume a dual appointment merely because the appointed guardian ad litem is also an attorney: *In re Janie M.*, 131 Ohio App. 3d 637, 723 N.E.2d 191 (1999).

Guardian ad litem generally

The guardian ad litem appointed for a child in a dependency action where the interest of the child and the parent may conflict must have no ties or loyalties to anyone with an adversary interest in the outcome such as a natural parent or the prospective adoptive parents: *In re Christopher*, 54 Ohio App. 2d 137, 8 Ohio Op. 3d 271, 376 N.E.2d 603 (1977).

Where an infant child has been in the custody of prospective adoptive parents as a result of a permanent order of custody in a dependency action and that permanent order is subsequently vacated and the parent moves to terminate temporary custody, it appears that the interests of the child and parent may conflict and a guardian ad litem must be appointed for the child pursuant to JuvR 4(B) prior to the hearing on the mother's motion to terminate custody: *In re Christopher*, 54 Ohio App. 2d 137, 8 Ohio Op. 3d 271, 376 N.E.2d 603 (1977).

Harmless error

Failure to appoint counsel to represent all of the allegedly abused children was rendered harmless because the court was not prevented from knowing the wishes of the children. *In re Joshua B.*, 2003 Ohio App. LEXIS 2797, 2003 Ohio 3096, (2003).

Incarcerated persons

Pursuant to RC § 2151.352, an indigent father had a legal right to appointed counsel in his attempt to obtain visitation rights of his child; a trial court erred in refusing to appoint counsel for an indigent, incarcerated father seeking visitation rights. *Hatton v. Ankney*, — Ohio App. 3d —, — N.E. 2d —, 2005 Ohio App. LEXIS 1232, 2005 Ohio 1252, (Mar. 21, 2005).

In a child support enforcement proceeding, an incarcerated obligor father did not show that he was entitled to appointed counsel under Ohio R. Juv. P. 4 or RC § 2151.352 because he did not establish that he was indigent. *Jones v. Bowns*, 2003 Ohio App. LEXIS 4671, 2003 Ohio 5224, (2003), appeal denied by 101 Ohio St. 3d 1423, 2004 Ohio 123, 802 N.E.2d 154, 2004 Ohio LEXIS 147 (2004).

Ineffective assistance of counsel

Mother failed to establish that her counsel's performance during the permanent custody proceedings was deficient in any form and she failed to show prejudice resulting from any alleged deficiency. The fact that her counsel sought to have a different attorney appointed did not demonstrate deficient performance, and the mother failed to demonstrate that she was prejudiced in any manner by having a second counsel appointed. In re Shriver, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Trial counsel was not ineffective for failing to make a continuous objection to the hearing continuing when the mother failed to appear since the evidence showed that the mother had notice of the hearing, was offered transportation by the Sandusky County Department of Job and Family Services, and the Department was attempting to contact the mother during the hearing and had someone on standby to bring her to court once contact was made; failure to request a bifurcated hearing did not amount of ineffective assistance since the mother failed to demonstrate any harm from such failure. In re Antonio C., 2004 Ohio App. LEXIS 67, 2004 Ohio 82, (2004).

Trial counsel did not render ineffective assistance of counsel by failing to object to the guardian ad litem's questioning of witnesses. The mother failed to overcome the strong presumption that trial counsel acted within the realm of reasonable trial strategy and that counsel was competent, and failed to show how counsel's failure to object to the guardian ad litem's questioning of witnesses prejudiced her or affected the outcome of the trial court's decision to award the agency permanent custody. In re Curry, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

In a proceeding to terminate a mother's parental rights, her counsel's decision not to present witnesses fell within the realm of trial strategy, and as she failed to show how this decision affected the outcome of the proceedings, she did not demonstrate ineffective assistance of counsel. In re Hatfield, 2003 Ohio App. LEXIS 6668, 2003 Ohio 7339, (2003).

Father had the right to be represented by counsel in a child support matter and had the right to effective assistance of counsel; however, the father failed to show that he was denied effective assistance of counsel in either his counsel's failure to present his case that he paid past child support or in his counsel's failure to raise a laches defense. Newbauer v. Bertrand, 2003 Ohio App. LEXIS 4612, 2003 Ohio 5109, (2003).

The right to counsel, guaranteed in permanent custody proceedings by RC § 2151.352 and by Ohio R. Juv. P. 4, includes the right to the effective assistance of counsel, and the test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody. In re Riley, 2003 Ohio App. LEXIS 3658, 2003 Ohio 4109, (2003).

Defense of diminished capacity due to intoxication is not recognized in Ohio, so counsel did not render ineffective assistance by failing to raise that defense to charge of felonious assault. State v. Hill, 2003 Ohio App. LEXIS 3184, 2003 Ohio 3484, (2003).

Father failed to demonstrate ineffective assistance of counsel where all parties waived opening and closing statements, which had no evidentiary value, and there was no indication of evidence that would have changed the result of the proceeding but was not presented. In re Matuszczak, 2003 Ohio App. LEXIS 2609, 2003 Ohio 2892, (2003).

The test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody: In re Heston, 129 Ohio App. 3d 825, 719 N.E.2d 93 (1998).

Parents receive ineffective assistance of counsel in termination of rights proceedings where appointed counsel fails to object to the court's loss of jurisdiction: In re Travis Children, 80 Ohio App. 3d 620, 609 N.E.2d 1356 (1992).

The two-part test for ineffective assistance of counsel used in criminal cases, announced in *Strickland v. Washington* (1984), 466 US 668, 687, is equally applicable in actions by the state to force the permanent, involuntary termination of parental rights: *Jones v. Lucas Cty. Children Services Bd.*, 46 Ohio App. 3d 85, 546 N.E.2d 471 (1988).

Judicial immunity

A judge has judicial immunity as to removal of an attorney's name from a list of approved counsel who may be appointed to represent indigents: *Eichenberger v. Petree*, 76 Ohio App. 3d 779, 603 N.E.2d 366 (1992).

Mandamus to require appointment

When a parent's mother sought custody of the parent's child, had the parent been entitled to have counsel appointed, she was not entitled to a writ of mandamus requiring a trial court to make such an appointment because she had an adequate remedy at law, which was an appeal of the trial court's denial of her motion to have counsel appointed, as that denial was a final appealable order, under RC § 2505.02(B)(2), because it was rendered in a special proceeding, which was a juvenile court case, and it affected a substantial right, which was the parent's right to counsel, especially if the parent was correct in maintaining that RC § 2151.352 guaranteed her that right. *State ex rel. Johnson v. Baronzzi*, 2006 Ohio App. LEXIS 4889, 2006 Ohio 4955, (2006).

Reimbursement of public defender's office

An order requiring the parents to reimburse the public defender's office for the cost of defending the child will be remanded where it is not clear whether it was fairly imposed: *In re Hinko*, 84 Ohio App. 3d 89, 616 N.E.2d 515 (1992).

A trial court is not required to appoint the attorney chosen by an indigent: *State ex rel. Butler v. Demis*, 66 Ohio St. 2d 123, 20 Ohio Op. 3d 121, 420 N.E.2d 116 (1981).

Separation of witnesses

If the parents of a juvenile who is the subject of a delinquency hearing in juvenile court are to testify at that hearing, the exclusion by the judge of the parents from the courtroom under an order for separation of witnesses until they have testified is not prejudicial, where the juvenile is represented by counsel during the hearing: *State v. Ostrowski*, 30 Ohio St. 2d 34, 59 Ohio Op. 2d 62, 282 N.E.2d 359 (1972).

Social worker as custodian

A social worker from a facility where the juvenile had been committed constituted a "custodian" for purposes of RC § 2151.35.2. The fact that the social worker advised the juvenile to admit the offense if she did it and to deny the offense if she did not commit it did not establish that the social worker was opposed to the juvenile's best legal interests. The court's colloquy did not establish that the juvenile fully understood the waiver of counsel: *In re Smith*, 142 Ohio App. 3d 16, 753 N.E.2d 930 (2001).

Temporary custody

Parents do not have a constitutional right to counsel at temporary custody proceedings: *Beard v. Williams Cty. Dept. of Social Services*, 12 Ohio St. 3d 40, 12 Ohio B. 35, 465 N.E.2d 397 (1984).

Waiver of counsel

When a trial court advised a juvenile alleged to have violated his probation that he had the right to counsel, that counsel would be appointed to represent him if he wanted counsel and could not afford a lawyer, and of the condition of his probation which he was alleged to have violated, it complied with RC § 2151.352 and Ohio R. Juv. P. 35(B), so it could properly accept his waiver of counsel, and it did not have to first advise him of the possible penalties he faced. *In re L.A.B.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1385, 2007 Ohio 1479, (Mar. 30, 2007).

Record did not support a conclusion that defendant, a juvenile, waived his right to legal counsel, pursuant to RC § 2151.352, at either the adjudicatory hearing or the sexual offender classification hearing because defendant was never afforded the opportunity to request the assistance of legal counsel in connection with the hearing at which his admission was tendered and accepted, and he never indicated that he was waiving that right and, at the sexual classification hearing, the trial court elicited a waiver of counsel from defendant's mother, but never ascertained whether defendant, himself, was willing to waive his right to legal counsel. *In re C.A.C.*, 2006 Ohio App. LEXIS 3934, 2006 Ohio 4003, (2006).

Based on a review of the record as a whole, and in consideration of the affirmations of the minor and her mother that they wished to proceed without counsel on her delinquency charge for drug possession, the requirements of Ohio R. Juv. P. 29(B) were met and the minor's waiver of counsel was voluntarily, knowingly and understandingly given. The trial court explained to the minor her right to counsel, the nature, elements, and category of the charge, her right to a trial, the possible commitment, her right to remain silent, her right to present evidence in her defense and her right to cross-examine witnesses and, as each right was explained, the minor answered that she understood the right and then the minor and her mother agreed to proceed without counsel. In re Loos, 2006 Ohio App. LEXIS 3891, 2006 Ohio 3932, (2006).

There was no showing of prejudice to a father where the mother waived her right to counsel in a parental rights termination proceeding, as the father was represented by his own counsel and had the opportunity to cross-examine witnesses and to submit evidence. In re Z.Y., 2006 Ohio App. LEXIS 260, 2006 Ohio 300, (2006).

When appellant was charged with offenses in juvenile court, RC § 2151.352 did not require that counsel be appointed to represent him because the statute, as well as Ohio R. Juv. P. 4(A) and 29(B), allowed him to waive counsel, which he knowingly, intelligently, and voluntarily did. In re Spears, 2006 Ohio App. LEXIS 1761, 2006 Ohio 1920, (2006).

Although the trial court substantially complied with Ohio R. Juv. P. 29(D) when it accepted defendant juvenile's waiver of counsel during the adjudication hearing, the trial court failed to reiterate defendant's right to counsel during disposition or allow him either to invoke or to waive his right to counsel at that stage as required by Ohio R. Juv. P. 34. In re S. J., 2006 Ohio App. LEXIS 4395, 2006 Ohio 4467, (2006).

In determining whether a juvenile's waiver of counsel is knowing, intelligent and voluntary, a court is required to give close scrutiny to such factors as the juvenile's age, emotional stability, mental capacity, and prior criminal experience. In re Kindred, 2004 Ohio App. LEXIS 3281, 2004 Ohio 3647, (2004).

Where a trial court determined that defendant, a juvenile, waived his right to counsel in his juvenile delinquency proceeding without having conducted the type of dialogue contemplated by the Ohio Juvenile Procedure Rules, the waiver was insufficient and defendant's admission of true should not have been accepted; defendant, as a juvenile, had a right to counsel under RC § 2151.352, and Ohio R. Juv. P. 4(A) and 29(B), and the trial court was required to make a sufficient inquiry as to his knowing, intelligent, and voluntary waiver of that right in order to avoid violating defendant's right to due process under U.S. Const. amends. V and XIV and Ohio Const. art. I, § 16. In re Christner, 2004 Ohio App. LEXIS 3864, 2004 Ohio 4252, (2004).

Given the background, experience, and conduct of the mother, the trial court did not err in determining that she waived her right to counsel and in granting counsel's motion to withdraw; the mother received notice of the scheduled hearings but failed to appear, she had had no contact with the attorney, and evidence showed that the mother had been disinterested in the child from the time of her birth, had been uncooperative with regard to case plan services, refused drug treatment, refused recommended psychiatric counseling, and failed to keep regularly scheduled meetings with her caseworkers. In re Savanah M., 2003 Ohio App. LEXIS 5209, 2003 Ohio 5855, (2003).

Under the totality of the circumstances, including the facts that a parent was repeatedly reminded of his right to counsel, discharged his appointed counsel, and stated that he would obtain counsel, the court properly allowed the parent to proceed without counsel. In re Moore, 153 Ohio App. 3d 641, 795 N.E.2d 149, 2003 Ohio 4250, (2003).

To establish a valid waiver of counsel, a court must investigate as long and as thoroughly as the circumstances of the case demand. In re Royal, 132 Ohio App. 3d 496, 725 N.E.2d 685 (1999).

The waiver of counsel was not valid where the magistrate's explanation seemed to state that the right to counsel was triggered only if the juvenile elected to proceed to trial. A waiver of rights form signed after the charge was admitted was not effective. In re Doyle, 122 Ohio App. 3d 767, 702 N.E.2d 970 (1997).

Pursuant to the 1996 amendment to JuvR 37, a notation in a

journal entry that the juvenile waived counsel at a dispositional hearing is no longer sufficient. In re Solis, 124 Ohio App. 3d 547, 706 N.E.2d 839 (1997).

The court erred by accepting the thirteen-year-old's waiver of counsel without fully explaining his rights and inquiring into the circumstances of the waiver. In re Johnson, 106 Ohio App. 3d 38, 665 N.E.2d 247 (1995).

Withdrawal by counsel

Parent's right to appointed counsel was not violated by her attorney's withdrawal in a proceeding to terminate parental rights where the parent's uncooperativeness and lack of interest in the proceedings were demonstrated by her failure to appear at scheduled hearings and by her attorney's unsuccessful attempts to contact her. In re Hendrickson, 162 Ohio App. 3d 602, 834 N.E.2d 401, 2005 Ohio 4183, (2005).

The court erred by allowing a parent's attorney to withdraw on the morning of the dispositional hearing, without prior notice to the client. A simple assertion that a party has been "uncooperative" is insufficient to demonstrate that an attorney should be allowed to withdraw, especially on the day of the dispositional hearing. In re M.L.R., 150 Ohio App. 3d 39, 779 N.E.2d 772, 2002 Ohio 5958, (2002).

[§ 2151.35.3] § 2151.353 Dispositional of abused, neglected or dependent child.

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 [2151.41.4] of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of section 2151.414 [2151.41.4] of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 [2151.41.4] of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 [2151.03.1] of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as

desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 [2151.41.4] of the Revised Code.

(C) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

(1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;

(2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;

(3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(D) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 [2151.41.2] of the Revised Code.

(E)(1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate

any order of disposition issued pursuant to division (A) of this section or section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 [2151.41.5] of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section.

(G)(1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 [2151.41.9] of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(I) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(J) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

(1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;

(2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.†

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 139 v H 440 (Eff 11-23-81); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 145 v H 152 (Eff 7-1-93); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 146 v H 265 (Eff 3-3-97); 147 v H 484 (Eff 3-18-99); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332, Eff 1-1-2001; 150 v S 185, § 1, eff. 4-11-05; 151 v S 238, § 1, eff. 9-21-06.

† The amendments made by HB 448 (148 v —), effective 10-5-2000 and HB 332 (148 v —), effective 1-1-2001 are the same. Both amendments delete the word "family" before "foster home" in division (A)(2) and add the word "years" to division (E)(1).

The effective date is set by section 5 of HB 332.

Effect of Amendments

151 v S 238, effective September 21, 2006, added the language beginning "or is identified" to the end of the introductory paragraph of (A)(3); and added (A)(3)(a) through (d).

150 v S 185, effective April 11, 2005, made minor stylistic changes.

Cross-References to Related Sections

Additional orders of disposition, RC § 2152.19.

Adjudicatory hearing; shelter care determination, RC § 2151.28.

Agency may file motion requesting permanent custody, RC § 2151.41.3.
 Hearing, RC § 2151.41.4.
 Alcohol or other drug testing and treatment of parent or other caregiver, RC § 2151.35.14.
 Certain offenders disqualified from day-care activities, RC § 5104.09.
 Children in permanent custody to be listed with department of job and family services for adoption, RC § 5103.15.4.
 Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.
 Consideration of whether return to parents is in best interest of child; certain orders granting legal custody intended to be permanent, RC § 2151.42.
 Court control of child following commitment to department, RC § 2152.22.
 Court review of child's placement or custody arrangement, RC § 2151.41.7.
 Definitions, RC § 2151.01.1.
 Abused child, RC § 2151.03.1.
 Child without proper parental care, RC § 2151.05.
 Delinquent child, RC § 2152.02.
 Dependent child, RC § 2151.04.
 Juvenile traffic offender, RC § 2152.02.
 Neglected child, RC § 2151.03.
 Residence or legal settlement of child, RC § 2151.06.
 Unruly child, RC § 2151.02.2.
 Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.
 Disposition of —
 Delinquent child, RC § 2152.11.
 Unruly child, RC § 2151.35.4.
 Effect of commitment order on jurisdiction of juvenile court, RC § 2151.38.
 Hearing procedure and records, RC § 2151.35.
 Information concerning certain delinquent children, RC § 2152.72.
 Motion requesting disposition order upon expiration of temporary custody order, RC § 2151.41.5.
 Parent killing other parent, custody order defined, RC § 3109.41.
 Payments to adoptive parents of child with special needs; determination of impossibility of adoption, RC § 5153.16.3.
 Temporary custody order, RC § 2151.35.20.
 Termination of inmate's participation in prison nursery program, RC § 5120.65.3.

Ohio Rules

Complaint, JuvR 10.
 Definitions, SupR 2.
 Dispositional proceedings, JuvR 29(F), 34, 35(A).
 Social history, examinations, and investigation, JuvR 32.
 Summons, JuvR 15.

Ohio Administrative Code

Department of job and family services, division of social services —
 Adoption. OAC ch. 5101:2-48.
 Preparation of child for adoptive placement. OAC 5101:2-48-14.
 Children services definition of terms: permanent commitment. OAC 5101:2-1-01.
 Substitute care. OAC ch. 5101:2-42.
 Authority to assume and retain custody of a child. OAC 5101:2-42-04.
 Obtaining permanent custody of child: termination of parental rights. OAC 5101:2-42-95.
 Supportive services. OAC ch. 5101:2-39.
 Protective supervision by public children services agencies (PCSAs) and private child placing agencies (PCPAs). OAC 5101:2-39-30.
 Department of rehabilitation and corrections—
 Prison nursery program; termination of participation. OAC 5120-9-57.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings
 Ohio Transaction Guide: Family Law & Forms § 5.24 Consent to Adoption of Minor
 Ohio Transaction Guide: Family Law & Forms § 5.21 Placement of Children for Foster Care

CASE NOTES AND OAC

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Constitutionality

Neither RC § 2151.04 nor 2151.35.3 is unconstitutionally broad or vague: In re Williams, 7 Ohio App. 3d 324, 7 Ohio B. 421, 455 N.E.2d 1027 (1982).

Generally

Grant of legal custody of a mother's son to the son's father was properly found to be in the son's best interest under RC § 3109.04 as the record showed that the parties' son and their daughter, who resided with the mother, harbored considerable anger toward one another but that the interaction between them had improved since they had been living in separate homes. In re Ratliff, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1625, 2007 Ohio 1770, (Apr. 13, 2007).

Competent, credible evidence supported the trial court's decision to place the children in the legal custody of the uncle and his wife because the trial court had discretion to make a dispositional order in the best interests of the children as it retained jurisdiction over the children. The problems that led to the original grant of temporary custody had not been resolved by the time the trial court made its dispositional order since the treatment of the children and the medical "diagnosis" of Munchausen Syndrome by Proxy and its applicability were still very much in issue. In re

McCallum, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 905, 2007 Ohio 995, (Mar. 1, 2007).

Right to file a petition for child custody is substantive, and JuvR 10 must be read in conjunction with the limitations expressed in RC §§ 2151.414(F) and 2151.353(E)(2): In re McBride, 110 Ohio St. 3d 19, 850 N.E.2d 43, 2006 Ohio 3454, (2006).

Evidence showed that it was in the best interests of the children of a mother and a father to award legal custody of the children to the father because the evidence showed that the mother was emotionally disturbed, that the children were afraid of the mother and believed that she did not like them because of her violent and angry actions, that the children enjoyed living with their father, and that the father had done a good job of taking care of the children. In re Memic, 2006 Ohio App. LEXIS 6302, 2006 Ohio 6346, (2006).

Evidence supported trial court's finding that granting custody to the aunt and uncle of children who had been adjudicated dependent was in the children's best interests, in that it showed that the children had lived in the father's semi-truck cab during at least two cross-country treks with their parents, that the children were left alone in the cab while the parents went to bathe and eat during rest stops, that the children had excrement and dirt stuck to their bodies, and that the mother and the father failed to visit the children for at least a five-month period while the children were living with the aunt and uncle. In re T.G., 2006 Ohio App. LEXIS 5489, 2006 Ohio 5504, (2006), dismissed by 113 Ohio St. 3d 1520, 2007 Ohio 2487, 866 N.E.2d 1093, 2007 Ohio LEXIS 1281 (2007).

Trial court did not abuse its discretion when it determined that the best interests of a mother's two children were best served by awarding legal custody to the children's paternal grandparents under RC § 2151.353(A)(3) because the mother had stipulated to findings of dependency for both children and also stipulated to a finding that one of the children had been abused, the mother did not demonstrate any sort of a bond with the children, the children regularly visited their paternal grandparents for extended vacations, and they expressed a strong desire to live with their grandparents instead of with the mother. In re C.S., 2006 Ohio App. LEXIS 5117, 2006 Ohio 5198, (2006).

Juvenile court did not abuse its discretion in awarding the grandmother legal custody of the children, pursuant to RC § 2151.353, because there was competent, credible evidence to support the determination of the children's best interests by a preponderance of the evidence. The requirement of finding the mother unsuitable did not apply since the children had been adjudicated dependent, the grandmother had succeeded in providing a stable home for the children, with the structure and consistency the boys needed, the children's guardian ad litem recommended that both children be placed with the grandmother, and the mother had mental health issues. In re D.R., 2006 Ohio App. LEXIS 307, 2006 Ohio 340, (2006).

Legal custody of children under RC § 2151.353(A)(3) was properly granted to the children's father rather than the children's mother as the evidence showed that the mother was emotionally disturbed and should not have custody of children, in that she had brandished a knife in front of the children, holding police at bay on one occasion for two hours, had destroyed property, had spat on the children and the father, and had hit the children. In re Memic, 2006 Ohio App. LEXIS 6302, 2006 Ohio 6346, (2006).

Juvenile court was not required to make a determination that a mother was unsuitable prior to awarding legal custody of the mother's child, who was adjudicated as dependent, to the child's grandmother on an interim temporary basis and ultimately to the father. In re Brown, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

It was not plain error for a magistrate to have accepted the consent of a mother, who was an "unemancipated incompetent minor," to a disposition of legal custody of her child, as the child was declared dependent pursuant to RC § 2151.04, and accordingly, the trial court had the right to make an award of legal custody with or without the mother's consent, pursuant to RC § 2151.353. In re H.B., 2006 Ohio App. LEXIS 1969, 2006 Ohio 2124, (2006).

Because neither the father nor his brother filed a motion requesting legal custody of the children prior to the dispositional hearing, the trial court was not required to consider the father's

brother as a placement option, pursuant to RC § 2151.353, in the permanent custody proceeding. Assuming, arguendo, that the father or the father's brother had a proper motion before the trial court, the trial court did not abuse its discretion in not granting legal custody to father's brother because the brother and his girlfriend were not able to adequately care for the children. In re Zurfley/Chatman/Black Children, 2006 Ohio App. LEXIS 602, 2006 Ohio 683, (2006).

Because a dependency complaint was never filed, the trial court had no jurisdiction to find the child to be a dependent child. As a result, it had no jurisdiction to grant legal custody to the boyfriend under RC § 2151.353, regardless of its finding that the father was an unsuitable parent. Riley v. Liston, 2006 Ohio App. LEXIS 5799, 2006 Ohio 5846, (2006).

When an appellate record did not reflect that a trial court adjudicated the children who were the subject of a motion for permanent custody to be abused, neglected or dependent, the trial court had no authority, under RC § 2151.353(A), to make any order of disposition regarding the children, including a grant of their permanent custody. In re Ronald H., 2006 Ohio App. LEXIS 4638, 2006 Ohio 4693, (2006).

Trial court was not required to find a change of circumstances or to find that the mother and the father were unsuitable before awarding legal custody of their children to the children's paternal aunt and uncle since the children had been adjudicated dependent. The relevant inquiry was merely whether granting custody to the aunt and uncle was in the children's best interests, and RC § 3109.04 was inapplicable. In re T.G., 2006 Ohio App. LEXIS 5489, 2006 Ohio 5504, (2006), dismissed by 113 Ohio St. 3d 1520, 2007 Ohio 2487, 866 N.E.2d 1093, 2007 Ohio LEXIS 1281 (2007).

Trial court did not abuse its discretion under RC § 2151.353(A)(3) when it terminated a putative father's custody and visitation rights with a minor child in favor of granting permanent custody to the child's biological father; when determining custody between a parent and a non-parent in an original custody dispute when the child had been adjudicated dependent, custody could not be awarded to the non-parent without a finding of parental unsuitability, which required a showing by a preponderance of the evidence that the biological parent contractually relinquished custody of the child, that the parent had become totally incapable of supporting or caring for the child, or that an award of custody to the parent would have been detrimental to the child. Huffman v. Forsythe, 2006 Ohio App. LEXIS 5293, 2006 Ohio 5311, (2006).

Trial court did not abuse its discretion by finding, in a custody proceeding involving a minor child's relative and the child's foster mother, that considerations related to stability and continuity of care were overriding factors especially where the child had been raised since birth by the same foster family that was seeking legal custody, and notwithstanding the fact both parties seeking legal custody appeared to be suitable custodians. Thus, there was both competent, credible evidence and case law to support the trial court's decision. In re A. V., 2006 Ohio App. LEXIS 3021, 2006 Ohio 3149, (2006).

Where a magistrate expressed doubt that a mother had received a long term benefit from completing her case plan and services, the appellate court presumed that the findings were correct and that the trial court did not abuse its discretion in terminating the mother's parental rights under RC § 2151.353(A)(3) based on the best interests of the children. In re Joemyde L., 2005 Ohio App. LEXIS 568, 2005 Ohio 537, (2005).

Award of legal custody to the maternal grandparents did not divest the mother of her residual parental rights. The evidence supported the court's finding that awarding custody to the mother would be detrimental to the children: In re Sean T., 164 Ohio App. 3d 218, 841 N.E.2d 838, 2005 Ohio 5739, (2005).

Although a child's paternal relatives were entitled to consideration for custody of the child under RC § 2151.353, because the mother's parental rights had not been terminated, the trial court abused its discretion under RC § 3109.04(F)(1) by failing to grant custody to the maternal relatives in accordance with the mother's wishes. In re Mouser, 2005 Ohio App. LEXIS 2128, 2005 Ohio 2244, (2005).

Because juvenile court had already determined that a child was abused, dependent, or neglected in accordance with RC

§ 2151.353, there was no requirement that it first determine that the mother was unfit before denying her RC § 2151.23(A)(2) motion to modify custody for the child. In re Allah, 2005 Ohio App. LEXIS 1163, 2005 Ohio 1182, (2005).

RC § 2151.353 deals with the disposition of abused, neglected, and dependent children, and it does not distinguish between granting custody of a child to a relative versus a non-relative at the dispositional hearing. In re Halstead, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Mother was properly granted legal custody of her son where she demonstrated the ability to care for him, with extensive family support if such was required, and she could provide the child with a stable home which was well-kept. In re E.B., 2004 Ohio App. LEXIS 1996, 2004 Ohio 2250, (2004).

RC § 2151.353 does not distinguish between granting custody of a child to a relative versus a non-relative at a dispositional hearing. In re Halstead, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Trial court was precluded from making any determination as to the child's best interest without first complying with the procedural safeguards of RC § 2151.353. In re G.R., 2004 Ohio App. LEXIS 886, 2004 Ohio 999, (2004).

Evidence supported the trial court's refusal to modify, pursuant to RC § 2151.417(B), an award of custody to the mother's sister pursuant to RC § 2151.353; granting custody to the father was not in the best interest of the child pursuant to RC § 2151.42(A), as the father was barely known by the child, had had two children taken from him, and could not show that the test establishing his paternity was a change in circumstances under RC § 2151.42(B). In re Osberry, 2003 Ohio App. LEXIS 4922, 2003 Ohio 5462, (2003).

In determining the best interest of a child in parental custody proceedings incident to a dependency and neglect action, the juvenile courts should consider the totality of the circumstances, including, to the extent they are applicable, those factors set forth in RC § 3109.04(F); a trial court's award of legal custody to a father was supported by the evidence and was affirmed where the child had done well while in temporary custody of the father and the mother had struggled with basic parenting skills. In re Fulton, 2003 Ohio App. LEXIS 5323, 2003 Ohio 5984, (2003).

Trial court did not err in awarding custody of the minor child to the foster parents, as competent credible evidence in the record supported the trial court's conclusion that it was in the best interests of the child because the grandmother would not be as appropriate a custodian of the child as would be the foster parents. In re Huffer, 2003 Ohio App. LEXIS 5302, 2003 Ohio 5964, (2003).

Grant of custody of the dependent child to a maternal great grandmother accorded with RC § 2151.353(A)(3); the former primary caregiver failed to complete a drug and alcohol relapse program or have a psychiatric evaluation and admitted to having prescription-drug problems, all indicating failure substantially to comply with the case plan. In re Rowe, 2003 Ohio App. LEXIS 5403, 2003 Ohio 6062, (2003).

Best interest of the child, as defined in RC § 3109.04(F)(1), must be considered by the juvenile court when determining the statutorily permissible alternatives set forth in RC § 2151.353(A); in an action to determine custody of two children where the parents were incapable of caring for the children, the trial court properly awarded custody of the girls to an aunt and uncle who were willing and desired to keep the girls, despite the recommendation of the guardian ad litem. In re Mitchell, 2003 Ohio App. LEXIS 3647, 2003 Ohio 4102, (2003).

Trial court did not err by not giving the father a parental unsuitability determination before awarding custody of the child to the maternal grandmother because the child was adjudicated neglected and it was in the child's best interest to be with the grandmother. In re C.F., 2003 Ohio App. LEXIS 2920, 2003 Ohio 3260, (2003), criticized by In re C.R., 2004 Ohio 4465, 2004 Ohio App. LEXIS 4053 (Ohio Ct. App., Cuyahoga County Aug. 26, 2004).

There was no abuse of discretion in denying the grandmother's motion for permanent custody of the grandchildren because of the ongoing history of abuse in her home including a conviction of child endangering for whipping her daughter with a belt. In re Zorns, 2003 Ohio App. LEXIS 5020, 2003 Ohio 5664, (2003),

appeal denied by 100 Ohio St. 3d 1547, 2003 Ohio 6879, 800 N.E.2d 752, 2003 Ohio LEXIS 3528 (2003).

Juvenile court did not err by ordering the removal of a dependent child from an abusive and unstable environment because the preponderance of the evidence showed that removal was appropriate under the circumstances; the parents and the minor child required counseling before reunification was proper. In re Day, 2003 Ohio App. LEXIS 3253, 2003 Ohio 3544, (2003).

The requirement that a court first find a parent unsuitable before awarding legal custody of a child to a nonparent does not apply to dispositional hearings following an adjudication that the child is abused, dependent, or neglected: In re D.R., 153 Ohio App. 3d 156, 792 N.E.2d 203, 2003 Ohio 2852, (2003).

Evidence that, among other things, the mother failed to provide financial support for the children, failed to attend any counseling sessions, completed less than half of the random urine screenings, and had no concern for the substantiated abuse claim of one of the children supported the award of custody to the cousin. In re Gales, 2003 Ohio App. LEXIS 5646, 2003 Ohio 6309, (2003).

The best interest of the child remains the primary standard to be applied in custody cases. Nevertheless, while the welfare of the child is the primary consideration, suitable parents have a paramount right to custody: In re Pryor, 86 Ohio App. 3d 327, 620 N.E.2d 973 (1993).

When proceeding under RC § 2151.35.3(A)(4), the court must find by clear and convincing evidence that the behavior of the parents has created an environment which is having an adverse impact on the child and that such environment will continue: *Elmer v. Lucas Cty. Children Serv. Bd.*, 36 Ohio App. 3d 241, 523 N.E.2d 540 (1987).

Under RC § 2151.35, a juvenile court may upon finding that a child is neglected, dependent, or delinquent, commit the child to any person or institution meeting the requirements of RC §§ 5103.02 and 5103.03, even though a county child welfare board exists and could provide care and support for the child: 1962 OAG No. 3489 (1962).

Adoption

Where permanent custody had already been granted to an agency, the juvenile court's grant of legal custody to parties who were ineligible to adopt thwarted the children's right to an expeditious adoption: In re Hitchcock, 120 Ohio App. 3d 88, 696 N.E.2d 1090 (1996).

Appeals

Although a dispositional hearing was required by RC § 2151.353(E)(2), based upon the fact that a county agency had petitioned for permanent custody of two minor children, because a grandmother failed to file an objection to a magistrate's determination, pursuant to Ohio R. Juv. P. 40(E)(3)(b), the error was not properly preserved for appellate review. In re McCann, 2004 Ohio App. LEXIS 260, 2004 Ohio 283, (2004).

Adjudication that a child was abused followed by a disposition awarding temporary custody to a public children services agency pursuant to R.C. § 2151.353(A)(2) constituted a final appealable order. In re K.B., 2003 Ohio App. LEXIS 3402, 2003 Ohio 3784, (2003).

An adjudication by a juvenile court that a child is "neglected" or "dependent" as defined in RC Chapter 2151, followed by a disposition awarding temporary custody to a public children services agency pursuant to RC § 2151.35.3(A)(2) constitutes a "final order" within the meaning of RC § 2505.02 and is appealable to the court of appeals pursuant to RC § 2501.02: In re Murray, 52 Ohio St. 3d 155, 556 N.E.2d 1169 (1990).

An order modifying a previously-entered temporary custody order which was made in disposition of a finding that a child is neglected constitutes a final appealable order pursuant to the provisions of RC § 2501.02: In re Rule, 1 Ohio App. 2d 57, 30 Ohio Op. 2d 76, 203 N.E.2d 501 (1963).

Applicability

Where children had been removed from their mother's care and adjudicated as neglected, and thereafter, the social service agency that had temporary custody of the children sought to modify the custody to permanent custody, RC § 2151.353 was not

applicable; rather, the proceeding was governed by RC § 2151.414(B). In re Ch. O., 2005 Ohio App. LEXIS 1024, 2005 Ohio 1013, (2005).

Care plan for child

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to RC § 2151.41.2 and to hold semiannual reviews of the case plan pursuant to RC § 2151.41.6: OAG No. 99-041 (1999).

Children with disabilities

Since the record did not reflect whether a father's son was mentally retarded, developmentally disabled, or physically impaired, it was possible that the trial court could still retain jurisdiction over the son under RC § 2151.353(A)(5). The father's appeal from the trial court's judgment granting legal custody of the son to a children services agency was not definitively moot by virtue of the fact that the son had since turned 18 years old. In re Anthony C., 2006 Ohio App. LEXIS 6725, 2006 Ohio 6812, (2006).

A juvenile court's jurisdiction over handicapped children until age twenty-one includes authority to order a parent to provide health insurance for the child until that date. In re Kessler, 90 Ohio App. 3d 231, 628 N.E.2d 153 (1993).

Commitment to district home

The juvenile court, pursuant to this section, may commit children directly to a district children's home: 1950 OAG No. 2529 (1950).

Continuing jurisdiction

Trial court had jurisdiction, pursuant to RC § 2151.353(E)(1) and RC § 2151.417(A), to modify or amend its prior disposition, including terminating the mother's parental rights, because, when the trial court returned the children to the mother, it specifically ordered that the agency maintain protective supervision. As such, the trial court had jurisdiction to proceed in the same case, under the same case number, when the agency asserted that the children needed to be removed from the mother's home based upon matters observed while the children remained under the agency's protective supervision. In re Peterson, 2006 Ohio App. LEXIS 1367, 2006 Ohio 1499, (2006).

Child's ongoing dependency action provided the trial court with subject matter jurisdiction as well as the authority to make ongoing decisions regarding his care, pursuant to RC § 2151.417(A) and (B) and RC § 2151.353(E)(1). In re Unger Children, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

Where problems which initially resulted in a temporary custody order over a minor child remained unresolved, the trial court retained jurisdiction and discretion to make a dispositional order in the best interest of the child, pursuant to RC § 2151.353(F). Accordingly, the father's claim that the juvenile court was divested of jurisdiction to enter orders due to the passing of the statutory time period lacked merit. In re P. C., 2004 Ohio App. LEXIS 1088, 2004 Ohio 1230, (2004).

A juvenile court retains jurisdiction over a child who has been adjudicated to be unruly or delinquent until the child attains twenty-one years of age, and may continue to make dispositional orders with respect to the child until that time, regardless of whether the court's order of temporary custody has expired under the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5: OAG No. 2003-004 (2003).

Juvenile court retains jurisdiction over a child placed in the permanent custody of a county children's services agency until the child is adopted and a final decree of adoption is issued; where the final adoption decree was filed, jurisdiction over the child, the adoption proceeding, and related matters rested with the probate division, and the juvenile court was thus without jurisdiction to consider the father's motion to set aside its termination and custody orders. In re Phillips, 2003 Ohio App. LEXIS 4618, 2003 Ohio 5107, (2003).

A juvenile court's retained jurisdiction did not terminate upon

a finding that the child had been found, or could have been found, dependent by another court in another county: In re Mullins, 1994 Ohio App. LEXIS 4220 (9th Dist. 1994).

Revised Code § 2151.35.3 authorizes a juvenile court to retain jurisdiction over a neglected child. Thus prohibition will not issue to prevent a juvenile court from ordering, under the threat of a contempt finding, that any adoption proceedings be stayed until the court has relinquished jurisdiction: State ex rel. Cuyahoga County Dep't of Children & Family Servs. v. Ferreri, 96 Ohio App. 3d 660, 645 N.E.2d 837 (1994).

The continuing jurisdiction of a juvenile court does not present a jurisdictional bar to adoption proceedings in a probate court: State ex rel. Hitchcock v. Cuyahoga County Court of Common Pleas, 97 Ohio App. 3d 600, 647 N.E.2d 208 (1994).

Cost of psychiatric care

A juvenile court does not possess the authority to require the Ohio department of mental health to pay the psychiatric costs associated with the care of a child who is placed in a private non-public psychiatric institution: Lozano v. Ohio Dep't of Mental Health, 66 Ohio App. 3d 583, 585 N.E.2d 889 (1990).

Death of child

Court of common pleas, juvenile division, erred when it determined that the court lacked jurisdiction to adjudicate the issue of abuse when the child was deceased; the technicality of death did not rob children of statutory protection as the statutory protections afforded siblings extended to afterborn children. In re Darling, 2003 Ohio App. LEXIS 6640, 2003 Ohio 7184, (2003).

Detention home

The placement or detention of delinquent, dependent, neglected children, or juvenile traffic offenders, under this section, is upon final disposition of the juvenile court and does not include placement in a detention home provided under RC § 2151.34: 1963 OAG No. 553 (1963).

Due process

Mother's contention that she was deprived of her due process rights because she was not given adequate notice that the trial court would be considering the issue of legal custody, under RC §§ 2152.19(A)(1) and 2151.353, of her son at a third hearing held after the son had been adjudicated delinquent was rejected because the trial court twice made the parties aware that it would consider the various dispositional alternatives at subsequent hearings and indicated that it would do so on its own motion. Moreover, the mother's presence at the hearing waived any objections she had to inadequacies of notice. In re Ratliff, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1625, 2007 Ohio 1770, (Apr. 13, 2007).

Trial court erred in excluding the testimony of the potential custodians on the grounds that it could not grant legal custody of the child to them because they had not filed their own motion requesting legal custody because the parties had sufficient notice that the couple were potential custodians well in advance of the hearing. Fundamental fairness as well as due process required the trial court to allow the mother to rebut or to explain the testimony of the agency's caseworker concerning the couple, and to argue that it would be in the best interest of the child to grant the couple legal custody rather than to grant permanent custody to the agency. In re Beatty, 167 Ohio App. 3d 730, 856 N.E.2d 1042, 2006 Ohio 3698, (2006), appeal dismissed for want of debatable question by 113 Ohio St. 3d 1207, 2007 Ohio 860, 862 N.E.2d 839, 2007 Ohio LEXIS 507 (2007).

Decision granting legal custody of a mother's daughter to her father under RC § 2151.353(A)(3) was supported by sufficient evidence and did not violate the mother's constitutional right to due process under U.S. Const. amends. V and XIV and Ohio Const. art. I, § 10. The mother offered unwavering support of and commitment to her husband, a sexually oriented offender who sexually abused her daughter, even supporting his efforts to move back into her home, and failed to complete her case plan objectives. In re A.W., 2006 Ohio App. LEXIS 1944, 2006 Ohio 2103, (2006).

Court rejected the contention of a relative of a child that, as a qualified blood-relative of the child, she had a substantive due process right to custody of the child, who was in foster care. In

Ohio, relatives seeking legal custody of a child are not afforded the same presumptive rights that a parent receives as a matter of law. In *re A. V.*, 2006 Ohio App. LEXIS 3021, 2006 Ohio 3149, (2006).

Courts must carefully avoid circumventing the fundamentally important adjudicatory stage when terminating parental rights because omitting the adjudicatory hearing from the process is a substantial deprivation of a parent's due process rights and renders the process fundamentally unfair. The adjudicatory stage requires stringent application of the Ohio Rules of Evidence and forbids any consideration of the child's best interests. In *re Nibert*, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

Where an unidentified biological parent does not voluntarily step forward and identify himself as the parent of abused, neglected or dependent children and request that he be reunited with the children, such a parent is not denied due process of law when he is not provided with a comprehensive reunification plan prior to the court's divesting him of his parental rights. If, however, it comes to the social welfare agency's attention, through a paternity suit or otherwise, and prior to the court's granting permanent custody to the social welfare agency, that a previously unidentified individual is the biological parent of the children, the social welfare agency must acknowledge the fact of the children's biological parentage and include said parent as a party to the permanent custody proceedings: *Garabrandt v. Lucas Cty. Children Services Bd.*, 47 Ohio App. 3d 119, 547 N.E.2d 997 (1988).

In cases involving children in the temporary legal custody of the Hamilton County Welfare Department, when removal from a natural parent is deemed appropriate by the welfare department, due process requires that parents be given notice prior to removal, with reasons for the removal, and that parents be afforded full opportunity at a hearing to present witnesses and evidence and have a right to a retained attorney, and that the hearing be conducted by a neutral and detached hearing officer who is to state in writing the decision reached and the reasons therefore: *Doe v. Staples*, 706 F.2d 985 (6th Cir. 1983).

Due process does not require a formal and full-blown adversary hearing in every case involving constitutionally protected liberty or property interests; therefore, the Hamilton County Welfare Department is not required to disclose the identity of persons who complain about parental misconduct, where the welfare department has temporary legal custody of the child and the parent, who has physical custody, is effectively notified of the charges against her and is provided a hearing to confront those charges: *Doe v. Staples*, 706 F.2d 985 (6th Cir. 1983).

Finding of parental unsuitability

Where a child's best interests under R.C. § 2151.42 were served by granting legal custody under R.C. § 2151.011(B)(19) to the child's relatives due to the mother's mental and/or physical condition pursuant to R.C. § 2151.04(B), the mother's unsuitability was implicit and a separate finding was not required; reasonable efforts to promote a reunification plan were made. In *re Reeher*, 2003 Ohio App. LEXIS 3152, 2003 Ohio 3470, (2003).

Findings and conclusions of court

Where a magistrate's decision terminating the mother's parental rights and granting custody to the family services agency complied with Ohio statute, there was no deficiency in counsel's failure to seek findings and conclusions from the trial court. In *re Teasley*, 2003 Ohio App. LEXIS 4580, 2003 Ohio 5079, (2003).

Foster care

Denial of the foster parents' motion to intervene (Ohio R. Civ. P. 24) was not a final appealable order, pursuant to RC § 2905.02(B), since the denial did not affect a substantial right; there was no judgment entry either granting or denying the agency's motion for permanent custody, or granting a disposition and placement of the minor child. Nor did dismissal of the foster parents' motion for custody, pursuant to RC § 2151.353(A)(3), affect a substantial right so as to make the denial of the motion a final appealable order because, since legal custody and permanent custody were alternative disposition choices, RC § 2151.353(A)(3) did not authorize the foster parents to intervene in the adjudicatory permanent custody proceeding (RC

§ 2151.414) and move for legal custody of the children. In *re Fell*, 2005 Ohio App. LEXIS 2457, 2005 Ohio 2415, (2005).

Definition of residential facility employed by the general assembly and as used in RC § 5119.22(A)(1)(d)(iii), did not extend to RC § 2151.353(A)(5) and what that chapter of the revised code deals with, which was the juvenile court's disposition of abused, neglected, and dependent children, and therefore did not eliminate foster homes from qualifying as residential care as that term is used in RC § 2151.353(A)(5)(a); thus, in a case where a child suffered from several mental disorders and was placed in foster care, the child's circumstances did not fail to meet the requirements of RC § 2151.353(A)(5)(a) and the trial court did not abuse its discretion in ordering that he be placed in a planned permanent living arrangement. In *re Priser*, 2004 Ohio App. LEXIS 1160, 2004 Ohio 1315, (2004).

In a case where a child suffered from several mental disorders and was placed in foster care, it did not follow that because the child was thriving and making progress in the family-like setting established by his current foster parents, he could function in any ordinary family-like home where the potential adoptive parents might lack the special skills possessed by the child's current foster parents; thus, pursuant to RC § 2151.353(A)(5)(a), the trial court did not abuse its discretion in determining that the child could not function in a family-like setting due to his special psychological and behavioral problems and needs. In *re Priser*, 2004 Ohio App. LEXIS 1160, 2004 Ohio 1315, (2004).

In a case where a child suffered from several mental disorders and was placed in foster care, the statutory factors in RC § 2151.414(D)(1) and (2) favored keeping the child in a planned permanent living arrangement pursuant to RC § 2151.353(A)(5)(a) in his current foster home rather than awarding permanent custody to the county child services agency. The child's counselor testified about the disadvantages associated with removing the child from his current foster home, including a loss of security, stability, and trust. In *re Priser*, 2004 Ohio App. LEXIS 1160, 2004 Ohio 1315, (2004).

Long-term foster care is only an option where requested by an agency: In *re Brodbeck*, 97 Ohio App. 3d 652, 647 N.E.2d 240 (1994).

Foster parents are not "parties" to juvenile court dispositional proceedings and do not have a right to intervene and move for custody of children who have been in their care and then removed from their home: In *re Baatz*, 1993 Ohio App. LEXIS 3996 (9th Dist. 1993).

The foster parents were not entitled to be made parties to the proceedings to accept the mother's permanent voluntary surrender of rights: In *re Franklin*, 88 Ohio App. 3d 277, 623 N.E.2d 720 (1993).

Foster parents who failed to file motion for permanent custody prior to original hearing were not permanently precluded from filing for review: In *re Moorehead*, 75 Ohio App. 3d 711, 600 N.E.2d 778 (1991).

Requirements for termination of parental rights, commitment to long-term foster care construed: In *re Smith Children*, 1990 Ohio App. LEXIS 2157 (1990).

Grandparents

Court rejected a father's contention that the trial court abused its discretion by not awarding custody of the father's child to the child's paternal grandparents because the grandparents had no standing to request custody, in that they had withdrawn their motion for legal custody of the child and never refiled their motion. In *re M. L.*, 2006 Ohio App. LEXIS 5893, 2006 Ohio 5931, (2006).

Juvenile court's grant of permanent custody to a county social service agency pursuant to RC §§ 2151.413 and 2151.414 rather than to the children's maternal grandparents was supported by evidence that the agency placement was in the children's best interests, as they were receiving necessary counseling and services; denial of the grandparents' request for custody was not an abuse of discretion, as they had not officially moved for such relief under RC § 2151.353(A)(3), but rather had merely sent correspondence to the juvenile court requesting such relief, and further, there was evidence that the children's best interests would not be served if they lived together due to acting out issues

regarding sexual abuse that they suffered. In re Turner, 2006 Ohio App. LEXIS 4832, 2006 Ohio 4906, (2006).

Grandmother's dependency petition and request for temporary custody of her grandchild pursuant to RC §§ 2151.27(A)(1) and 2151.04 was within the juvenile court's subject matter jurisdiction, as the grandmother qualified as "any person" pursuant to RC § 2151.27(A)(1), and RC §§ 2151.27(C) and 2151.353(A)(3) allowed her to seek custody. In re Brown, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

Maternal grandmother of three minor children lacked standing to challenge a trial court's grant of permanent custody to a county agency under RC § 2151.414, as she had failed to appropriately seek legal custody of the children under RC § 2151.353(A)(3). In re Th.W., 2005 Ohio App. LEXIS 2681, 2005 Ohio 2852, (2005).

Where a mother retained visitation rights after a child was adjudicated dependent, the juvenile court did not have to make a finding of suitability when awarding custody to a grandmother under RC § 2151.353 under a preponderance of the evidence standard of review. In addition, custody was properly awarded to the grandmother because the mother had not been able to provide stable housing or a consistent adequate level of care for the child's medical issues. In re A.W.-G., 2004 Ohio App. LEXIS 2038, 2004 Ohio 2298, (2004).

It was an abuse of discretion to treat the grandmother's letter as anything other than a letter and to use it as the basis for granting permanent custody to the grandmother because the letter was neither in the form of a motion, nor was it served on any of the parties. In re D.D., 2004 Ohio App. LEXIS 3856, 2004 Ohio 4243, (2004).

Where a custody hearing did not constitute a true dispositional hearing as envisioned by RC § 2151.353, the trial court abused its discretion in granting custody to a maternal grandmother absent a finding that the children's mother was unsuitable or unfit, pursuant to RC § 2151.23(A)(2). In re Mahley, 2004 Ohio App. LEXIS 1571, 2004 Ohio 1772, (2004).

Where there was no evidence that grandparents requested a stay of the child dependency proceedings and where, to the extent that the hearing occurred more than two years after the initial complaint, two RC § 2151.353(G)(1)-(3) extensions appear to have been granted, the lower court was obligated by statute to have a hearing on the grandchild's permanent custody. In re Goff, 2003 Ohio App. LEXIS 5989, 2003 Ohio 6768, (2003).

Awarding custody of the child to the grandmother was proper because both parents were low-functioning and the mother had anger control problems and lacked parenting skills. In re Haywood, 2003 Ohio App. LEXIS 3217, 2003 Ohio 3518, (2003).

Where the trial court denied the grandparents' motion to intervene in a temporary custody proceeding in a separate proceeding from the permanent custody case, the trial court was not required to grant a stay of the permanent custody proceeding pursuant to Ohio R. Civ. P. 62. In re Goff, 2003 Ohio App. LEXIS 5442, 2003 Ohio 6087, (2003).

The court properly found that placing the child with his paternal grandparents was in his best interest. In re Dukes, 81 Ohio App. 3d 145, 610 N.E.2d 513 (1991).

Habeas corpus

Habeas corpus actions may proceed in child custody cases where a remedy by appeal is not speedy enough. However, habeas corpus relief is the exception: McNeal v. Miami County Children's Services Bd., 64 Ohio St. 3d 208, 594 N.E.2d 587 (1992).

Hearings generally

Department of Children and Family Services, the minor child's aunt, and the child's foster parents were entitled to a dispositional hearing, on their motion to modify a prior custody order, and the trial court was required to provide notice to the guardian ad litem of said motion; although the burden rested with the movants to set forth the evidence in support of their motion, and no error could be attributed to the trial court for the movants failing to meet this burden, the movants should not have been precluded from presenting such evidence, if desired. In re G.R., 2004 Ohio App. LEXIS 886, 2004 Ohio 999, (2004).

Juvenile Rule 34(B) provides that at a dispositional hearing, the court may admit hearsay, opinion and documentary evidence that is material and relevant. Since the focus of the dispositional phase

of a neglect or dependency matter is the future care and best interests of the child, RC § 2151.35.3(A), then testimony relative to the child's home environment and parental care is material and relevant to the case. In re Smith, 77 Ohio App. 3d 1, 601 N.E.2d 45 (1991).

Dependency and abuse hearings are required to be bifurcated into separate adjudicatory and dispositional phases because the issues raised and procedures used at each hearing differ. Accordingly, at the adjudicatory phase of dependency and abuse proceedings, the trial court must focus upon whether the child has been proven to be dependent or abused, and must not allow the dispositional issues to dominate the determination of dependency or abuse. In re Pitts, 38 Ohio App. 3d 1, 525 N.E.2d 814 (1987).

Incarcerated parent

Incarcerated parent was denied due process where she did not receive the required notice and opportunity to participate in the proceedings leading to termination of parental rights. A trial court should only grant permanent custody as the initial disposition in extreme situations where reunification is not possible. Prior adjudication of permanent custody as a parent's other children does not result in a de facto termination of parental rights as to the child in question in the proceeding. In re Sheffey, 167 Ohio App. 3d 141, 854 N.E.2d 508, 2006 Ohio 619, (2006).

Visitation with an incarcerated parent is presumptively not in a child's best interest, and the parent bears the burden of proving that visitation is in the child's best interest. In re Erica, 65 Ohio Misc. 2d 17, 640 N.E.2d 623 (CP 1994).

An incarcerated mother's claim that the alleged conflict between the permanent custody procedures of RC Chapter 2151. and the adoption consent requirements of RC §§ 3107.06 and 3107.07 deprive her of due process and equal protection must fail because the two chapters of the Revised Code complement rather than oppose each other. Specifically, once an incarcerated person's parental rights have been terminated by a juvenile court pursuant to RC Chapter 2151., then RC § 3107.07(D) provides that that parent also loses her right to withhold consent to an adoption under RC § 3107.06. In re Dillard, 48 Ohio App. 3d 263, 549 N.E.2d 213 (1988).

Indigent persons

An indigent parent has a right to a transcript of proceedings for purposes of appealing from a state-instituted permanent custody action. State ex rel. Howard v. Ferri, 70 Ohio St. 3d 587, 639 N.E.2d 1189 (1994).

Judicial notice

A court cannot merely take judicial notice of its proceedings in another case in finding that a child is abused, neglected or dependent. In re Knotts, 109 Ohio App. 3d 267, 671 N.E.2d 1357 (1996).

Jurisdiction

Juvenile court did not err by dismissing the father's custody motion, under Ohio R. Juv. P. 18(D), because it unambiguously lacked jurisdiction pursuant to RC § 2151.353(J), since no action had been taken on the matter for over one year. Also, RC § 2151.353(J)(1) applied to vest jurisdiction in the juvenile court in the county in which the legal custodians now resided, and thus, the juvenile court did not have jurisdiction under the Uniform Child Custody Jurisdiction Act, RC § 3109.22 (repealed and replaced with RC § 3127.15). In re N.W., 2005 Ohio App. LEXIS 2348, 2005 Ohio 2466, (2005).

A juvenile court has the jurisdiction to make a disposition on dependency complaints under RC § 2151.35.3(A) but only on the alternatives listed in the statute. In re Phillips, 1998 Ohio App. LEXIS 1584 (2nd Dist. 1998).

Pursuant to RC § 2151.23(A), the juvenile court has jurisdiction to determine the custody of a child alleged to be abused, neglected, or dependent, when that child is not the ward of any court in this state. This jurisdiction includes children subject to a divorce decree granting custody pursuant to RC § 3109.04. When a juvenile court makes a custody determination under RC §§ 2151.23 and 2151.35.3, it must do so in accordance with RC § 3109.04 (RC § 2151.23[F](1), construed and applied.). In re Poling, 64 Ohio St. 3d 211, 594 N.E.2d 589, 1992 Ohio 144, (1992).

If jurisdiction has been previously acquired over children through custody disposition in a divorce decree, the common pleas court must certify the custody matter to the juvenile court before such court has jurisdiction to determine any subsequent custody issue. Before the juvenile court may determine custody in a neglect proceeding, it must make an adjudication of abuse, neglect or dependency: *Moore v. Moore*, 1991 Ohio App. LEXIS 472 (4th Dist. 1991).

Revised Code § 2151.23(A)(4) grants jurisdiction to the juvenile court to exercise only those powers given to the probate courts by RC Chapters 5122 and 5123. A probate court can hold a hearing under RC § 5122.15 and subsequently judicially commit a person to a mental health board pursuant to RC § 5122.15(C)(4) only if the judicial commitment proceedings were commenced in accordance with the procedural requirements of RC § 5122.11 and the other requirements of RC §§ 5122.11 through 5122.15 were complied with thereafter: *In re Shott*, 75 Ohio App. 3d 270, 599 N.E.2d 363 (1991).

Jurisdiction of the juvenile court was proper in a proceeding to terminate parental rights despite the failure to serve the infant's mother when the mother had voluntarily executed a permanent surrender of the child to a private agency and had actual notice of the proceeding via service upon her husband, the legal father: *In re Luallen*, 27 Ohio App. 3d 29, 27 Ohio B. 30, 499 N.E.2d 358 (1985).

Under the authority derived from RC §§ 2151.23, 2151.27 and 2151.35, the juvenile court has the authority to hear and determine the case of a neglected child notwithstanding the fact that the child is at the time within the continuing jurisdiction of the common pleas court by virtue of a divorce decree: *In re Gail*, 12 Ohio Misc. 251, 41 Ohio Op. 2d 341, 231 N.E.2d 253 (JC 1967).

Motion for custody

Trial court erred as a matter of law in awarding custody to a relative when the relative failed to file a motion for legal custody before the dispositional hearing. Any person who seeks an award of legal custody of a child must, under the Rules of Juvenile Procedure, file a motion requesting custody prior to the dispositional hearing: *In re L.R.T.*, 165 Ohio App. 3d 77, 844 N.E.2d 914, 2006 Ohio 207, (2006).

Although a magistrate granted legal custody of a mother's child to legal custodians who had failed to make a motion pursuant to RC § 2151.353(A)(3) requesting such custody, the procedural defect was not so harmful as to rise to the level of plain error, as the mother was aware of the initiation of the legal proceedings, the defect was not prejudicial to the mother, and it did not affect the fairness, integrity, or public reputation of the judicial proceedings. *In re H.B.*, 2006 Ohio App. LEXIS 1969, 2006 Ohio 2124, (2006).

Because compliance with the statutory mandates in RC § 2151.01, et seq. and the rules of juvenile procedure is mandatory, and because any person wishing legal custody of a child must, prior to the dispositional hearing, file a written motion requesting such custody, the juvenile court erred as a matter of law in awarding legal custody of the mother's son to his maternal aunt when no such motion for custody had been filed prior to the dispositional hearing. *In re C.T.*, 2005 Ohio App. LEXIS 916, 2005 Ohio 887, (2005).

The court abused its discretion in awarding legal custody of child to foster parent in the absence of a motion, filed prior to the hearing, requesting legal custody: *In re Mayle*, 2000 Ohio App. LEXIS 3379 (8th Dist. 2000).

Under RC § 2151.35.3, nonparents cannot be granted legal custody unless they filed a motion for custody prior to the dispositional hearing: *In re Perez*, 135 Ohio App. 3d 494, 734 N.E.2d 858 (1999).

Neglect and dependency

Where the parties stipulated the children were dependent and awarded the department of children and families protective supervision prior to the father's motion for custody of the minor child, the trial court applied the proper legal standard under RC § 3109.04 when it granted the father's motion. *In re Rosier-Lemmon/Rosier Children*, 2004 Ohio App. LEXIS 1149, 2004 Ohio 1290, (2004).

Leaving children basically unattended with a loaded, unsecured

gun is sufficient to support a finding of neglect and dependency. An order of permanent commitment or long-term foster care may be justified where a parent has repeatedly failed to supervise and provide adequate care for the children: *Skeen v. Gullett*, 1994 Ohio App. LEXIS 2746 (1994).

A parent's demonstration of lack of commitment toward her child is sufficient to support a finding that the child cannot be placed with the parent within a reasonable time. Testimony that the foster mother would adopt the child satisfies RC § 2151.41.4(D)(1). The time limits specified in RC §§ 2151.35.3 and 2151.41.5 are not unconstitutional as applied to a minor parent: *In re McCrary*, 75 Ohio App. 3d 601, 600 N.E.2d 347 (1991).

A finding of dependency should be made only upon the presentation of clear and convincing evidence. However, if the parties agree to waive such a hearing and stipulate to certain facts, then JuvR 29(D) must be fully complied with and the facts set forth in the record must sufficiently support a finding of dependency: *Elmer v. Lucas Cty. Children Serv. Bd.*, 36 Ohio App. 3d 241, 523 N.E.2d 540 (1987).

Such certification does not constitute a complaint in the juvenile court that such child is neglected, dependent or abused and those dispositions provided for under RC § 2151.35.3 pertaining to neglected, dependent or abused children, including an award of permanent custody to a county welfare department which has assumed the administration of child welfare, are not applicable to such a child, disposition thereof being subject to and controlled by RC § 3109.04: *In re Snider*, 14 Ohio App. 3d 353, 14 Ohio B. 420, 471 N.E.2d 516 (1984).

Notice

Because the motion to grant legal custody to the uncle and his wife was filed after the dispositional hearing, it was a motion to modify the prior dispositional order and RC § 2151.415(A)(3) applied. The father participated in the hearing and was aware that his brother and his wife were potential custodians because the father had acquiesced to the temporary custody arrangement and thus, the trial court's reference to RC § 2151.353(A)(3) constituted harmless error. *In re McCallum*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 905, 2007 Ohio 995, (Mar. 1, 2007).

Trial court did not err in awarding custody of a mother's son to the son's paternal grandparents after the mother stipulated to a finding of dependency because, while the paternal grandparents never filed a motion seeking custody under RC § 2151.353 or Ohio R. Juv. P. 33, the mother received more than sufficient notice that the grandparents could be awarded custody since the father, in his motion for custody, had requested that custody be awarded either to him or to the grandparents. Further, the transcript of the hearing indicated that the mother fully litigated the issue of granting custody of the son to the grandparents. *In re Rumschlag*, 2006 Ohio App. LEXIS 1067, 2006 Ohio 1184, (2006).

Where a lack of notice denied the mother her right to defend her parental rights in a full adjudication and deprived her of due process, a permanent custody award of her child to family services was vacated and temporary custody to the agency was reinstated. *In re D.H.*, 2003 Ohio App. LEXIS 5784, 2003 Ohio 6478, (2003).

RC § 2151.414(A)(1) provides that a court shall schedule a hearing and give notice of the filing of the motion, and RC § 2151.353(B) contains a similar notice requirement; a father, whose child was adjudicated as neglected and abused, was provided proper notice of the proceeding by which the father's parental rights were terminated. *In re I.M.*, 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

Revised Code § 2151.41.7 and JuvR 36(A) allow a court to review a child's placement or custody arrangement at any time. However, a party with current custody of the child is entitled to prior notice that a change of custody will be considered at a hearing ostensibly concerning visitation rights: *In re Bowman*, 101 Ohio App. 3d 599, 656 N.E.2d 355 (1995).

Where the record clearly demonstrates that a parent had actual notice of the proceedings, fully understood his rights and the nature of the proceedings, and participated throughout, a failure to serve the parent with summons is inconsequential: *In re Webb*, 64 Ohio App. 3d 280, 581 N.E.2d 570 (1989).

Service by publication, under JuvR 16(A), requires that any notice published in a newspaper of general circulation include, among other things, the last known address of the party whose present whereabouts are unknown and a summary statement of the object of the complaint. Service by publication is a method of last resort and the requirements therefor, as specified in JuvR 16(A), are mandatory and will be strictly enforced. A failure to include such information in the publication-notice will result in defective service (JuvR 16[A], construed): In re Wilson, 21 Ohio App. 3d 36, 21 Ohio B. 38, 486 N.E.2d 152 (1984).

Permanent award to agency

Trial court did not err when it found that awarding a children services agency permanent custody of a mother's son was in the son's best interest where the evidence showed that the agency made reasonable efforts to reunify the mother with the son and provided many services, including providing the mother with one-on-one drug rehabilitation counseling and access to anger management training; that, while the mother had success with her substance abuse issues, concerns were noted regarding the mother's comprehension of the concepts that were taught; that the mother completed only a small number of the anger management and domestic violence classes and had difficulty with comprehension; and that the mother did not have appropriate housing or adequate supplies for the son. In re Norman F., 2006 Ohio App. LEXIS 6720, 2006 Ohio 6810, (2006).

There was no abuse of discretion in finding that granting permanent custody of the child to the agency was in the child's best interest, pursuant to RC § 2151.414(D) and RC § 2151.353, because the agency had been working with the parents to remedy the same problems in connection with the older sibling for over a year and neither parent was willing or able to provide a stable home for the newborn child. The father made no attempt to communicate with his newborn child, nor did he inquire as to her well-being; he did not make any attempt to contact the agency regarding the child; he did not attend the adjudication and disposition hearing; and, even though the father was incarcerated, he had an obligation to provide for his child. In re Jamilah P., 2006 Ohio App. LEXIS 1511, 2006 Ohio 1631, (2006).

Trial court's finding that appellants' son was a dependent child under RC § 2151.04 on the ground that appellants had failed to remedy the conditions which led to the son's removal and awarding permanent custody of the son to the family services agency under RC § 2151.353 was unsupported by clear and convincing evidence because the information relied upon was either inconclusive or related to a time period seventeen months to three years prior to the son's birth when the parents two daughters were permanently removed from their custody. No current evidence or testimony was presented to provide any further explanation as to why the son should be deemed dependent. The trial court's dependency determination was based solely on the fact that appellants had previously lost custody of the first two children and on information which was not relative to the parents' unfitness at the time that the son was removed. In re Nicholas P., 169 Ohio App. 3d 570, 863 N.E.2d 1102, 2006 Ohio 6213, (2006).

In a proceeding to terminate a father's parental rights, a trial court did not err in finding that his two children could not be placed with either parent within a reasonable period of time under RC § 2151.414(E) and that granting a motion filed by a county department of job and family services for permanent custody under RC § 2151.353(A)(4) was in the children's best interests under RC § 2151.414(D). Although the father had made significant progress and had substantially complied with his most recent case plan, his compliance with the plan did not entitle him to custody, and the trial court could not ignore his long history of drug involvement and failed rehabilitation, his repeated incarcerations, or his initial failures to actively exercise visitation or to engage in his case plans. In re Gower, 2006 Ohio App. LEXIS 5666, 2006 Ohio 5676, (2006).

Granting permanent custody of the children to the agency was in the best interest of the children because the mother's parental rights had involuntarily been terminated with respect to siblings of the children, the interactions between the children and the mother were very limited as the mother's frequent failures to attend visitations demonstrated a lack of concern for the children.

The mother also failed to complete her case plan because she did not complete her domestic violence counseling. In re G.S., 2006 Ohio App. LEXIS 2389, 2006 Ohio 2530, (2006).

Trial court's determination to grant permanent custody of a mother's 10 children to a county social service agency was supported by clear and convincing evidence, pursuant to RC §§ 2151.353(A)(3) and 2151.414(B)(1)(d) and (D), as the mother was convicted of a sexual offense involving two of her children, the children's aunt who had requested custody was not a suitable placement because her home was too small, she barely knew the children, and it was in their best interests to be placed in the agency's custody. In re Hilyard, 2006 Ohio App. LEXIS 1809, 2006 Ohio 1976, (2006).

Trial court's decision to award the permanent custody of 10 children to a county social service agency rather than to the children's paternal aunt was supported by ample evidence and was in the children's best interest, pursuant to RC §§ 2151.353(A)(3) and 2151.414, as the aunt had a very small home which would not accommodate her present family as well as an additional 10 children, she had been granted visitation rights which she chose to only exercise on a couple of occasions, and she did not believe that the children's father had committed sexual offenses against some of the children, for which he had been convicted and sentenced; the children were in the agency's custody for the requisite period of time under § 2151.414(B)(1)(d), had been placed in foster families, and had all been adjudicated as dependent and/or neglected. In re Hilyard, 2006 Ohio App. LEXIS 1811, 2006 Ohio 1966, (2006).

Permanent custody of a father's son was properly granted to a children services agency under RC § 2151.353 because the father was unable to care for his son, as evidenced by his repeated failure to complete substance abuse treatment, the negative reports from his substance abuse counselor, and his failure to complete the anger management training that was mandated by his overall family case plan. The award of custody to the agency was in the son's best interest, especially since the foster family, which was the only family the son had ever known, had expressed an interest in adopting son. In re C.T., 2006 Ohio App. LEXIS 1791, 2006 Ohio 1944, (2006).

Trial court did not err in finding that it was in the best interest of the children to be placed in permanent custody of the agency, pursuant to RC § 2151.414, rather than to be placed in a planned permanent living arrangement, pursuant to RC § 2151.353(A)(J), and did not err in terminating the father's parental rights. Although the trial court noted that the evidence showed that the son could not be successful in a less restrictive environment and that at the present time there was no adoptive placement for him, the caseworker, guardian ad litem, and the trial court each found that permanent custody was in the best interest of both children. In re Lenix, 2006 Ohio App. LEXIS 1189, 2006 Ohio 1294, (2006).

Trial court did not err in determining that neither a grandmother nor an aunt were suitable placements for a father's 10 children after it determined that his parental rights were to be terminated, and its award to a county social service agency of permanent custody of the children was proper, as relative placement was given appropriate consideration pursuant to RC §§ 2151.353(A)(3), 2151.414(D), and 2151.412(C), to the extent the latter statute was applicable, and neither relative was suitable based on a variety of considerations and factors, as well as their custodial history with these and other children. In re Hilyard, 2006 Ohio App. LEXIS 1807, 2006 Ohio 1965, (2006).

Trial court's findings, pursuant to RC §§ 2151.353(A)(4) and 2151.414(E)(4) and (11) that a mother's one-month-old son should not be placed with the mother within a reasonable time and that permanent custody was in the son's best interest were supported by clear and convincing evidence. The fact that the mother's parental rights to the son's brother had been terminated four years earlier was sufficient under RC § 2151.414(D)(5) and (E)(11) to support the trial court's decision. The trial court examined the mother's circumstances as they existed at the time of the proceedings and found that the mother was unable to understand how to feed the son the proper amount of food at proper intervals, that the mother attended only one-half of the visits provided after the son was removed from her care, and that the mother had failed to remedy unsanitary housing conditions

that existed at the time of the removal of the son's older brother. In re Deasean J., 2006 Ohio App. LEXIS 4218, 2006 Ohio 4294, (2006).

Trial court did not abuse its discretion in denying a mother's motion for continuance of a permanent custody hearing in order to allow home studies to be completed on the child's maternal aunt and maternal grandmother because no interested persons had filed a motion seeking custody of the child, as outlined in RC § 2151.353(A)(3); the agency had previously investigated the grandmother as a proposed custody for two of the child's siblings and had denied the request for custody due to an inappropriate person living in the grandmother's house; and the aunt also had been investigated but had failed to attend a course to deal with the child's health issues and had failed to document that the housing authority had given its consent to allow the child to live with the aunt in her apartment, as requested by the child services agency. In re Fortson, 2006 Ohio App. LEXIS 1362, 2006 Ohio 1501, (2006).

Trial court's decision to terminate a mother's parental rights and to place the child in the permanent custody of a county agency was supported by the weight and sufficiency of the evidence and suited the child's best interest pursuant to RC § 2151.414(D), as the child was severely physically disabled, he was in a foster home that provided extensive therapy and medical care and was willing to have him as long as necessary, and the mother's contact with the child was sporadic and was a struggle for her. Placement in a planned permanent living arrangement under RC § 2151.353(A)(f) was properly denied, as there was no evidence that the child could not reside in a family-like setting. In re Wilson, 2005 Ohio App. LEXIS 5594, 2005 Ohio 6203, (2005).

County social service agency made reasonable efforts to reunify parents with their child for purposes of a permanent custody determination, pursuant to RC § 2151.419(A)(1), where it provided the father with visitation, parenting instruction, financial assistance, and case management; accordingly, the court complied with RC § 2151.353(H) and removal of the child from the parents' home was proper. In re West, 2005 Ohio App. LEXIS 2779, 2005 Ohio 2978, (2005).

Trial court had competent, credible evidence before it that granting permanent custody to the agency was in the children's best interests because the mother did not believe her son's allegations of sexual abuse by her boyfriend, she married the boyfriend soon after the allegations were made, and she had other children removed from her custody due to similar allegations. In re Moore, 2005 Ohio App. LEXIS 100, 2005 Ohio 136, (2005).

Trial court was authorized to grant permanent custody of the child to the agency because the trial court's October 30, 2003 journal entry made it clear that it was acting pursuant to the authority granted in RC § 2151.353(A)(2) in ordering temporary custody to the agency. Thus, under RC § 2151.353(B), the agency was permitted to file, and the trial court had the authority to grant, a motion for permanent custody. In re Van Atta, 2005 Ohio App. LEXIS 3828, 2005 Ohio 4182, (2005).

Trial court improperly awarded permanent custody (RC § 2151.414 and RC § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In re Nibert, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

Trial court's decision to award a newborn child's permanent custody to a county social service agency was supported by the evidence, pursuant to RC § 2151.414(E), where the child was initially adjudicated as dependent, pursuant to RC § 2151.353(A)(4), and it was determined that the child could not be placed with either of the child's parents within a reasonable time and that permanent custody in the agency was in the child's best interest, pursuant to RC § 2151.414(D), (E). The mother was a heavy smoker, she had no job and no independent living arrangement, she lived with several adults, including the father of the child, who was the subject of sexual child abuse charges, she did not have custody of her other children, and she used drugs and alcohol. In re West, 2005 Ohio App. LEXIS 2780, 2005 Ohio 2977, (2005).

In light of evidence that a father had a problem with cocaine, gave implausible reasons for his positive drug tests, did not

complete any of the three main case plan goals, and attended only 19 of 30 visitation sessions for the whole time allotted, the trial court did not abuse its discretion in finding that child's best interests would be served by granting permanent custody to appellee. In re Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Where the grandmother, who took care of the children, was no longer willing or able to take care of them, the children's mother was deceased, and the children's fathers had not been involved in their lives, the trial court did not abuse its discretion in finding, pursuant to RC § 2151.414, that it was in the children's best interest to be placed in the permanent custody of the Montgomery County Children Services Board; on remand in the case, the trial court did as instructed by the appellate court when the trial court considered the Board's motion for permanent custody in accordance with RC § 2151.353. In re Muldrew, 2004 Ohio App. LEXIS 1781, 2004 Ohio 2044, (2004).

Trial court did not abuse its discretion in choosing permanent custody over planned permanent living arrangements for the children, so that they could be adopted if possible. The record indicated that the children were in a family-like therapeutic foster home, and there was nothing to indicate that they should be in residential or institutional care; there was insufficient evidence to demonstrate the children had a significant positive relationship with their mother; the children needed permanency, and there was a chance of adoption for the children. In re Hutzel, 2004 Ohio App. LEXIS 3942, 2004 Ohio 4337, (2004).

Evidence that (1) children's behavioral problems and developmental delays improved greatly after their being placed in foster care, (2) the foster parents addressed the children's medical problems which the parents had failed to treat, and (3) the parents had limited intelligence and an improvement in their mental health conditions would take intensive treatment for at least one year supported an award of permanent custody to a child protection agency. In re Kitana, 2004 Ohio App. LEXIS 3612, 2004 Ohio 3963, (2004).

Grant of permanent custody to child services was proper and child services had made reasonable efforts to prevent the removal of the child from the mother; it was in the child's best interest that child services have permanent custody. In re Kierra D., 2004 Ohio App. LEXIS 257, 2004 Ohio 277, (2004).

Where a trial court found that the child's mother had abandoned her, and that it was in the child's best interests to grant permanent custody to an agency due to the father's drug use and failure to complete his case plan, it properly granted permanent custody of the child to the agency. In re Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Trial court's order awarding permanent custody of a father's three children to the county department of children and family services was upheld where: (1) the familial bond between him and his children was questionable; (2) he was unable to provide a secure and stable home for them; (3) he failed to remedy the problems that initially caused the children to be removed; (4) he abandoned the children; (5) he was unwilling to provide the basic necessities or prevent the abuse; and (6) he instilled a likelihood that a recurrence of abuse would threaten the children's safety; further, the trial court properly rejected the planned permanent living arrangement set forth in RC § 2151.353(5), finding no significant and positive relationship with either parent and a lack of desire by the children for reunification. In re D.B., 2004 Ohio App. LEXIS 893, 2004 Ohio 996, (2004).

Trial court properly granted a children's services motion for permanent custody where the mother's parental rights to five other children had been terminated and the father's parental rights to two other children had been terminated. In re Kristiana B., 2003 Ohio App. LEXIS 4768, 2003 Ohio 5268, (2003).

Whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents pursuant to RC § 2151.414(A) or RC § 2151.353(A)(4), the court shall consider all relevant evidence; in an action for termination of parental custody, because a mother failed to successfully complete a reunification program, primarily because she continued to use drugs and failed to regularly visit her children, the termination was affirmed. In re L.A., 2003 Ohio App. LEXIS 4312, 2003 Ohio 4790, (2003).

In a permanent custody proceeding, language in the summons

clearly providing an explanation that granting permanent custody to the children services agency would divest the parents of their parental rights is sufficient to satisfy the requirement set forth in RC § 2151.35.3(B): In re Pachin, 50 Ohio App. 3d 44, 552 N.E.2d 655 (1988).

Although a juvenile court has the authority, under RC § 2151.35.3(A)(4), to grant permanent custody of a child immediately to an appropriate state agency upon determination that the child is abused, neglected or dependent, permanent custody should be granted at the initial disposition hearing only under extreme situations where reunification is not possible: In re Smart, 21 Ohio App. 3d 31, 21 Ohio B. 33, 486 N.E.2d 147 (1984).

A finding of parental unfitness is not a mandatory prerequisite to an award of permanent custody to a child welfare agency, although it may enter into a consideration of the child's "best interests." Consideration of "best interests" should not enter into the initial step of adjudicating dependency: In re Cunningham, 59 Ohio St. 2d 100, 13 Ohio Op. 3d 78, 391 N.E.2d 1034 (1979).

Once a child has been found to be "dependent" as defined in RC § 2151.04, the "best interests" of the child are the primary consideration in determining whether an award of permanent custody is justified pursuant to RC § 2151.35.3(A)(4): In re Cunningham, 59 Ohio St. 2d 100, 13 Ohio Op. 3d 78, 391 N.E.2d 1034 (1979).

Where the evidence shows that to return a child to her natural parent would be clearly detrimental to the child, such child is a "dependent child" under RC § 2151.04(C) and the court is authorized to commit the child permanently to the Children's Services Board under RC § 2151.35.3(D), even though the parent might be capable of giving proper care and support to other children: In re Justice, 59 Ohio App. 2d 78, 13 Ohio Op. 3d 139, 392 N.E.2d 897 (1978).

In a hearing concerning the dependency of a child, the trial court need not consider the desires of the mother with regard to its placement prior to the permanent commitment with a county agency: In re Baumgartner, 50 Ohio App. 2d 37, 4 Ohio Op. 3d 22, 361 N.E.2d 501 (1976).

Under RC § 2151.35.3, the filing of a complaint containing a prayer requesting permanent custody of minor children, sufficiently apprising the parents of the grounds upon which the order is to be based, and the service of summons upon the parents, explaining that the granting of such an order permanently divests them of their parental rights, are prerequisite to a valid adjudication that a child is neglected or dependent for the purpose of obtaining an order for permanent custody divesting parental rights: In re Fassinger, 42 Ohio St. 2d 505, 71 Ohio Op. 2d 503, 330 N.E.2d 431 (1975).

The mere allegation in a motion filed by the county welfare department that "it would appear to be in the best interests of said minors that they be placed permanently for adoption" does not state grounds under which a Juvenile Court may lawfully take permanent custody of children from their natural parents. In a hearing conducted pursuant to RC § 2151.35, in which the welfare department seeks to take permanent custody of children from their natural parents, the welfare department has the burden to plead and prove by clear and convincing evidence that the children are presently neglected or dependent. An adjudication of dependency made in a temporary custody hearing does not constitute legal grounds for granting permanent custody of minor children to the welfare department where over 22 months have elapsed between the temporary and permanent custody hearings, and where custody had been returned to the natural parents in the interim period between the temporary and permanent custody hearings. The granting of permanent custody under such circumstances requires a contemporaneous finding of dependency: In re Fassinger, 43 Ohio App. 2d 89, 72 Ohio Op. 2d 292, 334 N.E.2d 5 (1974).

Permanent custody of a dependent child will be granted to the county welfare department if it is for the best interest of a child, despite the well-intentioned concern of the maternal grandparents who wished to adopt the child: In re Baby Girl, 32 Ohio Misc. 217, 61 Ohio Op. 2d 439, 290 N.E.2d 925 (CP 1972).

Planned permanent living arrangement

Since a family services agency did not request a planned permanent living arrangement, the trial court did not have the

authority, under RC § 2151.353(A)(5), to place the children in such an arrangement and, as a result, did not err in failing to consider such an arrangement instead of permanent custody. In re Daulton, 2006 Ohio App. LEXIS 5324, 2006 Ohio 5352, (2006).

Because the agency was awarded temporary custody of all three children and filed its permanent custody motion in December 2003, it did not request a planned permanent living arrangement (PPLA); therefore, the trial court did not have the authority to place the children in a PPLA. In re S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Magistrate's determination, which was adopted by the juvenile court, that a child should be placed in a planned permanent living arrangement was not against the manifest weight of the evidence pursuant to findings made under RC §§ 2151.353(A)(5)(b) and 2151.414, as the mother had limitations in her ability to understand due to permanent brain damage, the child had used drugs in the past, had behavioral problems, had excessive absenteeism from school, and had run away, and the mother had engaged in physical abuse on multiple occasions. In re K.B., 2006 Ohio App. LEXIS 4810 (2006).

Children's services agency did not request the trial court to consider the alternative of placing the child in the planned permanent living arrangement, which was one of the first prerequisites of RC § 2151.415(C)(1). Also, since the child was only two and a half years old, it was unlikely that he needed to be learning the necessary skills for independent living when it was anticipated that he may be adopted or live in a foster home. In re English, 2006 Ohio App. LEXIS 2952, 2006 Ohio 3067, (2006).

After a public children services agency or private child placing agency is granted temporary custody of a child and files a motion for permanent custody, a juvenile court does not have the authority to place the child in a planned permanent living arrangement when the agency does not request this disposition: In re A.B., 110 Ohio St. 3d 230, 852 N.E.2d 1187, 2006 Ohio 4359, (2006).

Based on the clear and unambiguous language of RC § 2151.353(A)(5), where a county social service agency requested permanent custody of a mother's children and not a planned permanent living arrangement (PPLA), the mother's claim that the PPLA was in the best interests of the children rather than the grant of permanent custody lacked merit; the court lacked authority to grant a PPLA where the requirements of § 2151.353(A)(5) were not met. In re M.E., 2006 Ohio App. LEXIS 1689, 2006 Ohio 1837, (2006).

As there was no requirement under RC § 2151.353(A)(5)(b) that a minor child was violent for purposes of a juvenile court's order that he be placed in a planned permanent living arrangement, a mother's claim on appeal that such a finding was not made had no merit. In re K.B., 2006 Ohio App. LEXIS 4810 (2006).

Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County restates the law in the Eighth District to be that a court may not order a planned permanent living arrangement unless it is requested by a "public children services agency or private child placing agency," pursuant to RC § 2151.353(A)(5); accordingly, a father's request for such a living arrangement failed, as the county had to make the request. In re M.W., 2005 Ohio App. LEXIS 1273, 2005 Ohio 1302, (2005), criticized by In re A.S., 163 Ohio App. 3d 647, 2005 Ohio 5309, 839 N.E.2d 972, 2005 Ohio App. LEXIS 4830 (Ohio Ct. App., Summit County 2005), criticized by In re A.B., 2005 Ohio 4936, 2005 Ohio App. LEXIS 4466 (Ohio Ct. App., Summit County Sept. 21, 2005).

Where a child could not be placed with either parent within a reasonable time as the mother was struggling with a drug addiction, the father had a drug problem that was not being treated, and the mother failed to complete her case plan, the court properly placed the child into the planned permanent living arrangement pursuant to RC §§ 2151.353 and 2151.414(D). In re Wheeler, 2005 Ohio App. LEXIS 3330, 2005 Ohio 3613, (2005).

Child with severe form of Down's Syndrome was properly placed in a planned permanent living arrangement: Miller v. Green County Children's Servs. Bd., 162 Ohio App. 3d 416, 833 N.E.2d 805, 2005 Ohio 4035, (2005).

There was clear and convincing evidence to support a trial court's determination that a child, who suffered from Down's

Syndrome and who had multiple medical problems which required specialized knowledge from a caretaker, should be placed in a planned permanent living arrangement, as he was unable to function in a family-like setting, it would be very difficult to find an adoptive placement, the foster family where he presently was placed was working out well but they had not decided about adoption due to the father's deployment in the military, and it was in the child's best interest, pursuant to RC § 2151.414(D), to order such an arrangement. *Miller v. Green County Children's Servs. Bd.*, 162 Ohio App. 3d 416, 833 N.E.2d 805, 2005 Ohio 4035, (2005).

Trial court did not err by not ordering a planned permanent living arrangement instead of awarding appellee family services agency permanent custody of appellant mother's children; as the agency never requested a planned permanent living arrangement, pursuant to RC § 2151.353(A)(5), the trial court could not have ordered such an arrangement. *In re K.P.*, 2004 Ohio App. LEXIS 1494, 2004 Ohio 1674, (2004), appeal denied by 102 Ohio St. 3d 1473, 2004 Ohio 2830, 809 N.E.2d 1159, 2004 Ohio LEXIS 1419 (2004).

Trial court did not err in granting permanent custody of the mother's four children to the county family welfare agency despite the mother's claim that the children should have been placed in a planned permanent living arrangement (PPLA) instead of permanent custody with the county family welfare agency; the trial court could place a child in a PPLA only if the county family welfare agency requested such a placement and the record showed that it did not make any such request. *In re B.N.*, 2004 Ohio App. LEXIS 4052, 2004 Ohio 4469, (2004).

Court did not err in terminating a mother's parental rights instead of granting a planned permanent living arrangement under RC § 2151.353(A)(5), as (1) the child was under 16, (2) there were no findings that he required institutional care, and (3) while the mother had completed a four-month parenting program, testimony indicated that her interaction with the child remained at times inappropriate and deconstructive. *In re R.N.*, 2004 Ohio App. LEXIS 2275, 2004 Ohio 2560, (2004).

Trial court, in placing a mother's daughter in a permanent planned living arrangement, properly considered RC § 2151.353(A)(5)(b), as it specifically found that the mother suffered from physical and psychological problems for which she failed to obtain appropriate treatment, and that her significant physical, mental and psychological problems rendered her unable to care for her daughter. *In re M. B.*, 2004 Ohio App. LEXIS 2373, 2004 Ohio 2666, (2004).

Trial court's placement of mother's daughter in a permanent planned living arrangement was supported by clear and convincing evidence about the mother's mental health problems, including her overreacting to stimulation, her emotional instability, difficulty in maintaining stress, drinking issues, and a suicide attempt. *In re M. B.*, 2004 Ohio App. LEXIS 2373, 2004 Ohio 2666, (2004).

Where two boys were afraid of their mother, and though they loved her, did not want to live with her, the evidence did not clearly support a finding that they had a significant and positive relationship with their mother; therefore, the trial court did not err by choosing permanent custody with the county over a planned permanent living arrangement, despite the request of the guardian ad litem. *In re M.H.*, 2003 Ohio App. LEXIS 6445, 2003 Ohio 7053, (2003).

When a child is adjudicated as such, the court may make one of several orders, including, pursuant to RC § 2151.353(A), placing the child in a planned permanent living arrangement under RC § 2151.353(5). *In re I.M.*, 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

Trial court's placement of the minor child in a Planned Permanent Living Arrangement with the child welfare agency was reversible error, as the agency never requested the placement of the minor child in that arrangement, and such a request was a prerequisite under statutory law before such a placement could be validly made. *In re McKee*, 2003 Ohio App. LEXIS 5266, 2003 Ohio 5925, (2003).

Planned permanent living arrangement (PPLA) for the minor child properly was granted over mother's objection because her initial agreement had been informed, voluntary and with the

advice of counsel, waiving a later claim that it was ill-advised. *In re D.B.*, 2003 Ohio App. LEXIS 3232, 2003 Ohio 3521, (2003).

In an adjudication of a minor child as dependent, none of the situations listed in RC § 2151.353(A)(5) for a planned permanent living arrangement were present because the child was able to function in a family-like setting, and did not require residential or institutional care. *In re Beasley*, 2003 Ohio App. LEXIS 2557, 2003 Ohio 2857, (2003).

Trial court did not err when it failed to place a boy in a planned permanent living arrangement where the evidence showed that the boy was capable of living in a family-like setting and none of the other criteria in RC § 2151.353(A)(5)(a)-(c) for such placements were established by the evidence. *In re Bounds*, 2003 Ohio App. LEXIS 4276, 2003 Ohio 4733, (2003).

Pleadings

Pursuant to RC § 2151.27, in a juvenile action, the complaint shall allege the particular facts upon which the allegation that the child is a neglected, or dependent child is based, and, pursuant to RC § 2151.353(B) and Ohio R. Juv. P. 10(D), shall contain a prayer specifically requesting permanent custody if that is the relief sought by the complainant; a complaint that sought to adjudicate a father's child neglected and abused properly stated the claim against the father. *In re I.M.*, 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

Prohibition

Where a juvenile court judge had statutory authority to determine permanent custody issues under RC §§ 2151.23(A)(2) and 2151.353(A)(4), and a father had a legal remedy providing adequate relief, the father was foreclosed from pursuing an extraordinary remedy in prohibition. *State ex rel. Wells v. Costine*, 2004 Ohio App. LEXIS 530, 2004 Ohio 563, (2004).

Protective supervision

Revised Code § 2151.35.3(C) is properly construed in OAC 5101:2-39-30 and does not impose a limit on the number of extensions of protective supervision orders: *In re Collier*, 85 Ohio App. 3d 232, 619 N.E.2d 503 (1993).

Reasonable efforts to reunify family

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Where a county agency initially sought permanent custody of a father's child, pursuant to RC § 2151.353 it was not required to show reasonable efforts to reunify the child with her father; further, permanent custody with the agency was shown to be in the child's best interests pursuant to RC § 2151.414(E)(13) and (16), as the father had a history of incarcerations and drug addictions, he did not indicate an intention to change his behavior, and the best interest of the child was served by her custody with the agency for purposes of a stable family environment, potentially with the foster family who wished to adopt her. *In re Bodenheimer*, 2006 Ohio App. LEXIS 3143, 2006 Ohio 3253, (2006).

Reasonable efforts under RC § 2151.419(A) toward reunification was inapplicable because the permanent custody hearing was unrelated to RC § 2151.353, rather, the hearing was held under RC § 2151.414 pursuant to a motion made under RC § 2151.413(A). *In re Samples*, 2006 Ohio App. LEXIS 963, 2006 Ohio 1056, (2006).

Trial court's failure to include a reasonable efforts finding in its decision as to a mother's daughters' disposition in a dependency proceeding was harmless error, as she stipulated to the girls' disposition, which was an implicit agreement by her to all aspects of that disposition; however, it was not harmless error to fail to make a reasonable efforts finding with respect to the mother's son, pursuant to RC §§ 2151.419(A)(1), (B)(1), and 2151.353(H), as no such stipulation was made and while she did not object to the

recommended disposition, she never expressly agreed to it. In re Ohm, 2005 Ohio App. LEXIS 3245, 2005 Ohio 3500, (2005).

Evidence relating to the natural mother's parenting history and her inability to comply with prior reunification plans is relevant to a juvenile court's determination of whether to commit a child to the permanent custody of a welfare agency pursuant to RC §§ 2151.35.3 and 2151.41.4. In re Brown, 60 Ohio App. 3d 136, 552 N.E.2d 1217 (1989).

In an action for permanent custody under RC § 2151.35.3(A)(4), permanent custody should only be granted at the initial disposition hearing under extreme situations where reunification is not possible. In re Pachin, 50 Ohio App. 3d 44, 552 N.E.2d 655 (1988).

Revised Code § 2151.41.2 does not require a juvenile court to order a reunification plan when it makes a dispositional order pursuant to RC § 2151.35.3(A)(4). In re Baby Girl Baxter, 17 Ohio St. 3d 229, 17 Ohio B. 469, 479 N.E.2d 257 (1985).

Any time a dependent child is temporarily placed with someone other than a parent, a reunification plan should be formulated. In cases where the child is placed with a relative, pursuant to RC § 2151.35.3(A)(2), the court should formulate the reunification plan itself or appoint an agency with some expertise in the area to formulate one. In re Patterson, 16 Ohio App. 3d 214, 16 Ohio B. 229, 475 N.E.2d 160 (1984).

In a case in which a social welfare agency moves for permanent custody of a child for adoptive placement, if the record reveals that the non-custodial parent has maintained a continuing interest in his or her child's welfare, RC § 2151.41.2(C) places a mandatory duty on the social welfare agency to prepare a comprehensive reunification plan for that non-custodial parent. In re Ball, 5 Ohio App. 3d 56, 5 Ohio B. 152, 449 N.E.2d 490 (1982).

Religion

Trial court did not err in overruling the objections filed by a relative of a child to a magistrate's report that concerned the magistrate's curtailment of the relative's cross-examination of the child's foster mother, who was competing for custody of the child, as to the religious practices of the foster mother and her husband because the foster parents' religious persuasion was irrelevant because the relative still retained parental rights including the right to choose the religion in which the child would be raised. Moreover, it was clear that counsel did not possess a good faith belief that a factual predicate existed for questioning the foster mother about the level of religious observance in her household. In re A. V., 2006 Ohio App. LEXIS 3021, 2006 Ohio 3149, (2006).

Temporary custody

Trial court did not have the authority to grant a third extension of temporary custody because temporary custody of children in the care of a children's services agency was limited to a period of two years—an initial period of one year, followed by up to two extensions of six months each. In re D.J., 2006 Ohio App. LEXIS 6276, 2006 Ohio 6304, (2006).

Despite the fact that the two-year sunset period in RC § 2151.35.3(F) had expired, the trial court retained jurisdiction to enter dispositional orders as to the parties' child since the evidence showed that the child's mother did not substantially mitigate problems which caused the initial order of temporary custody. The evidence showed that the mother suffered from bipolar disorder but did not regularly take her medications, causing her to become physically violent; that the mother worked out of her home as a phone sex operator; and that there was a danger that the child would be present during telephone conversations and would be exposed to sexually oriented material on the mother's computer. In re Shropshire, 2006 Ohio App. LEXIS 3985, 2006 Ohio 4049, (2006).

Trial court did not err in extending an original order of temporary custody for six months, so that a mother could secure appropriate housing and maintain sobriety, as temporary custody could be properly extended so as to exceed a total of two years, as the jurisdictional grant of RC § 2151.35.3(E)(1) was not limited; hence, a judge could enter an order of disposition pursuant to RC § 2151.41.5(A) after the sunset date when the problems that led to the original temporary custody order remained unresolved. In re N.B., 2003 Ohio App. LEXIS 3295, 2003 Ohio 3656, (2003),

criticized by In re D.J., 2006 Ohio 6304, 2006 Ohio App. LEXIS 6276 (Ohio Ct. App., Montgomery County Dec. 1, 2006).

Trial court erred when it terminated an action filed by a county department of job and family services which sought a judgment declaring that a child was dependent, without terminating an order it issued earlier which gave temporary custody of the child to the department. In re Snow, 2004 Ohio App. LEXIS 1361, 2004 Ohio 1532, (2004).

Evidence that mother used prescription drugs heavily and provided drugs to minors, was arrested four times in three years, placed her children at risk, and did not comply with court-ordered drug testing or use social services appropriately supported the trial court's award of temporary custody of the children to social services. In re Barnosky, — Ohio App. 3d —, — N.E. 2d —, 2004 Ohio App. LEXIS 994, 2004 Ohio 1127, (Mar. 9, 2004).

The passing of the statutory time period ("sunset date") pursuant to RC § 2151.35.3(F) does not divest juvenile courts of jurisdiction to enter dispositional orders. In re Young Children, 76 Ohio St. 3d 632, 669 N.E.2d 1140 (1996).

The total time an agency can be granted custody of an abused or dependent child is two years. The court's failure to render a decision within the time limit may violate parental due process rights. In re Omosun Children, 106 Ohio App. 3d 813, 667 N.E.2d 431 (1995).

Where a juvenile court grants temporary custody to a children services agency under RC § 2151.35.3, it has continuing jurisdiction until the child reaches eighteen. In re Doe Children, 93 Ohio App. 3d 134, 637 N.E.2d 977 (1994).

The trial court had authority to grant temporary custody of the delinquent child to the children services board and to order placement in a residential treatment facility. In re Lawson, 98 Ohio App. 3d 456, 648 N.E.2d 889 (1994).

The one year limitation upon a temporary custody order runs from the date of request for temporary custody following a disposition of protective supervision pursuant to the original complaint. In re Ward, 75 Ohio App. 3d 377, 599 N.E.2d 431 (1992).

Where a single parent's diabetes adversely affects her child's care and welfare, a court may grant temporary custody to the human services department. The one-year limit in RC § 2151.35.3(F) cannot be strictly applied. In re Ward, 75 Ohio App. 3d 377, 599 N.E.2d 431 (1992).

A court loses jurisdiction to determine the custody of children after the "sunset" date provided by RC § 2151.35.3. RC § 2151.41.5 authorizes no more than two six month extensions. In re Travis Children, 80 Ohio App. 3d 620, 609 N.E.2d 1356 (1992).

Revised Code § 2151.35.3(B) does not require a public children's services agency to be awarded temporary custody before it can move for permanent custody but rather requires a court to adhere to the procedures of RC § 2151.41.4 before it converts a temporary custody order into a permanent one. In re Burkhart, 1991 Ohio App. LEXIS 3937 (12th Dist. 1991).

When an emergency situation exists, the juvenile court may grant temporary custody of a child to the local Children Services Board in an ex parte proceeding. Parker v. Children Services Bd. of Trumbull Cty., 21 Ohio App. 3d 115, 21 Ohio B. 123, 487 N.E.2d 341 (1984).

If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to RC § 2151.35.4(A)(1) or RC § 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5: OAG No. 2003-004 (2003).

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3, the juvenile court is required to hold periodic reviews pursuant to RC § 2151.41.7 and JuvR 36(A): OAG No. 99-041 (1999).

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

—Termination

Where a natural parent moves to terminate temporary custody in another based on a previous finding of dependency, the parent's present suitability and fitness for the role of parent must be considered in the context of the child's best interests: In re Christopher, 54 Ohio App. 2d 137, 8 Ohio Op. 3d 271, 376 N.E.2d 603 (1977).

Termination of parental rights

Parent who has lost permanent custody of a child does not have standing as a nonparent to file a petition for custody of that child: In re McBride, 110 Ohio St. 3d 19, 850 N.E.2d 43, 2006 Ohio 3454, (2006).

Trial court did not err in terminating a mother's parental rights rather than placing her children in a planned permanent living arrangement pursuant to RC § 2151.353 because the mother suffered from a significant mental problem which interfered with her ability to parent the children, and while the children had a significant bond with the mother, the testimony of the children's case worker and the guardian ad litem established that the children's need for stability was critical. In re Laigle Children, 2006 Ohio App. LEXIS 756, 2006 Ohio 829, (2006).

Grant of permanent custody to a Children Services Board was in the best interest of the children, as the mother's parental rights to her two other children previously had been terminated under RC §§ 2151.353, 2151.414, or 2151.415, and evidence supported the trial court's findings under the RC § 2151.414(D)(1)-(5) factors, as the mother's interactions with her children were poor and had not progressed, she resisted treatment of her borderline personality disorder and continued to abuse crack cocaine, the older child had bonded with the foster family, the children had been in the Board's custody significant portions of their lives and needed a secure placement. In re J.G., 2004 Ohio App. LEXIS 2237, 2004 Ohio 2513, (2004).

Trial court correctly found, under RC § 2151.353(A)(4), that a child could not be returned to the custody of her parents after the parents severely physically abused the child's sibling and, due to severe and chronic mental illness, would be unable to provide the child with an adequate, permanent, home within one year, and, when given the opportunity, did not support, visit, or communicate with the child. In re Lauren P., 2004 Ohio App. LEXIS 1458, 2004 Ohio 1656, (2004).

Termination of a mother's parental rights and award of custody to appellee department of job and family services was affirmed where, inter alia, the child was placed after not being picked up at day care, where a psychologist expressed significant concerns about the mother's ability to provide a safe and nurturing environment for the child, and cited the mother's multiple health problems, low level of intelligence, and potential for personality disturbance as factors which prevented her from providing adequate parental care, where the mother had lost two prior children in permanent custody cases in another county, where the mother had a history of interacting with men who had lost their own children to permanent custody, and/or had criminal histories, and where the mother had moved four times within the last year and one-half, and relied on family members for transportation. In re Huston, 2003 Ohio App. LEXIS 6569, 2003 Ohio 7280, (2003).

Termination of parental rights pursuant to RC § 2151.353(A)(3) based on the factors of RC § 2151.414(E)(2) was an abuse of discretion where the evidence did not support the finding that the mother suffered from a chronic mental illness or retardation so severe that she could not provide an adequate home; she had been capable of caring for herself previously, the examining psychologist recommended custody, and there was no evidence of abuse or neglect. In re Jordan, 2003 Ohio App. LEXIS 5424, 2003 Ohio 6071, (2003).

Order terminating parental rights was not against the manifest weight of the evidence that the mother failed to rectify problems that caused the removal of her two other children, including mental health and anger management issues, domestic violence, and her lack of parenting skills, and that she refused to accept a case plan from a caseworker for her third child. In re Foster, 2003 Ohio App. LEXIS 4561, 2003 Ohio 5053, (2003).

The court did not err by terminating the mother's parental rights where, after the children's father was convicted of sexually molesting them and imprisoned, she took up residence with

another convicted child molester: In re Kutzli, 71 Ohio App. 3d 843, 595 N.E.2d 1026 (1991).

Evidence that the parents were uncooperative with caseworkers from the children's services agency reflects adversely on the parent's ability to care for their children since the parents are fully aware that failure to abide by the agency's guidelines could result in the divestiture of their rights. The evidence that the father had sexually abused the children was overwhelming. The unsuitability of each parent must be considered separately: In re Pieper Children, 74 Ohio App. 3d 714, 600 N.E.2d 317 (1991).

Transfer from another court

When a case concerning a child is transferred or certified from another court, the certification from the transferring court is deemed to be the complaint: In re Snider, 14 Ohio App. 3d 353, 14 Ohio B. 420, 471 N.E.2d 516 (1984).

§ 2151.35.4] § 2151.354 Disposition of unruly child.

(A) If the child is adjudicated an unruly child, the court may:

(1) Make any of the dispositions authorized under section 2151.353 [2151.35.3] of the Revised Code;

(2) Place the child on community control under any sanctions, services, and conditions that the court prescribes, as described in division (A)(3) of section 2152.19 of the Revised Code, provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;

(3) Suspend the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court and suspend the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(4) Commit the child to the temporary or permanent custody of the court;

(5) Make any further disposition the court finds proper that is consistent with sections 2151.312 [2151.31.2] and 2151.56 to 2151.61 of the Revised Code;

(6) If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (3), (4), and (7) of section 2152.19 of the Revised Code that is consistent with sections 2151.312 [2151.31.2] and 2151.56 to 2151.61 of the Revised Code.

(B) If a child is adjudicated an unruly child for committing any act that, if committed by an adult, would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, or a violation of division (B) of section 2917.11 of the Revised Code, in addition to imposing, in its discretion, any other order of disposition authorized by this section, the court shall do both of the following:

(1) Require the child to participate in a drug abuse or alcohol abuse counseling program;

(2) Suspend the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of time prescribed by the court. The court, in its discretion, may terminate the suspension if

the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program as described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license, and the court shall return the permit or license if it terminates the suspension.

(C)(1) If a child is adjudicated an unruly child for being an habitual truant, in addition to or in lieu of imposing any other order of disposition authorized by this section, the court may do any of the following:

(a) Order the board of education of the child's school district or the governing board of the educational service center in the child's school district to require the child to attend an alternative school if an alternative school has been established pursuant to section 3313.533 [3313.53.3] of the Revised Code in the school district in which the child is entitled to attend school;

(b) Require the child to participate in any academic program or community service program;

(c) Require the child to participate in a drug abuse or alcohol abuse counseling program;

(d) Require that the child receive appropriate medical or psychological treatment or counseling;

(e) Make any other order that the court finds proper to address the child's habitual truancy, including an order requiring the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year and including an order requiring the child to participate in a truancy prevention mediation program.

(2) If a child is adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, in addition to any order of disposition authorized by this section, all of the following apply:

(a) The court may require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school attended by the child.

(b) The court may require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program.

(c) The court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being an habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919.24 of the Revised Code.

HISTORY: 133 v H 320 (Eff 11-19-69); 142 v H 643 (Eff 3-17-69); 143 v H 330 (Eff 6-30-69); 143 v H 381 (Eff 7-1-69); 143 v S 131 (Eff 7-25-90); 143 v S 258 (Eff 8-22-90); 144 v H 154 (Eff 7-31-92); 146 v H 274 (Eff 8-8-96); 146 v H 265 (Eff 3-3-97); 147 v S 35 (Eff 1-1-99); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 57 (Eff 2-19-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 400, § 1. Eff 4-3-2003; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58

of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

† The effective date of sections 1 and 2 of Sub. H.B. 57 (149 v —) differs from the effective date set for the sections by section 3 of the Act. See provisions of OConst art II, §§ 1c and d.

Effect of Amendments

S.B. 123, Acts 2002, effective January 1, 2004, deleted "or revoke" following "Suspend" in (A)(3) and (B)(2); in (A)(3), inserted "for a period of time prescribed by the court" twice, deleted "or revoked" preceding "is ineligible for issuance" and "or revocation" following "period of suspension" twice and, in (B)(2), substituted "The court, in its discretion, may terminate the suspension if" for "or, at the discretion of the court, until", "and the court" for "issued to the child, and", and "if it terminates the suspension" for "when the child satisfactorily completes the program", and inserted "as described in this division"; and made minor stylistic changes.

Cross-References to Related Sections

Additional orders of disposition, RC § 2152.19.

Control of conduct of parent, guardian, or custodian, RC § 2151.35.9.

Definitions, RC § 2151.01.1.

Juvenile traffic offender, RC § 2152.02.

Unruly child, RC § 2151.02.2.

Duties and powers of probation department, RC § 2151.14.

Hearing procedure, RC § 2151.35.

Information concerning certain delinquent children, RC § 2152.72.

Notice of intended commitment order, RC § 2151.35.10.

Parent killing other parent, custody order defined, RC § 3109.41.

Place of detention, RC § 2152.26.

Reimbursement of court for costs of children in custody of court, RC § 2151.15.2.

Ohio Rules

Dispositional proceedings, JuvR 29(F), 34, 35.

Relinquishment of jurisdiction, JuvR 30.

Social history, examinations and investigation, JuvR 32.

Ohio Administrative Code

Department of job and family services, division of social services

Adoption. OAC ch. 5101:2-48.

Preparation of child for adoptive placement. OAC 5101:2-48-14.

Children services definition of terms: permanent commitment. OAC 5101:2-1-01.

Substitute care. OAC ch. 5101:2-42.

Authority to assume and retain custody of a child. OAC 5101:2-42-04.

Obtaining permanent custody of child: termination of parental rights. OAC 5101:2-42-95.

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Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Ohio Transaction Guide: Family Law & Forms § 5.21 Placement of Children for Foster Care

CASE NOTES AND OAG

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Case plan

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to RC § 2151.41.2 and to hold semiannual reviews of the case plan pursuant to RC § 2151.41.6: OAG No. 99-041 (1999).

Due process

Any construction of RC § 2151.35.4 that would allow commitment of an "unruly" child to the legal custody of the Ohio youth commission would be a violation of due process of law, and therefore an improper construction. Both the existing juvenile code and the juvenile rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

Placement with youth services department

Upon a determination during reviewing hearings held pursuant to RC § 2151.417 and Ohio R. Juv. P. 36(A) that a juvenile was not benefitting from a residential treatment program that he was originally committed to upon being declared a delinquent pursuant to RC § 2151.35(A)(1) and that he was acting out, a juvenile court's placement of the juvenile with the Department of Youth Services was not error pursuant to RC § 2151.354(5) and (6); the juvenile was not amenable to treatment or rehabilitation due to his conduct at the residential treatment facility. In re D.B., 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

Prior law

Under this section a court may make an order permitting an incorrigible child to make his home with his father on certain days of the week, and with his mother on the remaining days of the week, subject to certain conditions and provided that final judgment of commitment to any other person, place or institution should be suspended as long as such child should comply with such conditions, in the opinion of the judge, without losing jurisdiction of such case; and the court may thereafter remove such child from the custody of its parents and commit it to a county children's home: (decided under former analogous section) *Children's Home v. Fetter*, 90 Ohio St. 110, 106 N.E. 761 (1914).

Temporary custody

If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to RC § 2151.35.4(A)(1) or RC § 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5: OAG No. 2003-004 (2003).

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3, the juvenile court is required to hold periodic reviews pursuant to RC § 2151.41.7 and JuvR 36(A): OAG No. 99-041 (1999).

[SEALING AND EXPUNGEMENT OF RECORDS CONCERNING DELINQUENT AND UNRULY CHILDREN AND JUVENILE TRAFFIC OFFENDERS]

[§ 2151.35.5] · § 2151.355 Definitions.

As used in sections 2151.356 [2151.35.6] to 2151.358 [2151.35.8] of the Revised Code:

(A) "Expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(B) "Seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court.

HISTORY: 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

Not analogous to former RC § 2151.355 (133 v H 320; 133 v H 931; 134 v H 494; 135 v S 324; 135 v H 1067; 136 v H 1196; 137 v H 1; 137 v S 119; 137 v H 565; 139 v H 440; 139 v H 209; 140 v S 210; 142 v H 643; 143 v H 330; 143 v H 381; 143 v H 166; 143 v H 513; 143 v S 131; 143 v H 266; 143 v H 51; 143 v S 258; 144 v H 154; 144 v S 331; 144 v H 725; 145 v H 571; 146 v H 4; 146 v H 1; 146 v S 2; 146 v S 269; 146 v H 274, §§ 1, 4; 146 v H 445; 146 v H 124; 147 v H 215, § 1; 147 v H 215, § 7; 147 v H 1; 147 v H 526, § 1; 147 v S 35; 147 v H 2; 147 v H 526, § 4; 148 v H 3; 148 v S 181; 148 v S 222), repealed 148 v S 179, § 4, eff 1-1-02.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 5.21 Placement of Children for Foster Care

[§ 2151.35.6] § 2151.356 Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders.

(A) The records of a case in which a person was adjudicated a delinquent child for committing a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code shall not be sealed under this section.

(B)(1) The juvenile court shall promptly order the immediate sealing of records pertaining to a juvenile in any of the following circumstances:

(a) If the court receives a record from a public office or agency under division (B)(2) of this section;

(b) If a person was brought before or referred to the court for allegedly committing a delinquent or unruly act and the case was resolved without the filing of a complaint against the person with respect to that act pursuant to section 2151.27 of the Revised Code;

(c) If a person was charged with violating division (E)(1) of section 4301.69 of the Revised Code and the person has successfully completed a diversion program under division (E)(2)(a) of section 4301.69 of the Revised Code with respect to that charge;

(d) If a complaint was filed against a person alleging that the person was a delinquent child, an unruly child, or a juvenile traffic offender and the court dismisses the complaint after a trial on the merits of the case or finds the person not to be a delinquent child, an unruly child, or a juvenile traffic offender;

(e) Notwithstanding division (C) of this section and subject to section 2151.358 [2151.35.8] of the Revised Code, if a person has been adjudicated an unruly child, that person has attained eighteen years of age, and the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.

(2) The appropriate public office or agency shall immediately deliver all original records at that public office or agency pertaining to a juvenile to the court, if the

person was arrested or taken into custody for allegedly committing a delinquent or unruly act, no complaint was filed against the person with respect to the commission of the act pursuant to section 2151.27 of the Revised Code, and the person was not brought before or referred to the court for the commission of the act. The records delivered to the court as required under this division shall not include fingerprints, DNA specimens, and DNA records described under division (A)(3) of section 2151.357 [2151.35.7] of the Revised Code.

(C)(1) The juvenile court shall consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after two years after the later of the following:

(a) The termination of any order made by the court in relation to the adjudication;

(b) The unconditional discharge of the person from the department of youth services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

(2) In making the determination whether to seal records pursuant to division (C)(1) of this section, all of the following apply:

(a) The court may require a person filing an application under division (C)(1) of this section to submit any relevant documentation to support the application.

(b) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.

(c) The court shall promptly notify the prosecuting attorney of any proceedings to seal records initiated pursuant to division (C)(1) of this section.

(d)(i) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings.

(ii) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(iii) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney

and to the person who is the subject of the records under consideration.

(e) After conducting a hearing in accordance with division (C)(2)(d) of this section or after due consideration when a hearing is not conducted, except as provided in division (B)(1)(c) of this section, the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(i) The age of the person;

(ii) The nature of the case;

(iii) The cessation or continuation of delinquent, unruly, or criminal behavior;

(iv) The education and employment history of the person;

(v) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(D)(1)(a) The juvenile court shall provide verbal notice to a person whose records are sealed under division (B) of this section, if that person is present in the court at the time the court issues a sealing order, that explains what sealing a record means, states that the person may apply to have those records expunged under section 2151.358 [2151.35.8] of the Revised Code, and explains what expunging a record means.

(b) The juvenile court shall provide written notice to a person whose records are sealed under division (B) of this section by regular mail to the person's last known address, if that person is not present in the court at the time the court issues a sealing order and if the court does not seal the person's record upon the court's own motion, that explains what sealing a record means, states that the person may apply to have those records expunged under section 2151.358 [2151.35.8] of the Revised Code, and explains what expunging a record means.

(2) Upon final disposition of a case in which a person has been adjudicated a delinquent child for committing an act other than a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code, an unruly child, or a juvenile traffic offender, the juvenile court shall provide written notice to the person that does all of the following:

(a) States that the person may apply to the court for an order to seal the record;

(b) Explains what sealing a record means;

(c) States that the person may apply to the court for an order to expunge the record under section 2151.358 [2151.35.8] of the Revised Code;

(d) Explains what expunging a record means.

(3) The department of youth services and any other institution or facility that unconditionally discharges a person who has been adjudicated a delinquent child, an unruly child, or a juvenile traffic offender shall immediately give notice of the discharge to the court that committed the person. The court shall note the date of discharge on a separate record of discharges of those natures.

HISTORY: 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

Not analogous to former RC § 2151.356, amended and renumbered to RC § 2152.21 by 148 v S 179, eff. 1-1-02.

[§ 2151.35.7] § 2151.357 Effects of order sealing records; index of sealed records; inspection of sealed records.

(A) If the court orders the records of a person sealed pursuant to section 2151.356 [2151.35.6] of the Revised Code, the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, except as provided in division (D) of this section, shall do all of the following:

(1) Order that the proceedings in a case described in divisions (B) and (C) of section 2151.356 [2151.35.6] of the Revised Code be deemed never to have occurred;

(2) Except as provided in division (C) of this section, delete all index references to the case and the person so that the references are permanently irretrievable;

(3) Order that all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected pursuant to section 2152.74 of the Revised Code, and DNA records derived from DNA specimens pursuant to section 109.573 [109.57.3] of the Revised Code, be delivered to the court;

(4) Order each public office or agency, upon the delivering of records to the court under division (A)(3) of this section, to expunge remaining records of the case that are the subject of the sealing order that are maintained by that public office or agency, except fingerprints, DNA specimens, and DNA records described under division (A)(3) of this section;

(5) Send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record;

(6) Seal all of the records delivered to the court under division (A)(3) of this section, in a separate file in which only sealed records are maintained.

(B) Except as provided in division (D) of this section, an order to seal under section 2151.356 [2151.35.6] of the Revised Code applies to every public office or agency that has a record relating to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Except as provided in division (D) of this section, upon the written request of a person whose record has been sealed and the presentation of a copy of the order and compliance with division (A)(3) of this section, a public office or agency shall expunge its record relating to the case, except a record of the adjudication or arrest or taking into custody that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order.

(C) The court that maintains sealed records pursuant to this section may maintain a manual or computerized index of the sealed records and shall make the index available only for the purposes set forth in division (E) of this section.

(1) Each entry regarding a sealed record in the index of sealed records shall contain all of the following:

(a) The name of the person who is the subject of the sealed record;

(b) An alphanumeric identifier relating to the person who is the subject of the sealed record;

(c) The word "sealed";

(d) The name of the court that has custody of the sealed record.

(2) Any entry regarding a sealed record in the index of sealed records shall not contain either of the following:

(a) The social security number of the person who is subject of the sealed record;

(b) The name or a description of the act committed.

(D) Notwithstanding any provision of this section that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under section 2151.356 [2151.35.6] of the Revised Code to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of an adjudication that an individual is a delinquent child may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to division (F) of this section.

(E) Inspection of records that have been ordered sealed under section 2151.356 [2151.35.6] of the Revised Code may be made only by the following persons or for the following purposes:

(1) By the court;

(2) If the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for any valid law enforcement or prosecutorial purpose;

(3) Upon application by the person who is the subject of the sealed records, by the person that is named in that application;

(4) If the records in question pertain to an alleged violation of division (E)(1) of section 4301.69 of the Revised Code, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for the purpose of determining whether the person is eligible for diversion under division (E)(2) of section 4301.69 of the Revised Code;

(5) At the request of a party in a civil action that is based on a case the records for which are the subject of a sealing order issued under section 2151.356 [2151.35.6] of the Revised Code, as needed for the civil action. The party also may copy the records as needed for the civil action. The sealed records shall be used solely in the civil action and are otherwise confidential and subject to the provisions of this section;

(6) By the attorney general or an authorized employee of the attorney general or the court for purposes of determining whether a child is a public registry-qualified juvenile offender registrant, as defined in section 2950.01 of the Revised Code, for purposes of Chapter 2950. of the Revised Code.

(F) No officer or employee of the state or any of its political subdivisions shall knowingly release, disseminate,

nate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to section 2151.356 [2151.35.6] of the Revised Code and the release, dissemination, or making available of which is not expressly permitted by this section. Whoever violates this division is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(G) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest or taking into custody for which the records were sealed. If an inquiry is made in violation of this division, the person may respond as if the sealed arrest or taking into custody did not occur, and the person shall not be subject to any adverse action because of the arrest or taking into custody or the response.

(H) The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication, and no child shall be charged with or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court shall not operate to disqualify a child in any future civil service examination, appointment, or application. Evidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding. Otherwise, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in section 2929.01 of the Revised Code.

HISTORY: 151 v H 137, § 1, eff. 10-12-06; 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

The effective date is set by § 6 of 151 v H 137.

Not analogous to former RC § 2151.357, renumbered to RC § 2151.362 by 151 v H 137, eff. 10-12-06.

Effect of Amendments

152 v S 10, effective July 1, 2007, added (E)(6).

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Cross-examination

Because defendant opened the door to questions regarding his prior juvenile adjudication and attempted to minimize his conduct during that incident, the trial court did not err by allowing the State to cross-examine him about the result of that adjudica-

tion; just as with the instant case, defendant denied hitting the victim with a baseball bat. Given his testimony, the State was entitled to question him further and to bring out the result of the adjudication. *State v. Edwards*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 6944, 2006 Ohio 6987, (Dec. 29, 2006).

School district

When a child was adjudicated to be a delinquent, the record did not support the trial court's order directing a certain school district to bear the cost of educating the child because it did not show that the child's mother was his residential parent and legal custodian when the child was removed from his home or that she lived in the school district when the child was removed, which was the operative date for determining which school district was responsible for the cost of the child's education, under RC § 3313.64(C). *In re Emrick*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 3118, 2006 Ohio 3235, (June 26, 2006).

[§ 2151.35.8] § 2151.358 Expungement of records.

(A) The juvenile court shall expunge all records sealed under section 2151.356 [2151.35.6] of the Revised Code five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier.

(B) Notwithstanding division (A) of this section, upon application by the person who has had a record sealed under section 2151.356 [2151.35.6] of the Revised Code, the juvenile court may expunge a record sealed under section 2151.356 [2151.35.6] of the Revised Code. In making the determination whether to expunge records, all of the following apply:

(1) The court may require a person filing an application for expungement to submit any relevant documentation to support the application.

(2) The court may cause an investigation to be made to determine if the person who is the subject of the proceedings has been rehabilitated to a satisfactory degree.

(3) The court shall promptly notify the prosecuting attorney of any proceedings to expunge records.

(4)(a) The prosecuting attorney may file a response with the court within thirty days of receiving notice of the expungement proceedings.

(b) If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the expungement of the records, the court may order the records of the person that are under consideration to be expunged without conducting a hearing on the application. If the court decides in its discretion to conduct a hearing on the application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(c) If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the expungement of the records, the court shall conduct a hearing on the application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration.

(5) After conducting a hearing in accordance with division (B)(4) of this section or after due consideration

when a hearing is not conducted, the court may order the records of the person that are the subject of the application to be expunged if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (a) The age of the person;
- (b) The nature of the case;
- (c) The cessation or continuation of delinquency, unruly, or criminal behavior;
- (d) The education and employment history of the person;
- (e) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

(C) If the juvenile court is notified by any party in a civil action that a civil action has been filed based on a case the records for which are the subject of a sealing order, the juvenile court shall not expunge a record sealed under section 2151.356 [2151.35.6] of the Revised Code until the civil action has been resolved and is not subject to further appellate review, at which time the records shall be expunged pursuant to division (A) of this section.

(D) After the records have been expunged, the person who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.

HISTORY: 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

Analogous in part to former RC § 2151.358 (133 v H 320 (Eff 11-19-69); 137 v H 315 (Eff 3-15-78); 139 v H 440 (Eff 11-23-81); 140 v H 37 (Eff 6-22-84); 144 v H 27 (Eff 10-10-91); 144 v H 154 (Eff 7-31-92); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 17. Eff 10-11-2002), repealed 151 v H 137, § 2, eff 10-12-06.

Cross-References to Related Sections

Community school, terms of contract between sponsor and governing authority, RC § 3314.03.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Foster caregivers to receive information concerning certain delinquent children; exceptions, RC § 2152.72.

Guidelines for statewide education management information system, RC § 3301.07.14.

Sealing or expungement of fingerprints and photographs, RC § 2151.31.3.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Expungement, JuvR 34(E).

Record restrictions, JuvR 37(B).

Relinquishment of jurisdiction, JuvR 30.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts, juvenile courts, and to be included in individual child care agreement; exception. OAC 5101:2-42-90.

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Generally

There was no error in the admission of a juvenile's guilty plea and juvenile adjudication for complicity to trafficking in crack cocaine in defendant's criminal trial on a charge of, *inter alia*, corruption of a juvenile with drugs in violation of RC § 2925.02(A)(4)(c), as the conviction was not used to impeach the juvenile pursuant to Ohio R. Evid. 609(D) and RC § 2151.358(H), but rather, as substantive evidence of defendant's corruption of the minor by his involvement in the drug conduct. There was no violation of Ohio R. Evid. 803(22) where the juvenile had already admitted in his live testimony that he pled guilty to complicity to drug trafficking and then he tried to recant his statement. *State v. Simmons*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1442, 2007 Ohio 1570, (Mar. 28, 2007).

Trial court did not impinge upon defendant's Sixth Amendment rights of confrontation and compulsory process. The trial court had already provided defendant with the material evidence (regarding the minor victim's violence towards his family) needed to present his fabrication defense, which he used during the victim's cross-examination to impeach him. Not only was defendant able to cross-examine the victim about the motive, but the victim had already testified that he was incarcerated for those fights. *State v. Haverland*, — Ohio App. 3d —, — N.E. 2d —, 2005 Ohio App. LEXIS 6322, 2005 Ohio 6997, (Dec. 30, 2005), reversed in part by 109 Ohio St. 3d 411, 2006 Ohio 2394, 848 N.E.2d 809, 2006 Ohio LEXIS 1395 (2006).

During his trial on charges of murder and aggravated murder, the trial court properly prevented defendant from confronting certain witnesses regarding their prior juvenile adjudications because prior adjudications could not be used to impeach the credibility of a juvenile under Ohio R. Evid. 609(D) and RC § 2151.358(H); defendant did not present a plausible showing of any purpose other than to impeach the testimony of the witnesses. *State v. Higgins*, 2006 Ohio App. LEXIS 5197, 2006 Ohio 5220, (2006).

Trial court properly prevented defendant from cross-examining a State witness with respect to her prior juvenile record, as defendant intended to use that evidence, pursuant to Ohio R. Evid. 404(B), to attack the witness's credibility and character for truthfulness and her general motive to lie, rather than to show bias, for which introduction of such evidence was allowable under the exception to Ohio R. Evid. 609(D) and RC § 2151.358(H). *State v. Braxton*, 2005 Ohio App. LEXIS 2084, 2005 Ohio 2198, (2005).

The court lawfully denied an application for sealing of records where the juvenile vacillated between accepting and denying responsibility for the offenses and refused to admit culpability at the hearing on the application: *In re Anspach*, 136 Ohio App. 3d 535, 737 N.E.2d 115 (2000).

The admissibility of a parent's juvenile record is limited only by the evidence rules, except that it cannot be used to impeach the credibility of the child in any action or proceeding under RC § 2151.35.8(H) and EvR 609(D). Thus, the admissibility of the record to prove a pattern of behavior is left to the discretion of the trial court as a relevancy determination under EvR 401 to 403: *In re Aarika D.*, 1998 Ohio App. LEXIS 2368 (6th Dist. 1998).

Revised Code § 2151.31.8 unambiguously limits the sealing of juvenile records until two years after the termination of a juvenile court's order: *In re Manuel*, 1997 Ohio App. LEXIS 5494 (1997).

Pursuant to EvR 609(D), a juvenile's court records may not be used for the sole purpose of discrediting his character as a witness: *State v. Pirman*, 94 Ohio App. 3d 203, 640 N.E.2d 575 (1994).

Where the defendant testified as to his law abiding character and that of his street gang, the prosecution could properly cross-examine him concerning his juvenile adjudications: *State v. Robinson*, 98 Ohio App. 3d 560, 649 N.E.2d 18 (1994).

Admission of evidence in violation of RC § 2151.35.8 is harmless error where there was overwhelming admissible evidence of defendant's guilt: *State v. Shedrick*, 80 Ohio App. 3d 823, 610 N.E.2d 1147 (1992).

Exclusion of a juvenile record does not violate a defendant's confrontation rights where the evidence would be used only to further a general attack on the witness's credibility: *State v. Willman*, 77 Ohio App. 3d 344, 602 N.E.2d 323 (1991).

Where a witness has testified in a juvenile proceeding, RC § 2151.35.8(H) prohibits that witness from giving essentially the same testimony in any other criminal case or criminal proceeding (*State v. Shedrick* [1991], 59 Ohio St.3d 146, 572 NE2d 59, vacated and clarified.); *State v. Shedrick*, 61 Ohio St. 3d 331, 574 N.E.2d 1065 (1991).

Under RC § 2151.35.8(H), testimony, documents, or exhibits, presented as evidence against a juvenile in a juvenile proceeding, are inadmissible against the juvenile in any other criminal case or criminal proceeding except ones in which the same underlying alleged crime is being adjudicated: *State v. Shedrick*, 61 Ohio St. 3d 331, 574 N.E.2d 1065 (1991).

A defendant charged with contributing to the unruliness of a minor is not entitled to introduce the child's prior juvenile records into evidence in order to prove that she was already unruly prior to the occasion in question. The child may be cross-examined, however, as to such records if they are relevant to establishing bias on the part of the witness: *State v. Lukens*, 66 Ohio App. 3d 794, 586 N.E.2d 1099 (1990).

When a juvenile admits the allegations of a juvenile complaint, evidence of the acts which underlie the allegations is not admissible against the juvenile in a subsequent case or proceeding, except as provided in RC § 2151.35.8(H): *State v. Hall*, 57 Ohio App. 3d 144, 567 N.E.2d 305 (1989).

Evidence of juvenile's prior adjudication of delinquency should not have been admitted since neither sentencing nor probation was involved: *In re Johnson*, 61 Ohio App. 3d 544, 573 N.E.2d 184 (1989).

Evidence of a defendant's prior adjudications of delinquency predicated on petit theft, otherwise not admissible under RC § 2151.35.8(H), is admissible as prior convictions to enhance the degree of a theft offense to grand theft for the purposes of disposition. The prior adjudications become an element of the present offense and must be proved by the state beyond a reasonable doubt (*In re Russell* [1984], 12 Ohio St.3d 304, followed); *In re Hayes*, 29 Ohio App. 3d 162, 29 Ohio B. 191, 504 N.E.2d 491 (1986).

Where there was testimony that a juvenile witness was in the custody of the Ohio youth commission and that he had participated in the crime for which the defendant was being tried, and the defense was able to cross-examine the witness as to his current status and any deals he may have struck with the prosecution, the defense did not have a constitutional right to inquire into prior findings of juvenile delinquency: *Mann v. Gray*, 622 F. Supp. 1225 (N.D. Ohio 1985).

A juvenile court delinquency adjudication cannot be used to impeach the general credibility of a witness under EvR 609, although it may be admissible in particular cases where it has special significance to possible bias of the witness. The restriction against using such evidence for impeachment of general credibility does not contravene an accused's right to confront and cross-examine adverse witnesses: *State v. White*, 6 Ohio App. 3d 1, 6 Ohio B. 23, 451 N.E.2d 533 (1982).

Evidence of acts by a defendant, which is otherwise admissible under RC § 2945.59 and which does not constitute part of a disposition or evidence given in court, is not barred by RC § 2151.35.8, even though the evidence tends to show the commission of another crime by the defendant when a juvenile: *State*

v. Bayless, 48 Ohio St. 2d 73, 2 Ohio Op. 3d 249, 357 N.E.2d 1035 (1976).

Although the general assembly may enact legislation to effectuate its policy of protecting the confidentiality of juvenile records, such enactments may not impinge upon the right of a defendant in a criminal case to present all available, relevant and probative evidence which is pertinent to a specific and material aspect of his defense: *State v. Cox*, 42 Ohio St. 2d 200, 71 Ohio Op. 2d 186, 327 N.E.2d 639 (1975).

Where it is apparent on appeal that a youth who was adjudicated delinquent, knew of his right to expungement and that the statutory time for expungement had not been met, a claim of error on the part of the lower court in not advising the youth of this right will be regarded as frivolous and not prejudicial: *In re Haas*, 45 Ohio App. 2d 187, 74 Ohio Op. 2d 231 (1975).

Under Ohio law, juvenile convictions were inadmissible as evidence in a subsequent criminal prosecution, and such convictions could not be used to enhance punishment. [RC § 2151.35] The use by the prosecution of any prior convictions for whatever purpose is prejudicial and cannot be construed as harmless error. This error is of constitutional dimension and use of such a conviction, at a trial for a subsequent offense, for any purpose leading to a conviction for that subsequent offense is violative of the Fourteenth Amendment: *Workman v. Cardwell*, 60 Ohio Op. 2d 187, 338 F. Supp. 893 (N.D. Ohio 1972).

Where the defense introduces character evidence to the effect that the defendant had never been in any kind of trouble, and where the trial court disallows cross-examination of defendant's witnesses on the subject of prior juvenile court involvement, the introduction of a juvenile record to rebut such evidence is not prejudicial error: *State v. Hale*, 21 Ohio App. 2d 207, 50 Ohio Op. 2d 340, 256 N.E.2d 239 (1969).

Although Ohio law generally protects a minor from the exposure of his acts in another judicial forum, paragraph (G) of RC § 2151.35 does not prohibit the cross-examination, in a criminal trial, of a defendant, or defendant's witnesses, concerning a prior juvenile record, where the defendant's evidence attempts to establish his good character: *State v. Hale*, 21 Ohio App. 2d 207, 50 Ohio Op. 2d 340, 256 N.E.2d 239 (1969).

Under this section a minor, tried and found guilty by a juvenile court on a charge of auto theft, is neither charged with a crime nor convicted of a felony, and the judgment rendered therein is not admissible as evidence against him in any other case or proceeding in any other court: *Beatty v. Riegel*, 115 Ohio App. 448, 21 Ohio Op. 2d 71, 185 N.E.2d 555 (1961).

It is prejudicial error to permit examination of a witness in a negligence action as to convictions and imprisonments with respect to law violations committed in another state, where charges for the offenses involved were heard and disposed of by a juvenile court of such state and, under the laws of such state, denominating a child a criminal because of the adjudication of a juvenile court and denominating such an adjudication a conviction are expressly forbidden: *Mason v. Klaserner*, 114 Ohio App. 171, 19 Ohio Op. 2d 24, 180 N.E.2d 870 (1961).

The fact that the confessions were used in the juvenile court, did not render them inadmissible in the common pleas court, under this section, because there was but one case or proceeding: *State v. Lowder*, 79 Ohio App. 237, 34 Ohio Op. 568, 72 N.E.2d 785 (1946).

When a defendant in a criminal case is permitted to introduce evidence of his life history, he waives the protection of this section, and may be cross-examined with reference to the disposition of any charge preferred against him as a juvenile: *State v. Marinski*, 189 Ohio St. 559, 23 Ohio Op. 50, 41 N.E.2d 387 (1942).

It is prejudicial error to permit cross-examination of a defendant in a criminal case as to the commission of offenses prior to the one for which he is being tried, when such inquiry is predicated upon juvenile court proceedings against him as a juvenile delinquent, examination of this character being within the prohibitions of GC § 1669 [see former RC § 2151.35 (now RC § 2151.35.8)]: *Malone v. State*, 130 Ohio St. 443, 5 Ohio Op. 59, 200 N.E. 473 (1936).

Driving under influence

A prior adjudication as a juvenile traffic offender for violation of RC § 4511.19(A) does not constitute a "conviction" under RC

§ 4511.99(A)(2). As a result, a person convicted of violating RC § 4511.19(A) as an adult may not be sentenced under the enhanced penalty provided by RC § 4511.99(A)(2) because of the previous juvenile adjudication. Nevertheless, the court may consider the previous juvenile adjudication when sentencing the adult offender, in accordance with RC § 2151.35.8(H): *State v. Blogna*, 60 Ohio App. 3d 141, 573 N.E.2d 1223 (1990).

Due process

State's failure to seal juvenile record or to notify defendant of his right to have it sealed did not amount to a violation of the due process clause: *United States v. Inglesi*, 988 F.2d 500 (1993).

Insurance

Criminal acts exclusion in homeowner's policy barred coverage for wrongful death action where insureds' son was adjudicated delinquent notwithstanding the fact that an adjudication of delinquency is not a criminal conviction: *Allstate Ins. Co. v. Cutcher*, 920 F. Supp. 796 (S.D. 1996).

In an action by an insurance company to declare an automobile liability policy void, the admission into evidence of juvenile court records was not prejudicial error where the insured's own testimony disclosed his arrest for driving while under the influence of intoxicating liquor, the suspension of his driver's license, and the payment of a fine: *Allstate Ins. Co. v. Cook*, 26 Ohio Op. 2d 192, 324 F.2d 752 (6th Cir. 1963).

This section, providing that evidence received in the juvenile court is not admissible as evidence against the child in any other case or proceeding or any other court, is not applicable to a proceeding against the alleged insurance carrier of the child on a supplemental petition to enforce the insurer's liability: *Bingham v. Hartman*, 88 Ohio L. Ab. 126, 181 N.E.2d 721 (App 1961).

Public records law

When a record of the adjudication or arrest of a juvenile has been ordered sealed or expunged pursuant to RC § 2151.35.8, such record is not a public record: OAG No. 90-101 (1990).

Sex offender classification

An adjudication of juvenile delinquency based on a sexually oriented offense does not qualify as a prior conviction for purposes of status as a habitual sex offender: *State v. Prether*, 141 Ohio App. 3d 6, 749 N.E.2d 796 (2001).

Sheriff

Pursuant to RC 2953.321, RC 2953.54, and RC 2151.358, a county sheriff may not disclose to the public information in an investigatory work product report that pertains to a case the records of which have been ordered sealed or expunged pursuant to RC 2953.31-.61 or RC 2151.358, but the sheriff must disclose information in the report that relates to a defendant, suspect, or juvenile offender who has not had this information ordered sealed or expunged, unless one of the exceptions set forth in RC 149.43(A) applies to the information: Opinion No. 2003-025, 2003 Op. Atty Gen. Ohio 198 (2003).

Traffic violations generally

The accumulation of twelve or more traffic violation points within a period of two years as a juvenile driver will support a revocation of driving privileges by the registrar pursuant to RC § 4507.40(K) and is not prohibited by RC § 2151.35.8: *Gebell v. Dollison*, 57 Ohio App. 2d 198, 9 Ohio Op. 3d 23, 386 N.E.2d 845 (1978).

[§ 2151.35.9] § 2151.359 Control of conduct of parent, guardian, or custodian.

(A)(1) In any proceeding in which a child has been adjudicated an unruly, abused, neglected, or dependent child, on the application of a party, or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of that individual to the child if the court finds that an order of that type is necessary to do either of the following:

(a) Control any conduct or relationship that will be detrimental or harmful to the child.

(b) Control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made.

(2) The court shall give due notice of the application or motion under division (A) of this section, the grounds for the application or motion, and an opportunity to be heard to the person against whom an order under this division is directed. The order may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or control required by the court.

(B) The authority to make an order under division (A) of this section and any order made under that authority is in addition to the authority to make an order pursuant to division (C)(2) of section 2151.354 [2151.35.4] or division (A)(7)(b) of section 2152.19 of the Revised Code and to any order made under either division.

(C) A person's failure to comply with any order made by the court under this section is contempt of court under Chapter 2705. of the Revised Code.

HISTORY: 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003.

Cross-References to Related Sections

Victim's bill of rights pamphlet, RC § 109.42.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Restraining order, JuvR 34(D).

CASE NOTES AND OAG

Generally

Trial court did not abuse its discretion in ordering a parent, whose children had been placed in protective supervision due to neglect, to submit to drug testing and to allow the department of human services into her home upon reasonable appearance or request; nor did the court exceed its authority in prohibiting the parent's boyfriend from being present when the children are home, where there have been past problems with the boyfriend with whom the mother resided, which have created a danger for the children: *In re Daum*, 1995 Ohio App. LEXIS 1516 (3rd Dist. 1995).

Revised Code § 2151.35.9 authorizes an order that the mother not allow the children to have any contact or communication with the father where the father was found to have abused the children. An order prohibiting any contact between the parents is, however, overly broad and an undue restriction on marital rights. A court may order a parent to submit to drug testing and to waive any privilege concerning her treatment for bipolar disorder and drug abuse: *In re Pieper*, 85 Ohio App. 3d 318, 619 N.E.2d 1059 (1993).

A court should not order a parent to undergo sexual offender therapy as a condition of continued visitation without making any finding that the parent committed abuse: *In re Sarah H.*, 86 Ohio App. 3d 455, 621 N.E.2d 545 (1993).

The juvenile court has no jurisdiction to regulate the conduct of a pregnant adult for the purpose of protecting the health of her unborn child: *Cox v. Franklin Cty. Court of Common Pleas*, 42 Ohio App. 3d 171, 537 N.E.2d 721 (1988).

[§ 2151.35.10] § 2151.3510 Notice of intended commitment order.

Before a juvenile court issues an order of disposition pursuant to division (A)(1) of section 2151.354 [2151.35.4] or 2152.19 of the Revised Code committing

an unruly or delinquent child to the custody of a public children services agency, it shall give the agency notice in the manner prescribed by the Juvenile Rules of the intended dispositional order.

HISTORY: 144 v H 298 (Eff 7-26-91); 146 v H 274 (Eff 8-8-96); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.
=sn [§ 2151.35.11] 2151.3511 Amended and renumbered RC § 2152.81 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2151.35.12] § 2151.3512 Repealed, 148 v S 179, § 4 [146 v H 1; 146 v S 269; 148 v S 181]. Eff 1-1-2002.

This section concerned schedule of fines and costs.

The effective date is set by section 5 of SB 179.

[§ 2151.35.14] § 2151.3514 Alcohol or other drug testing and treatment of parent or other caregiver.

(A) As used in this section:

(1) "Alcohol and drug addiction program" has the same meaning as in section 3793.01 of the Revised Code;

(2) "Chemical dependency" means either of the following:

(a) The chronic and habitual use of alcoholic beverages to the extent that the user no longer can control the use of alcohol or endangers the user's health, safety, or welfare or that of others;

(b) The use of a drug of abuse to the extent that the user becomes physically or psychologically dependent on the drug or endangers the user's health, safety, or welfare or that of others.

(3) "Drug of abuse" has the same meaning as in section 3719.011 [3719.01.1] of the Revised Code.

(4) "Medicaid" means the program established under Chapter 5111. of the Revised Code.

(B) If the juvenile court issues an order of temporary custody or protective supervision under division (A) of section 2151.353 [2151.35.3] of the Revised Code with respect to a child adjudicated to be an abused, neglected, or dependent child and the alcohol or other drug addiction of a parent or other caregiver of the child was the basis for the adjudication of abuse, neglect, or dependency, the court shall issue an order requiring the parent or other caregiver to submit to an assessment and, if needed, treatment from an alcohol and drug addiction program certified by the department of alcohol and drug addiction services. The court may order the parent or other caregiver to submit to alcohol or other drug testing during, after, or both during and after, the treatment. The court shall send any order issued pursuant to this division to the public children services agency that serves the county in which the court is located for use as described in section 340.15 of the Revised Code.

(C) Any order requiring alcohol or other drug testing that is issued pursuant to division (B) of this section shall require one alcohol or other drug test to be conducted each month during a period of twelve consecutive months beginning the month immediately following the month in which the order for alcohol or other drug testing is issued. Arrangements for administering the alcohol or other drug

tests, as well as funding the costs of the tests, shall be locally determined in accordance with sections 340.033 [340.03.3] and 340.15 of the Revised Code. If a parent or other caregiver required to submit to alcohol or other drug tests under this section is not a recipient of Medicaid, the agency that refers the parent or caregiver for the tests may require the parent or caregiver to reimburse the agency for the cost of conducting the tests.

(D) The certified alcohol and drug addiction program that conducts any alcohol or other drug tests ordered in accordance with divisions (B) and (C) of this section shall send the results of the tests, along with the program's recommendations as to the benefits of continued treatment, to the court and to the public children services agency providing services to the involved family, according to federal regulations set forth in 42 C.F.R. Part 2, and division (B) of section 340.15 of the Revised Code. The court shall consider the results and the recommendations sent to it under this division in any adjudication or review by the court, according to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.419 [2151.41.9] of the Revised Code.

HISTORY: 147 v H 484. Eff 3-18-99.

Cross-References to Related Sections

Referral of parent or other caregiver of at-risk child, RC § 340.15.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: chemical dependency. OAC 5101.2-1-01.

CASE NOTES AND OAG

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Admission of drug tests
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Admission of drug tests

Mother's claim that positive drug tests were improperly admitted at trial without expert testimony failed because she did not object to the admission of this evidence at the hearing; regardless, even if the tests were improperly admitted, they were not prejudicial, as her failure to complete 109 of the 122 required tests alone demonstrated her failure to comply with a case plan. In re Davis, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

Number of drug tests allowable

One drug test per month is a required minimum under Ohio Rev. Code Ann § 2151.3514(B), and the statute does not restrict a trial court's authority to order more tests than one test per month for a period of 12 consecutive months. In re Davis, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

Trial court did not violate RC § 2151.3514(B) by ordering a mother to submit to one to two drug tests per week, as it was imperative to determine that she was no longer using crack cocaine in order to determine her child's best interest. In re Davis, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

[DESERTION OF CHILD UNDER 72 HOURS OLD]

§ 2151.35.15 § 2151.3515 Definitions.

As used in sections 2151.3515 [2151.35.15] to 2151.3530 [2151.35.30] of the Revised Code:

(A) "Deserted child" means a child whose parent has voluntarily delivered the child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child.

(B) "Emergency medical service organization," "emergency medical technician-basic," "emergency medical technician-intermediate," "first responder," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(C) "Emergency medical service worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or paramedic.

(D) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(E) "Hospital employee" means any of the following persons:

(1) A physician who has been granted privileges to practice at the hospital;

(2) A nurse, physician assistant, or nursing assistant employed by the hospital;

(3) An authorized person employed by the hospital who is acting under the direction of a physician described in division (E)(1) of this section.

(F) "Law enforcement agency" means an organization or entity made up of peace officers.

(G) "Nurse" means a person who is licensed under Chapter 4723. of the Revised Code to practice as a registered nurse or licensed practical nurse.

(H) "Nursing assistant" means a person designated by a hospital as a nurse aide or nursing assistant whose job is to aid nurses, physicians, and physician assistants in the performance of their duties.

(I) "Peace officer" means a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, or a state highway patrol trooper.

(J) "Physician" and "physician assistant" have the same meanings as in section 4730.01 of the Revised Code.

HISTORY: 148 v H 660. Eff 4-9-2001.

§ 2151.35.16 § 2151.3516 Persons authorized to take possession of deserted child.

The following persons, while acting in an official capacity, shall take possession of a child who is seventy-two hours old or younger if that child's parent has voluntarily delivered the child to that person without the parent expressing an intent to return for the child.

(A) A peace officer on behalf of the law enforcement agency that employs the officer;

(B) A hospital employee on behalf of the hospital that has granted the person privilege to practice at the hospital or that employs the person;

(C) An emergency medical service worker on behalf of the emergency medical service organization that employs the worker or for which the worker provides services.

HISTORY: 148 v H 660. Eff 4-9-2001.

Cross-References to Related Sections

Civil and criminal immunity of parent and of person or entity taking possession of deserted child, RC § 2151.35.23.

Duties of entity or worker taking possession of deserted child, RC § 2151.35.17.

Information materials to be given parents, RC § 2151.35.29.

Parent's right to anonymity, RC § 2151.35.24.

Prohibited activities by person taking possession of deserted child, RC § 2151.35.27.

Ohio Administrative Code

Department of job and family services, division of social services—

PCSA requirements for a deserted child investigation. OAC 5101:2-34-32.1.

[§ 2151.35.17] § 2151.3517 Duties of entity or worker taking possession of deserted child.

(A) On taking possession of a child pursuant to section 2151.3516 [2151.35.16] of the Revised Code, a law enforcement agency, hospital, or emergency medical service organization shall do all the following:

(1) Perform any act necessary to protect the child's health or safety;

(2) Notify the public children services agency of the county in which the agency, hospital, or organization is located that the child has been taken into possession;

(3) If possible, make available to the parent who delivered the child forms developed under section 2151.3529 [2151.35.29] of the Revised Code that are designed to gather medical information concerning the child and the child's parents;

(4) If possible, make available to the parent who delivered the child written materials developed under section 2151.3529 [2151.35.29] of the Revised Code that describe services available to assist parents and newborns;

(5) If the child has suffered a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, attempt to identify and pursue the person who delivered the child.

(B) An emergency medical service worker who takes possession of a child shall, in addition to any act performed under division (A)(1) of this section, perform any medical service the worker is authorized to perform that is necessary to protect the physical health or safety of the child.

HISTORY: 148 v H 660. Eff 4-9-2001.

Cross-References to Related Sections

Duties of public children services agency upon receiving notice of deserted child, RC § 2151.35.18.

Parent may complete medical information forms, RC § 2151.35.25.

Parent may decline informational materials, RC § 2151.35.26.

Parent's right to anonymity, RC § 2151.35.24.

Prohibited activities by person taking possession of deserted child, RC § 2151.35.27.

Ohio Administrative Code

Department of job and family services, division of social services—

PCSA requirements for a deserted child investigation. OAC 5101:2-34-32.1.

[§ 2151.35.18] § 2151.3518 Duties of public children services agency upon receiving notice of deserted child.

On receipt of a notice given pursuant to section 2151.3517 [2151.35.17] of the Revised Code that an emergency medical service organization, a law enforcement agency, or hospital has taken possession of a child and in accordance with rules of the department of job and family services, a public children services agency shall do all of the following:

(A) Consider the child to be in need of public care and protective services;

(B) Accept and take emergency temporary custody of the child;

(C) Provide temporary emergency care for the child, without agreement or commitment;

(D) Make an investigation concerning the child;

(E) File a motion with the juvenile court of the county in which the agency is located requesting that the court grant temporary custody of the child to the agency or to a private child placing agency;

(F) Provide any care for the child that the public children services agency considers to be in the best interest of the child, including placing the child in shelter care;

(G) Provide any care and perform any duties that are required of public children services agencies under section 5153.16 of the Revised Code;

(H) Prepare and keep written records of the investigation of the child, of the care and treatment afforded the child, and any other records required by the department of job and family services.

HISTORY: 148 v H 660. Eff 4-9-2001.

Cross-References to Related Sections

Civil and criminal immunity of parent and of person or entity taking possession of deserted child, RC § 2151.35.23.

Emergency hearing on motion for temporary custody, RC § 2151.35.19.

Ohio Administrative Code

Department of job and family services, division of social services—

PCSA requirements for a deserted child investigation. OAC 5101.2-34-32.1.

[§ 2151.35.19] § 2151.3519 Emergency hearing on motion for temporary custody.

When a public children services agency files a motion pursuant to division (E) of section 2151.3518 [2151.35.18] of the Revised Code, the juvenile court shall hold an emergency hearing as soon as possible to determine whether the child is a deserted child. The court is required to give notice to the parents of the child only if the court has knowledge of the names of the parents. If the court determines at the initial hearing or at any other hearing that a child is a deserted child, the court shall adjudicate the child a deserted child and enter its findings in the record of the case.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.20] § 2151.3520 Temporary custody order.

If a juvenile court adjudicates a child a deserted child, the court shall commit the child to the temporary custody of a public children services agency or a private child

placing agency. The court shall consider the order committing the child to the temporary custody of the agency to be an order of disposition issued under division (A)(2) of section 2151.353 [2151.35.3] of the Revised Code with respect to a child adjudicated a neglected child.

HISTORY: 148 v H 660. Eff 4-9-2001.

Cross-References to Related Sections

Court to treat deserted child as neglected child, RC § 2151.35.21.

Distribution of forms and informational materials, RC § 2151.35.30.

[§ 2151.35.21] § 2151.3521 Court to treat deserted child as neglected child; exception.

A court that issues an order pursuant to section 2151.3520 [2151.35.20] of the Revised Code shall treat the child who is the subject of the order the same as a child adjudicated a neglected child when performing duties under Chapter 2151. of the Revised Code with respect to the child, except that there is a rebuttable presumption that it is not in the child's best interest to return the child to the natural parents.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.22] § 2151.3522 Agency granted temporary custody to treat deserted child or neglected child.

A public children services agency or private child placing agency that receives temporary custody of a child adjudicated a deserted child shall prepare case plans, conduct investigations, conduct periodic administrative reviews of case plans, and provide services for the deserted child as if the child were adjudicated a neglected child and shall follow the same procedures under this chapter in performing those functions as if the deserted child was a neglected child.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.23] § 2151.3523 Civil and criminal immunity of parent and of person or entity taking possession of deserted child.

(A) A parent does not commit a criminal offense under the laws of this state and shall not be subject to criminal prosecution in this state for the act of voluntarily delivering a child under section 2151.3516 [2151.35.16] of the Revised Code.

(B) A person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child is not immune from civil or criminal liability for abuse or neglect.

(C) A person or governmental entity that takes possession of a child pursuant to section 2151.3516 [2151.35.16] of the Revised Code or takes emergency temporary custody of and provides temporary emergency care for a child pursuant to section 2151.3518 [2151.35.18] of the Revised Code is immune from any civil liability that might otherwise be incurred or imposed as a result of these actions, unless the person or entity has acted in bad faith or with malicious purpose. The immunity provided by this division does not apply if the person or govern-

mental entity has immunity from civil liability under section 9.86, 2744.02, or 2744.03 of the Revised Code for the action in question.

(D) A person or governmental entity that takes possession of a child pursuant to section 2151.3516 [2151.35.16] of the Revised Code or takes emergency temporary custody of and provides temporary emergency care for a child pursuant to section 2151.3518 [2151.35.18] of the Revised Code is immune from any criminal liability that might otherwise be incurred or imposed as a result of these actions, unless the person or entity has acted in bad faith or with malicious purpose.

(E) Divisions (C) and (D) of this section do not create a new cause of action or substantive legal right against a person or governmental entity, and do not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law, to which a person or governmental entity may be entitled under circumstances not covered by this section.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.24] § 2151.3524 Parent's right to anonymity.

(A) A parent who voluntarily delivers a child under section 2151.3516 [2151.35.16] of the Revised Code has the absolute right to remain anonymous. The anonymity of a parent who voluntarily delivers a child does not affect any duty imposed under sections 2151.3516 [2151.35.16] or 2151.3517 [2151.35.17] of the Revised Code. A parent who voluntarily delivers a child may leave the place at which the parent delivers the child at any time after the delivery of the child.

(B) Notwithstanding division (A) of this section, a parent who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child does not have the right to remain anonymous and may be subject to arrest pursuant to Chapter 2935. of the Revised Code.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.25] § 2151.3525 Parent may complete medical information forms.

A parent who voluntarily delivers a child under section 2151.3516 [2151.35.16] of the Revised Code may complete all or any part of the medical information forms the parent receives under division (A)(3) of section 2151.3517 [2151.35.17] of the Revised Code. The parent may deliver the fully or partially completed forms at the same time as delivering the child or at a later time. The parent is not required to complete all or any part of the forms.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.26] § 2151.3526 Parent may decline informational materials.

A parent who voluntarily delivers a child under section 2151.3516 [2151.35.16] of the Revised Code may refuse to accept the materials made available under division (A)(4) of section 2151.3517 [2151.35.17] of the Revised Code.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.27] § 2151.3527 Prohibited activities by person taking possession of deserted child.

(A) No person described in section 2151.3516 [2151.35.16] of the Revised Code shall do the following with respect to a parent who voluntarily delivers a child under that section:

(1) Coerce or otherwise try to force the parent into revealing the identity of the child's parents;

(2) Pursue or follow the parent after the parent leaves the place at which the child was delivered;

(3) Coerce or otherwise try to force the parent not to desert the child;

(4) Coerce or otherwise try to force the parent to complete all or any part of the medical information forms received under division (A)(3) of section 2151.3517 [2151.35.17] of the Revised Code;

(5) Coerce or otherwise try to force the parent to accept the materials made available under division (A)(4) of section 2151.3517 [2151.35.17] of the Revised Code.

(B) Divisions (A)(1) and (2) of this section do not apply to a person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.28] § 2151.3528 DNA testing of person seeking reunification with child.

If a child is adjudicated a deserted child and a person indicates to the court that the person is the parent of the child and that the person seeks to be reunited with the child, the court that adjudicated the child shall require the person, at the person's expense, to submit to a DNA test to verify that the person is a parent of the child.

HISTORY: 148 v H 660. Eff 4-9-2001.

[§ 2151.35.29] § 2151.3529 Forms requesting medical information concerning child; information materials to be given parents.

(A) The director of job and family services shall promulgate forms designed to gather pertinent medical information concerning a deserted child and the child's parents. The forms shall clearly and unambiguously state on each page that the information requested is to facilitate medical care for the child, that the forms may be fully or partially completed or left blank, that completing the forms or parts of the forms is completely voluntary, and that no adverse legal consequence will result from failure to complete any part of the forms.

(B) The director shall promulgate written materials to be given to the parents of a child delivered pursuant to section 2151.3516 [2151.35.16] of the Revised Code. The materials shall describe services available to assist parents and newborns and shall include information directly relevant to situations that might cause parents to desert a child and information on the procedures for a person to follow in order to reunite with a child the person delivered under section 2151.3516 [2151.35.16] of the Revised Code, including notice that the person will be required to submit to a DNA test, at that person's expense, to prove that the person is the parent of the child.

(C) If the department of job and family services

determines that money in the putative father registry fund created under section 2101.16 of the Revised Code is more than is needed for its duties related to the putative father registry, the department may use surplus moneys in the fund for costs related to the development and publication of forms and materials promulgated pursuant to divisions (A) and (B) of this section.

HISTORY: 148 v H 660. Eff 4-9-2001; 150 v H 95, § 1, eff. 6-26-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

Effect of Amendments

H.B. 95, Acts 2003, effective June 26, 2003, added (C).

Cross-References to Related Sections

Duties of entity or worker taking possession of deserted child, RC § 2151.35.17.

[§ 2151.35.30] § 2151.3530 Distribution of forms and informational materials.

(A) The director of job and family services shall distribute the medical information forms and written materials promulgated under section 2151.3529 [2151.35.29] of the Revised Code to entities permitted to receive a deserted child, to public children services agencies, and to other public or private agencies that, in the discretion of the director, are best able to disseminate the forms and materials to the persons who are most in need of the forms and materials.

(B) If the department of job and family services determines that money in the putative father registry fund created under section 2101.16 of the Revised Code is more than is needed to perform its duties related to the putative father registry, the department may use surplus moneys in the fund for costs related to the distribution of forms and materials pursuant to this section.

HISTORY: 148 v H 660. Eff 4-9-2001; 150 v H 95, § 1, eff. 6-26-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

Effect of Amendments

H.B. 95, Acts 2003, effective June 26, 2003, added (B).

§ 2151.36 Support of child.

Except as provided in section 2151.361 [2151.36.1] of the Revised Code, when a child has been committed as provided by this chapter or Chapter 2152. of the Revised Code, the juvenile court shall issue an order pursuant to Chapters 3119., 3121., 3123., and 3125. of the Revised Code requiring that the parent, guardian, or person charged with the child's support pay for the care, support, maintenance, and education of the child. The juvenile court shall order that the parents, guardian, or person pay for the expenses involved in providing orthopedic, medical, or surgical treatment for, or for special care of, the child, enter a judgment for the amount due, and enforce the judgment by execution as in the court of common pleas.

Any expenses incurred for the care, support, maintenance, education, orthopedic, medical, or surgical treatment, and special care of a child who has a legal settlement in another county shall be at the expense of the county of legal settlement if the consent of the juvenile judge of the county of legal settlement is first obtained. When the consent is obtained, the board of county commissioners of the county in which the child

has a legal settlement shall reimburse the committing court for the expenses out of its general fund. If the department of job and family services considers it to be in the best interest of any delinquent, dependent, unruly, abused, or neglected child who has a legal settlement in a foreign state or country that the child be returned to the state or country of legal settlement, the juvenile court may commit the child to the department for the child's return to that state or country.

Any expenses ordered by the court for the care, support, maintenance, education, orthopedic, medical, or surgical treatment, or special care of a dependent, neglected, abused, unruly, or delinquent child or of a juvenile traffic offender under this chapter or Chapter 2152. of the Revised Code, except the part of the expense that may be paid by the state or federal government or paid by the parents, guardians, or person charged with the child's support pursuant to this section, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge. The court shall not be responsible for any expenses resulting from the commitment of children to any home, public children services agency, private child placing agency, or other institution, association, or agency, unless the court authorized the expenses at the time of commitment.

HISTORY: GC § 1639-34; 117 v 520; 119 v 731; 121 v 557; Bureau of Code Revision, 10-1-53; 133 v S 49 (Eff 8-13-69); 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-23-75); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 148 v H 471 (Eff 7-1-2000); 148 v S 180 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 27, §§ 1, 3. Eff 3-15-2002.†.

† The effective date for RC § 2151.36, § 3, differs from the effective date set for the section by section 5(A) of SB 27 (149 v —). See provisions of OConst Art II, §§ 1c and d.

The provisions of §§ 5(A) and 8(C) of SB 27 (149 v —) read as follows:

SECTION 5. (A) Sections 3 and 4 of this act shall take effect January 1, 2002.

• • •

SECTION 8.

• • •

(C) Section 2151.36 of the Revised Code is presented in Section 3 of this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Am. Sub. S.B. 180 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in Section 3 of this act.

Cross-References to Related Sections

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination by juvenile judge that truant child is dependent or delinquent, RC § 3321.22.

Dispositional hearing, RC § 2151.35.

Interfering with action to issue or modify support order, RC § 2919.23.1.

Juvenile court proceedings, on failure to send a child to school, RC § 3321.22.

Ohio Rules

Child support, JuvR 34(C).

Ohio Administrative Code

Department of job and family services, division of public assistance—

Child support enforcement agency; Title IV-D cases. OAC ch. 5101:1-29.

Administrative process relative to paternity and child support orders. OAC ch. 5101:1-32.

Administrative rules of agency. OAC ch. 5101:1-31.

Locating absent parents; garnishment and withholding; tax refund offsets. OAC ch. 5101:1-30.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 20.01 Statutory Duty to Support Children

Ohio Transaction Guide: Family Law & Forms § 20.03 Jurisdiction of Courts Regarding Child Support

Ohio Transaction Guide: Family Law & Forms § 20.09 Enforcement of Support Obligations

Practice Checklists

Methods of Obtaining Support Orders, Ohio Transaction Guide: Family Law & Forms § 14.136

CASE NOTES AND OAG

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Generally

Costs of a juvenile's detention in a juvenile facility could be imposed on a parent or guardian, under RC § 2151.36. In re Williams, 2006 Ohio App. LEXIS 4583, 2006 Ohio 4657, (2006).

Child support orders issued pursuant to RC § 2151.36 must be based on the trial court's own determination and must be made part of the record. An appellate court reversed a decision of the trial court that ordered a parent to pay for surgery performed on her son while he was in the temporary custody of the children services board because a child support worksheet was not included in the record. On remand the trial court was directed to hold a hearing to determine if the parent was financially able to pay for the surgery and if the surgery was medically necessary. In re Mundy, 1998 Ohio App. LEXIS 223 (1998).

A juvenile court lacks jurisdiction to order that a delinquent child be cared for in a private mental health facility at the expense of the department of mental health and of an organization of community mental health boards. In re Hoodlet, 72 Ohio App. 3d 115, 593 N.E.2d 478 (1991).

A juvenile court does not possess the authority to require the Ohio department of mental health to pay the psychiatric costs associated with the care of a child who is placed in a private non-public psychiatric institution. Lozano v. Ohio Dep't of Mental Health, 66 Ohio App. 3d 583, 585 N.E.2d 889 (1990).

By the enactment of this section and GC § 1639-57 (RC § 2151.10) the legislature has granted to the juvenile court authority commensurate with its enlarged responsibility for the welfare of neglected, dependent or delinquent children. The court may obligate the county for the payment of expenses necessary to the proper discharge of its responsibility but it is not contemplated that such action will be taken where the welfare of such children is subserved adequately by their commitment to private or municipal institutions that voluntarily assume the

expenses resulting therefrom: Cleveland v. Gorman, 87 Ohio App. 36, 42 Ohio Op. 278, 89 N.E.2d 605 (1949).

Unless a dependent child is committed to an institution designated by this section, or a family home, and in conformity with the juvenile court code, no payment for the care and board of such child is authorized, as there is no commitment under the law: 1937 OAG No. 983 (1937).

Age of majority

Revised Code §§ 2151.01.1 and 2151.36 authorize an order requiring the parents to pay the costs of the child's support up to age twenty-one: In re Hinko, 84 Ohio App. 3d 89, 616 N.E.2d 515 (1992).

Educational costs

The court cannot place a child in a specific school when it commits a child to the department of youth services pursuant to RC § 2151.35.5. The same prohibition applies to the disposition of parole violators. Thus an order requiring the department to pay the child's expenses at an out-of-state school is unlawful: In re Sanders, 72 Ohio App. 3d 655, 595 N.E.2d 974 (1991).

When, pursuant to RC § 2151.35.5, a juvenile court commits a delinquent child to an out-of-state private residential facility, the cost of educating the child is paid with funds from the state subsidy provided in RC § 2151.35.7; if such subsidy is insufficient, any remaining educational expense is to be paid by the court as provided in RC § 2151.36: OAG No. 89-006 (1989).

Where, under division (B) of RC § 2151.35, a juvenile court commits a child to a specialized school in another state, the court, under RC § 2151.36, must itself pay expenses occasioned by the commitment and authorized by the court at the time of commitment, which expenses are paid out of funds appropriated to the court by the board of county commissioners under RC § 2151.10; and pursuant to RC § 2151.36, the court may order the parents, guardian, or person charged with the child's support to reimburse the court for such payments: 1962 OAG No. 2938 (1962).

While the duty rests upon the board of education of a school district in which a juvenile detention home is located to employ and provide such teachers and such incidental facilities as are necessary to furnish instruction to children confined in such home, such board of education may recover from the county commissioners the cost and expense involved in so doing: 1946 OAG No. 1200 (1946).

Legal settlement

Application of RC § 2151.36, regarding a party responsible for the costs of supporting a minor child in detention, turned on the phrase "legal settlement," and this phrase appeared periodically in the Ohio Revised Code, but it was not defined. Several courts construed the phrase to mean living in an area with some degree of permanency greater than a visit lasting a few days or weeks, and RC § 2151.06 stated that a child had the same "legal settlement" as a "legal guardian" or "custodian." In re Williams, 2006 Ohio App. LEXIS 4583, 2006 Ohio 4657, (2006).

Parent's incarceration

Financial circumstances of the parents were irrelevant to whether or not they should have been to pay expenses pursuant to RC § 2151.36. A parent's incarceration did not result in an alteration of that parent's child support, and a trial court properly denied a father's request to suspend his obligation due to his current incarceration. In re Pease, 2006 Ohio App. LEXIS 2622, 2006 Ohio 2785, (2006).

Payment by county

Chapter 7 trustee's objection to a county juvenile court's priority claim for the detention costs for the debtors' child was sustained and the claim was allowed as a general unsecured claim because, pursuant to the pre-Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 version of 11 U.S.C.S. § 507(a)(7), only debts owed to a debtor's spouse, former spouse, or child are entitled to priority. In re Stipes, 2007 Bankr. LEXIS 906 (2007).

When a child in the legal custody of another county's children's services board was found to have violated his probation, RC § 2151.36 did not authorize the trial court to order the board to pay the child's housing costs because, while the board had legal custody of the child and the county in which the board was situated was the child's legal settlement, there was no evidence in

the record that the trial court obtained the consent of the juvenile court for the county in which the board was situated, so the statutory criteria for ordering the board to pay the child's costs were not satisfied. In re Williams, 2006 Ohio App. LEXIS 4583, 2006 Ohio 4657, (2006).

A committing juvenile court may, under this section, at the time of commitment, obligate the county for such expenses as are authorized and approved by the judge of the juvenile court for the care of a delinquent child committed to the department of mental hygiene and correction for placement in a private family home or institution operating under such rules and regulations as are adopted by the department: 1956 OAG No. 7007 (1956).

Where a crippled child has been committed to the division of social administration under GC § 1352-8 (RC § 5103.12), by the juvenile court of a county in which such child does not have legal settlement, the division of social administration is authorized, under such section, to meet the expense of such care from funds allocated from the federal children's bureau to the state of Ohio for the care of crippled children. In such case, in the event that such child has, or subsequently acquires, legal settlement in a county other than the county from which commitment was ordered, the county of legal settlement can be charged with the expense thus incurred only after the consent of the juvenile court of the county of legal settlement has been obtained, as provided in GC § 1639-34 (RC § 2151.36): 1952 OAG No. 1839 (1952).

Where a crippled child has been committed to the division of social administration for care under GC § 1352-8 (RC § 5103.12), and such child has, or subsequently acquires, legal settlement in another county, the committing court should, in the ordinary case, certify such case under GC § 1639-34 (RC § 2151.36), to the juvenile court of such other county for further proceedings. Following such certification, and until the juvenile court of such other county otherwise orders, the division of social administration may continue to extend care to such child under the original order of commitment, and the cost of such care must be borne by the county of legal settlement: 1952 OAG No. 1839 (1952).

Moneys paid into the county welfare board for the support of dependent children, which moneys are collected from the parents of such children, should be paid into the county treasury to the credit of the general fund, such payment amounting to a reimbursement of the county fund for public funds expended for the care of dependent children: 1938 OAG No. 1843 (1938).

The county in which a juvenile court assumes jurisdiction of a child and declares such child to be dependent, will be responsible for the support of such child: 1935 OAG No. 4172 (1935).

Temporary custody

Trial court did not err by ordering parents of a dependent child to pay child support while the child was in the temporary custody of a county agency. In re Day, 2003 Ohio App. LEXIS 3253, 2003 Ohio 3544, (2003).

Termination of parental rights

A child welfare board may not legally request support payments from parents whose children have been taken from them permanently by the courts: OAG No. 66-148 (1966).

Worksheet

The child support worksheet must be completed by the court itself. Deviations from the schedule must be supported by findings of fact. In re Krechting, 108 Ohio App. 3d 435, 670 N.E.2d 1081 (1996).

[§ 2151.36.1] § 2151.361 Order where adopted child is placed into temporary custody or committed.

(A) If the parents of a child enter into an agreement with a public children services agency or private child placing agency to place the child into the temporary custody of the agency or the child is committed as provided by this chapter, the juvenile court, at its discretion, may issue an order pursuant to Chapters 3119., 3121., 3123., and 3125. of the Revised Code requiring that the parents pay for the

care, support, maintenance, and education of the child if the parents adopted the child.

(B) When determining whether to issue an order under division (A) of this section, the juvenile court shall consider all pertinent issues, including, but not limited to, all of the following:

(1) The ability, of the parents to pay for the care, support, maintenance, and education of the child;

(2) The chances for reunification of the parents and child;

(3) Whether issuing the order will encourage the reunification of the parents and child or undermine that reunification;

(4) Whether the problem underlying the agreement to place the child into temporary custody existed prior to the parents' adoption of the child and whether the parents were informed of the problem prior to that adoption;

(5) Whether the problem underlying the agreement to place the child into temporary custody began after the parents' adoption of the child;

(6) Whether the parents have contributed to the child's problems;

(7) Whether the parents are part of the solution to the child's problems.

HISTORY: 149 v S 27. Eff 3-15-2002.

Cross-References to Related Sections

Interfering with action to issue or modify support order, RC § 2919.23.1.

Support of a child, RC § 2151.36.

[§ 2151.36.2] § 2151.362 School district liability for cost of education; state subsidy where placement is in private facility.

(A)(1) In the manner prescribed by division (C)(1) or (2) of section 3313.64 of the Revised Code, as applicable, the court, at the time of making any order that removes a child from the child's own home or that vests legal or permanent custody of the child in a person other than the child's parent or a government agency, shall determine the school district that is to bear the cost of educating the child. The court shall make the determination a part of the order that provides for the child's placement or commitment. That school district shall bear the cost of educating the child unless and until the department of education determines that a different district shall be responsible for bearing that cost pursuant to division (A)(2) of this section. The court's order shall state that the determination of which school district is responsible to bear the cost of educating the child is subject to re-determination by the department pursuant to that division.

(2) If, while the child is in the custody of a person other than the child's parent or a government agency, the department of education determines that the place of residence of the child's parent has changed since the court issued its initial order, the department may name a different school district to bear the cost of educating the child. The department shall make this new determination, and any future determinations, based on evidence received from the school district currently responsible to bear the cost of educating the child. If the department finds that the evidence demonstrates to its satisfaction that the residence of the child's parent has changed since the court issued its initial order under division (A)(1) of this section, or since the department last made a deter-

mination under division (A)(2) of this section, the department shall name the district in which the child's parent currently resides or, if the parent's residence is not known, the district in which the parent's last known residence is located. If the department cannot determine any Ohio district in which the parent currently resides or has resided, the school district designated in the initial court order under division (A)(1) of this section, or in the most recent determination made by the department under division (A)(2) of this section, shall continue to bear the cost of educating the child.

(B) Whenever a child is placed in a detention facility established under section 2152.41 of the Revised Code or a juvenile facility established under section 2151.65 of the Revised Code, the child's school district as determined by the court or the department, in the same manner as prescribed in division (A) of this section, shall pay the cost of educating the child based on the per capita cost of the educational facility within the detention home or juvenile facility.

(C) Whenever a child is placed by the court in a private institution, school, or residential treatment center or any other private facility, the state shall pay to the court a subsidy to help defray the expense of educating the child in an amount equal to the product of the daily per capita educational cost of the private facility, as determined pursuant to this section, and the number of days the child resides at the private facility, provided that the subsidy shall not exceed twenty-five hundred dollars per year per child. The daily per capita educational cost of a private facility shall be determined by dividing the actual program cost of the private facility or twenty-five hundred dollars, whichever is less, by three hundred sixty-five days or by three hundred sixty-six days for years that include February twenty-ninth. The state shall pay seventy-five per cent of the total subsidy for each year quarterly to the court. The state may adjust the remaining twenty-five per cent of the total subsidy to be paid to the court for each year to an amount that is less than twenty-five per cent of the total subsidy for that year based upon the availability of funds appropriated to the department of education for the purpose of subsidizing courts that place a child in a private institution, school, or residential treatment center or any other private facility and shall pay that adjusted amount to the court at the end of the year.

HISTORY: 133 v H 320 (Eff 11-19-69); 133 v S 518 (Eff 7-16-70); 139 v S 140 (Eff 7-1-81); 146 v H 117 (Eff 6-30-95); 148 v S 179, § 3, Eff 1-1-2002; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 137, § 1, eff. 10-12-06; 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is set by § 812.03 of 152 v H 119.

The effective date is set by § 6 of 151 v H 137.

The effective date is set by § 812.03 of 151 v H 530.

The effective date is set by section 5 of SB 179.

Effect of Amendments

152 v H 119, effective September 29, 2007, rewrote (A); and inserted "or the department, in the same manner as prescribed in division (A) of this section" in (B).

151 v H 530, effective June 30, 2006, rewrote (A); and designated the last two paragraphs as (B) and (C).

Publisher's Note:

This section was renumbered from RC § 2151.357 by 151 v H 137, effective October 12, 2006.

Cross-References to Related Sections

Adjudication order permanently excluding pupil from public schools does not relieve district of cost of child's education, RC § 3313.66.2.

Education of handicapped children; school district of residence defined, RC § 3323.01.

Tuition to be paid by district determined by court, RC § 3313.64.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Cost of education, JuvR 34(C).

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Special needs
State subsidy

Generally

Under RC § 2151.35.7, the juvenile court is required to follow RC § 3313.64(C)(2) in determining the school district that is to bear the cost of educating the child; thus, the juvenile court properly found that the Marion City School District was required to pay for a child's tuition where his parents were residing within the district boundaries at the time he was removed from their home: In re Feters, 1998 Ohio App. LEXIS 867 (12th Dist. 1998).

In determining which school district shall bear the cost of educating a delinquent child who has been committed to the permanent custody of the Department of Youth Services, the court, in complying with JuvR 34(C), is to follow the procedure set forth in RC §§ 2151.35.7 and 3313.64(C)(2): Christman v. Washington Court House School Dist., 30 Ohio App. 3d 228, 30 Ohio B. 386, 507 N.E.2d 384 (1986).

Similar earlier proceedings by the Juvenile Court of another county do not prevent a child from thereafter becoming a school resident in a county to which he moves with his family: In re Laricchiuta, 16 Ohio App. 2d 164, 45 Ohio Op. 2d 456, 243 N.E.2d 111 (1968).

The school board of the district in which a child has a school residence at the time of his placement in another district must pay his tuition, whether such placement was by order of court or by the child welfare board in whose care the parent had voluntarily left him: In re Laricchiuta, 16 Ohio App. 2d 164, 45 Ohio Op. 2d 456, 243 N.E.2d 111 (1968).

A mother's continuing receipt of aid to dependent children from one county after moving to another does not prevent her children from becoming school residents of a district in the county to which she moved with them: In re Laricchiuta, 16 Ohio App. 2d 164, 45 Ohio Op. 2d 456, 243 N.E.2d 111 (1968).

A child becomes a "school resident" in a school district as soon as he begins to reside therein as the child or ward of a resident. No specific period of residence is required by RC § 3313.64 to entitle him to free schooling in such district: In re Laricchiuta, 16 Ohio App. 2d 164, 45 Ohio Op. 2d 456, 243 N.E.2d 111 (1968).

Subsequent proceedings by the juvenile court declaring a child neglected will not end the obligation of the district of his school residence to continue paying his tuition: In re Laricchiuta, 16 Ohio App. 2d 164, 45 Ohio Op. 2d 456, 243 N.E.2d 111 (1968).

When a juvenile court commits a neglected child to the temporary custody of a children services board, RC § 2151.35.7 requires the court to determine, in the manner prescribed by RC § 3313.64(C)(2), the school district that is to bear the cost of educating the child. Where the children services board, retaining legal custody of the child, places the child to live with a relative in another state which is a party to the Interstate Compact on the Placement of Children, RC § 5103.20, art. V(A) imposes upon the children services board, as the sending agency, the financial responsibility for assuring payment to the receiving state of the cost of the child's out-of-state public school tuition. In the absence of statutory direction as to the manner in which payment for the receiving state's tuition will be made by the responsible school district, as determined in the manner prescribed by RC § 3313.64(C)(2), the juvenile court may, in the exercise of its

discretion, direct the manner in which payment will be made: OAG No. 89-092 (1989).

If a welfare agency has placed a child in a kindergarten program outside the district of the residence of the child's parents, the parents will be responsible for the tuition if they are able to pay. If they are not able to pay, the welfare agency will be responsible for the tuition, even if the board of education of the parents' residence has made no provision for a kindergarten program: OAG No. 72-099 (1972).

If the juvenile court, pursuant to RC § 2151.35.7, removes a child of kindergarten age from the home of its parents and places it under the custody of a welfare agency, and that agency then places the child in a kindergarten program in a school district other than that of the child's parents, RC § 5153.16(D), places the responsibility for payment of the tuition on the welfare agency: OAG No. 72-099 (1972).

A child of kindergarten age is included within the meaning of the word "child" as it is used in RC § 2151.35.7: OAG No. 72-099 (1972).

A board of education which does not have a kindergarten program as part of its curriculum is neither obligated nor permitted to assume the cost of tuition for a child under six years of age who resides within its district and attends a kindergarten program in another school district: OAG No. 72-099 (1972).

When a county child welfare board assumes control of a school age child and such child is placed by the board in the county children's home or in a foster home, the child's district of school residence prior to the board's assumption of control must pay tuition to another school district in which the child subsequently attends school: OAG No. 66-077 (1966).

Under this section the juvenile court "shall, at time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs": 1963 OAG No. 553 (1963).

Where under RC § 2151.35 a juvenile court commits a child to a specialized school in another state, the court, under RC § 2151.36, must itself pay expenses occasioned by the commitment and authorized by the court at the time of commitment, which expenses are paid out of funds appropriated to the court by the board of county commissioners under RC § 2151.10; and pursuant to RC § 2151.36 the court may order the parents, guardian, or person charged with the child's support to reimburse the court for such payments: 1962 OAG No. 2938 (1962).

Children with disabilities

Under RC § 3313.64(C)(2), the local school district in which the parent of a handicapped child resided at the time that the child was removed from the parent's custody must bear the costs of educating the child: In re Humerick, 137 Ohio App. 3d 45, 738 N.E.2d 31 (2000).

Detention or juvenile facility

Juvenile Rule 34(C) and RC § 2151.35.7 require a court that commits a child to the custody of the Department of Youth Services to determine which school district shall bear the cost of educating the child: OAG No. 88-023 (1988).

Revised Code § 2151.35.7 does not require the school district of residence of a child placed in a detention home by a juvenile court to pay the cost of nonacademic summer activities provided for the child by the detention home: OAG No. 85-028 (1985).

Pursuant to RC § 2151.35.7, when a child is placed in a detention home established under RC § 2151.34, the child's school district, as determined by the court, is responsible for paying the cost of the education of the child (1963 OAG No. 553, p.552, and No. 261, p.326, overruled to the extent that they are inconsistent with this conclusion): OAG No. 80-101 (1980).

Foster care

A foster home is not an educational facility within the meaning of RC § 2151.35.7, and the section has no application to a foster home: OAG No. 70-166 (1970).

Special needs

Revised Code §§ 2151.35.7 and 3313.64(C)(2) do not make any distinctions for children with special needs; both statutes refer to a "child," which would include children with special

needs: In re Feters, 1998 Ohio App. LEXIS 867 (12th Dist. 1998).

State subsidy

When, pursuant to RC § 2151.35.5, a juvenile court commits a delinquent child to an out-of-state private residential facility, the cost of educating the child is paid with funds from the state subsidy provided in RC § 2151.35.7; if such subsidy is insufficient, any remaining educational expense is to be paid by the court as provided in RC § 2151.36: OAG No. 89-006 (1989).

§ 2151.37 Institution receiving children required to make report.

At any time the juvenile judge may require from an association receiving or desiring to receive children, such reports, information, and statements as he deems necessary. He may at any time require from an association or institution reports, information, or statements concerning any child committed to it by such judge under sections 2151.01 to 2151.54, inclusive, of the Revised Code.

HISTORY: GC § 1639-36; 117 v 520(532); Bureau of Code Revision. Eff 10-1-53.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Detention and shelter care, JuvR 7.

§ 2151.38 Duration of dispositional order.

Subject to sections 2151.353 [2151.35.3] and 2151.412 [2151.41.2] to 2151.421 [2151.42.1] of the Revised Code, and any other provision of law that specifies a different duration for a dispositional order, all dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

HISTORY: GC § 1639-35; 117 v 520; 121 v 557; Bureau of Code Revision, 10-1-53; 130 v 625 (Eff 10-7-63); 133 v S 49 (Eff 8-13-69); 133 v H 320 (Eff 11-19-69); 138 v H 695 (Eff 10-24-80); 139 v H 1 (Eff 8-5-81); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 144 v S 241 (Eff 4-9-93); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 145 v H 314 (Eff 9-29-94); 146 v H 1 (Eff 1-1-96); 146 v H 124 (Eff 3-31-97); 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v H 3 (Eff 11-22-99); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Definitions, RC § 2151.01.1.

Notice of acquittal or conviction or of juvenile court dismissal or delinquency adjudication, RC § 2930.12.

Notice of juvenile's commitment, RC § 2930.16.

Victim's bill of rights pamphlet, RC § 109.42.

Victim's statement prior to granting of judicial or early release, RC § 2930.17.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Motions, JuvR 19, 22.

Ohio Administrative Code

Department of youth services —

Release and discharge procedures. OAC ch. 5139-68.

Disposition investigation report and transfer of physical custody. OAC 5139-68-02.

Release authority. OAC 5139-68-03.

Comparative Legislation

When jurisdiction ceases:

CA—Cal Wel & Inst Code §§ 362.4, 388, 778

FL—Fla. Stat. § 985.201
 IL—705 ILCS §§ 405/2-31, 405/3-32, 405/4-29
 IN—Burns Ind. Code Ann. § 31-30-2-1
 MI—MCL § 712A.2a
 NY—NY CLS Family Ct Act §§ 360.1, 631 et seq, 756
 PA—42 P.S. §§ 6331, 6332, 6341

CASE NOTES AND OAG

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Constitutionality

This section, providing that the jurisdiction of the juvenile court with respect to a child shall cease when such child is committed to the permanent care of an institution is constitutional: *State v. Clevenger*, 19 Ohio App. 2d 306, 48 Ohio Op. 2d 416, 251 N.E.2d 159 (1969).

Age of majority

Where an adjudicated delinquent child becomes twenty-one years of age during the pendency of appeals from his adjudication, all jurisdiction of the juvenile court terminates by operation of RC § 2151.38 so that the court has no authority even to vacate its previous order of commitment, which was suspended by an appellate court: *In re J.F.*, 17 Ohio Misc. 40, 46 Ohio Op. 2d 49, 242 N.E.2d 604 (JC 1968).

Applicability

Revised Code § 2151.38 is not applicable to, nor does it bar the filing of, a motion to vacate the required judicial consent to an agreement surrendering permanent custody of a child to a county children services board pursuant to RC §§ 5103.15 and 5153.16(B): *In re Miller*, 61 Ohio St. 2d 184, 15 Ohio Op. 3d 211, 399 N.E.2d 1262 (1980).

Juvenile Court consent to an agreement surrendering permanent custody of a child to a county children services board, pursuant to RC §§ 5103.15 and 5153.16(B), is not an adversary proceeding, nor is such judicial consent a "commitment" of the child into the board's custody for purposes of RC § 2151.38: *In re Miller*, 61 Ohio St. 2d 184, 15 Ohio Op. 3d 211, 399 N.E.2d 1262 (1980).

Commitment to agency

Children committed by a juvenile court to a county department of welfare (human services) pursuant to RC Chapter 2151., either permanently or temporarily, remain the responsibility of the department until they reach the age of twenty-one, unless the court, upon a proper application, terminates the order of commitment at an earlier date: OAG No. 75-035 (1975).

Continuing jurisdiction

Juvenile court's transfer of a delinquent juvenile's placement from a residential treatment program to the Division of Youth Services was within the court's authority under RC § 2152.16(A)(1), as it had continuing jurisdiction once the juvenile was adjudicated as delinquent pursuant to RC §§ 2151.23 and 2151.38: *In re D.B.*, 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful:

In re Gillespie, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

It is apparent from this section that the juvenile court's jurisdiction of a child continues until the child is twenty-one years of age: *Calogeras v. Calogeras*, 82 Ohio L. Ab. 438, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (JC 1959).

Court's release of child

A juvenile court has no authority pursuant to RC § 2151.38(B) or (C) to release a child committed to the Department of Youth Services under RC § 2151.35.5(A)(4)-(6) for institutional care after expiration of the applicable minimum period of institutionalization. The effect of RC § 2151.38(A), therefore, is that the juvenile court's jurisdiction to release a child terminates when the child has completed the minimum period of institutionalization: OAG No. 93-079 (1993).

If a request for early release is made pursuant to one of the procedures specified in RC § 2151.38(B) prior to expiration of the minimum period of institutionalization imposed under RC § 2151.35.5(A)(4)-(6), and the hearing is rescheduled or continued beyond the expiration of the minimum period of institutionalization, the juvenile court does not acquire or retain jurisdiction to grant an early release after that date. The court's jurisdiction over releases after the minimum period of confinement is limited to that set out in RC § 2151.38(C): OAG No. 93-079 (1993).

Credit for time served

An adjudged delinquent who is confined as an adult in an adult jail may be granted credit for time served while waiting his dispositional hearing: *In re Smith*, 32 Ohio App. 3d 82, 513 N.E.2d 1387 (1986).

Due process

Revised Code § 2151.38, which establishes the parole provisions for juveniles in Ohio, comports with the requirements of the due process clause, and does not mandate a full-scale adversarial adjudicatory hearing in juvenile parole revocation cases: *In re Long*, 24 Ohio App. 3d 32, 24 Ohio B. 55, 492 N.E.2d 878 (1985).

Educational costs

The court cannot place a child in a specific school when it commits a child to the department of youth services pursuant to RC § 2151.35.5. The same prohibition applies to the disposition of parole violators. Thus an order requiring the department to pay the child's expenses at an out-of-state school is unlawful: *In re Sanders*, 72 Ohio App. 3d 655, 595 N.E.2d 974 (1991).

Home furlough

Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility under RC § 2151.35.5(A)(4) or (5), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the expiration of the minimum period prescribed by the statutory provision under which he was committed, unless the court which committed the child approves of such early release in accordance with RC § 2151.38(B); once such a child has been institutionalized or institutionalized in a secure facility for the minimum period prescribed by the statutory provision under which he was committed, the Department may, in accordance with RC §§ 2151.38(C) and 5139.06, allow the child to leave the institution in which he was placed and return home, without prior approval of the court which committed the child: OAG No. 88-062 (1988).

Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization in a secure facility under RC § 2151.35.5(A)(6), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the child's attainment of the age of twenty-one years, unless the court which committed the child approves of such early release in accordance with RC § 2151.38(B): OAG No. 88-062 (1988).

Parole revocation

The determination of whether a violation of the terms and conditions of a juvenile's parole constitutes a serious violation for purposes of revoking that parole is to be made at the discretion of the trial court: *In re Long*, 24 Ohio App. 3d 32, 24 Ohio B. 55, 492 N.E.2d 878 (1985).

Payment by county

When a juvenile court acquires jurisdiction over a dependent child the jurisdiction continues until the child becomes twenty-one years of age, regardless of the residence of the parents; the county in which such court is situated is responsible for its support: 1937 OAG No. 891 (1937).

Permanent award to agency

The juvenile court's jurisdiction is terminated where a child is committed permanently to the county child welfare board and such fact requires a dismissal of an application for modification and change of custody by the child's mother: *In re Howell*, 74 Ohio L. Ab. 217, 140 N.E.2d 347 (JC 1956).

§ 2151.39 Placement of children from other states.

No person, association or agency, public or private, of another state, incorporated or otherwise, shall place a child in a family home or with an agency or institution within the boundaries of this state, either for temporary or permanent care or custody or for adoption, unless such person or association has furnished the department of job and family services with a medical and social history of the child, pertinent information about the family, agency, association, or institution in this state with whom the sending party desires to place the child, and any other information or financial guaranty required by the department to determine whether the proposed placement will meet the needs of the child. The department may require the party desiring the placement to agree to promptly receive and remove from the state a child brought into the state whose placement has not proven satisfactorily responsive to the needs of the child at any time until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the department. All placements proposed to be made in this state by a party located in a state which is a party to the interstate compact on the placement of children shall be made according to the provisions of sections 5103.20 to 5103.22 of the Revised Code.

HISTORY: GC § 1639-37; 117 v 520; Bureau of Code Revision, 10-1-53; 126 v 1165 (Eff 10-17-55); 136 v H 247 (Eff 1-1-76); 141 v H 428 (Eff 12-23-86); 148 v H 471. Eff 7-1-2000; 151 v S 238, § 1, eff. 9-21-06.

The effective date is set by section 12(A) of HB 471.

Effect of Amendments

151 v S 238, effective September 21, 2006, corrected internal references.

Cross-References to Related Sections

Enforcement of child placing, adoption provisions, RC § 5103.14.

Free schooling for residents or pursuant to agreement between superintendents, RC § 3313.64.

Ohio Rules

Social history, examinations and investigation, JuvR 32.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: requirements applicable to interstate placements of children into or from Ohio; compact and noncompact states. OAC 5101:2-42-20 et seq.

§ 2151.40 Cooperation with court.

Every county, township, or municipal official or department, including the prosecuting attorney, shall render all assistance and co-operation within his jurisdictional power which may further the objects of sections 2151.01 to 2151.54 of the Revised Code. All institutions or agencies to which the juvenile court sends any child shall give to the court or to any officer appointed by it such information concerning such child as said court or officer requires. The court may seek the co-operation of all societies or organizations having for their object the protection or aid of children.

On the request of the judge, when the child is represented by an attorney, or when a trial is requested the prosecuting attorney shall assist the court in presenting the evidence at any hearing or proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child or juvenile traffic offender.

HISTORY: GC § 1639-55; 117 v 520; Bureau of Code Revision, 10-1-53; 133 v H 320 (Eff 11-19-69); 136 v H 85. Eff 11-28-75.

Ohio Rules

Attorney cooperation, JuvR 29(E).

Avoiding court action, JuvR 9(A).

Social history; examination, JuvR 32.

CASE NOTES AND OAG**Confidentiality of information**

Where no fingerprints or photographs of a juvenile have been taken in connection with a first-time drug or alcohol offense, a law enforcement agency may share with other law enforcement agencies or local schools personal information regarding such offenses by a juvenile, as the law enforcement agency deems such sharing appropriate to carry out its duties and to promote the goals of RC Chapter 2151., including the prevention and control of juvenile delinquency: OAG No. 87-010 (1987).

§ 2151.41 Repealed, 141 v H 349, § 2 [GC § 1639-45; 117 v 520; Bureau of Code Revision, 10-1-53; 133 v H 320]. Eff 3-6-86.

This section concerned abusing or contributing to delinquency of a child. See now RC § 2919.24.

[§ 2151.41.1] § 2151.411 Repealed, 148 v S 179, § 4 [127 v 21; 143 v S 258; 143 v S 3; 146 v H 4; 146 v H 124; 148 v H 448]. Eff 1-1-2002.

This section concerned parent or custodian charged with control of child; liability and searches during probation period; order to exercise control.

The effective date is set by section 5 of SB 179.

[§ 2151.41.2] § 2151.412 Case plan for each child; changes; priorities.

(A) Each public children services agency and private child placing agency shall prepare and maintain a case plan for any child to whom the agency is providing services and to whom any of the following applies:

(1) The agency filed a complaint pursuant to section 2151.27 of the Revised Code alleging that the child is an abused, neglected, or dependent child;

(2) The agency has temporary or permanent custody of the child;

(3) The child is living at home subject to an order for protective supervision;

(4) The child is in a planned permanent living arrangement.

Except as provided by division (A)(2) of section 5103.153 [5103.15.3] of the Revised Code, a private child placing agency providing services to a child who is the subject of a voluntary permanent custody surrender agreement entered into under division (B)(2) of section 5103.15 of the Revised Code is not required to prepare and maintain a case plan for that child.

(B)(1) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the content and format of case plans required by division (A) of this section and establishing procedures for developing, implementing, and changing the case plans. The rules shall at a minimum comply with the requirements of Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 671 (1980), as amended.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code requiring public children services agencies and private child placing agencies to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not required by division (A) of this section. The agencies shall maintain case plans as required by those rules; however, the case plans shall not be subject to any other provision of this section except as specifically required by the rules.

(C) Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. If the agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child.

(D) Any agency that is required by division (A) of this section to prepare a case plan shall attempt to obtain an agreement among all parties, including, but not limited to, the parents, guardian, or custodian of the child and the guardian ad litem of the child regarding the content of the case plan. If all parties agree to the content of the case plan and the court approves it, the court shall journalize it as part of its dispositional order. If the agency cannot obtain an agreement upon the contents of the case plan or the court does not approve it, the parties shall present evidence on the contents of the case plan at the dispositional hearing. The court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(E)(1) All parties, including the parents, guardian, or custodian of the child, are bound by the terms of the

journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

(2) Any party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 [2151.41.7] of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(3) If an agency has reasonable cause to believe that a child is suffering from illness or injury and is not receiving proper care and that an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm, to believe that a child is in immediate danger from the child's surroundings and that an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm to the child, or to believe that a parent, guardian, custodian, or other member of the child's household has abused or neglected the child and that the child is in danger of immediate or threatened physical or emotional harm from that person unless the agency makes an appropriate change in the child's case plan, it may implement the change without prior agreement or a court hearing and, before the end of the next day after the change is made, give all parties, the guardian ad litem of the child, and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency shall file a statement of the change with the court and give notice of the filing accompanied by a copy of the statement to all parties and the guardian ad litem. All parties and the guardian ad litem shall have ten days from the date the notice is sent to object to and request a hearing on the change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section

2151.417 [2151.41.7] of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency shall continue to administer the case plan with the change after the hearing, if the court approves the change. If the court does not approve the change, the court shall make appropriate changes to the case plan and shall journalize the case plan.

(b) If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it shall journalize the case plan with the change within fourteen days after receipt of the change. If the court does not approve the change to the case plan, it shall schedule a hearing under section 2151.417 [2151.41.7] of the Revised Code to be held no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child.

(F)(1) All case plans for children in temporary custody shall have the following general goals:

(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the general goals of case plans for children subject to dispositional orders for protective supervision, a planned permanent living arrangement, or permanent custody.

(G) In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

(1) A child who is residing with or can be placed with the child's parents within a reasonable time should remain in their legal custody even if an order of protective supervision is required for a reasonable period of time;

(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the child, the child should be placed in the legal custody of a suitable member of the child's extended family;

(3) If a child described in division (G)(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable nonrelative who shall be made a party to the proceedings after being given legal custody of the child;

(4) If the child has no suitable member of the child's extended family to accept legal custody of the child and no suitable nonrelative is available to accept legal custody of the child and, if the child temporarily cannot or should not be placed with the child's parents, guardian, or custodian, the child should be placed in the temporary

custody of a public children services agency or a private child placing agency;

(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable nonrelative is available to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child placing agency;

(6) If the child is to be placed for adoption or foster care, the placement shall not be delayed or denied on the basis of the child's or adoptive or foster family's race, color, or national origin.

(H) The case plan for a child in temporary custody shall include at a minimum the following requirements if the child is or has been the victim of abuse or neglect or if the child witnessed the commission in the child's household of abuse or neglect against a sibling of the child, a parent of the child, or any other person in the child's household:

(1) A requirement that the child's parents, guardian, or custodian participate in mandatory counseling;

(2) A requirement that the child's parents, guardian, or custodian participate in any supportive services that are required by or provided pursuant to the child's case plan.

(I) A case plan may include, as a supplement, a plan for locating a permanent family placement. The supplement shall not be considered part of the case plan for purposes of division (D) of this section.

HISTORY: 142 v H 403 (Eff 1-1-89); 146 v H 274 (Eff 8-5-96); 146 v H 419 (Eff 9-18-96); 147 v H 494 (Eff 3-18-99); 148 v H 471. Eff 7-1-2000.

Analogous to former RC § 2151.41.2 (138 v H 695; 141 v H 428; 142 v H 399; 142 v S 89), repealed, 142, v H 403, § 2, eff 1-1-89.

The effective date is set by section 12(A) of HB 471.

Cross-References to Related Sections

Administrative reviews of case plan, RC § 2151.41.6.

Agreement for temporary custody or surrender of permanent custody, RC § 5103.15.

Periodic review hearings of agreement, RC § 5103.15.3.

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Court control of child following commitment to department; judicial release, RC § 2152.22.

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Disposition of abused, neglected or dependent child; court to journalize case plan, RC § 2151.35.3.

Duration of dispositional order, RC § 2151.38.

Foster caregivers to receive information concerning certain delinquent children, RC § 2152.72.

Hearing on motion for permanent custody, RC § 2151.41.4.

Privileged communications, RC § 2317.02.

Protective day-care defined, RC § 5104.01.

Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.
Time-limited cash assistance under self-sufficiency contract; assistance group eligibility, RC § 5107.10.

Ohio Rules

Child support, JuvR 34(C).
Dispositional proceedings, JuvR 29(F), 34, 35(A).

Ohio Administrative Code

Case plan; case plan document; requirements for—
Child care agencies—
PCPA and PNA case plans and administrative case reviews for direct placements. OAC 5101:2-5-34.
Children in custody or under court-ordered protective supervision of—
Private child placing agency (PCPA). OAC 5101:2-39-10 et seq.
Public children services agency (PCSA) OAC 5101:2-39-08.1.
Forms and documents—
“Case Plan Document,” form 1444. OAC 5101:2-39-51.
“Child’s Education and Health Information,” form 1443. OAC 5101:2-39-082.
Publicly funded child care program. OAC 5101:2-16-30.
Substitute care. OAC ch. 5101:2-42.
Information to be provided to caregivers, etc., and to be included in individual child care agreement; when. OAC 5101:2-42-90.
Procedural requirements regarding change of placement or visitation plan prior to journalization of case plan. OAC 5101:2-42-93.
Supportive services. OAC 5101:2-39-07.
In-home supportive services; no court order. OAC 5101:2-39-08.
Removal of a child from his own home. OAC 5101:2-39-12 et seq.
Children services definition of terms: case plan; service plan. OAC 5101:2-1-01.

Comparative Legislation

Child custody plans:
CA—Cal Wel & Inst Code § 360 et seq
FL—Fla. Stat. § 39.508 et seq
IL—705 ILCS §§ 405/2-23, 405/3-24, 405/4-21
IN—Burns Ind. Code Ann. § 31-34-15-1
KY—KRS § 620.230
MI—MCLS § 712A.24
NY—NY CLS Family Ct Act § 353.5, 756
PA—42 P.S. §§ 6351, 6352

Practice Guides

Anderson’s Ohio Probate Practice and Procedure § 49.09 Age or race of adoptive parent as affecting suitability to adopt

Practice Forms

Order of Magistrate Appointing Guardian Ad Litem in Proceeding Involving Abuse or Neglect 1, 14 OH Forms of Pleading & Practice — Probate Form J4:6

CASE NOTES AND OAG

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Generally

Trial court did not err in determining that neither a grand-

mother nor an aunt were suitable placements for a father’s 10 children after it determined that his parental rights were to be terminated, and its award to a county social service agency of permanent custody of the children was proper, as relative placement was given appropriate consideration pursuant to RC §§ 2151.353(A)(3), 2151.414(D), and 2151.412(G), to the extent the latter statute was applicable, and neither relative was suitable based on a variety of considerations and factors, as well as their custodial history with these and other children. *In re Hilyard*, 2006 Ohio App. LEXIS 1807, 2006 Ohio 1965, (2006).

Court rejected a father’s contention that a family services agency did not use reasonable efforts to assist him in completing his case plan because the evidence showed that the father was provided with a case plan that required him to enroll in a long term batterer’s treatment program, to undergo extensive outpatient treatment for substance abuse problems, to submit to weekly urine screens, to complete parenting classes, and to obtain employment. The father, however, failed to do comply with the case plan. *In re Davidson-Rush*, 2006 Ohio App. LEXIS 4781, 2006 Ohio 4873, (2006).

Permanent custody of a mother’s three children was properly granted to family services agency as the award was in the children’s best interests. Since the children’s grandparents had little contact with the children, since the children had been doing well with their foster parents, who wished to adopt them, and since placement with the grandparents would have facilitated the mother and father with continued involvement with the children which could place the children in danger, the trial court did not err in failing to place the children with their grandparents under RC § 2151.412(G). *In re Bodenheimer*, 2006 Ohio App. LEXIS 3131, 2006 Ohio 3245, (2006).

Trial court did not abuse its discretion by finding, in a custody proceeding involving a minor child’s relative and the child’s foster mother, that considerations related to stability and continuity of care were overriding factors especially where the child had been raised since birth by the same foster family that was seeking legal custody, and notwithstanding the fact both parties seeking legal custody appeared to be suitable custodians. While placement with a suitable family member was one factor to consider under RC § 2151.412(G), it was not dispositive. *In re A. V.*, 2006 Ohio App. LEXIS 3021, 2006 Ohio 3149, (2006).

Father’s contention that a trial court erred by failing to comply with RC § 2151.412(G)(5) before granting permanent custody of the father’s child to a children’s services agency was rejected because there is no requirement that a trial court consider this statute in determining whether to grant permanent custody as the statute deals with the creation and implementation of a case plan, not the determination of whether to grant permanent custody of a child to an agency. Even so, neither the father nor any of his family members filed a motion with the trial court requesting that the trial court grant them custody. *In re Alexander*, 2006 Ohio App. LEXIS 7005, 2006 Ohio 7083, (2006).

Failure to include a child’s father in a case plan concerning the child was not fatal, under RC § 2151.412(F)(1)(b), because the father was included in a substantially similar case plan in a previous case regarding the child’s siblings and half sibling, and, although he completed that case plan’s objectives, he refused to acknowledge the problem which barred the subject child’s safe return home. *In re Hortsmann*, 2005 Ohio App. LEXIS 2089, 2005 Ohio 2168, (2005).

Language of RC § 2151.412, regarding placing a child who has been abandoned, of whom custody has been relinquished, or whose parents are incapable of caring for the child or have a detrimental effect on the health, safety and best interest of the child, with a public children’s services agency or a private child placement agency is precatory rather than mandatory, and sets forth criteria a court should consider in determining placement of the child. *In re Gaugler*, 2004 Ohio App. LEXIS 3756, 2004 Ohio 4114, (2004).

RC § 2151.412(G), regarding placing custody of an abused or neglected child with an extended family member, sets out general, discretionary priorities to guide the court, and while the guidelines may be helpful to the juvenile court, it is not obligated to follow them. *In re Halstead*, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Language of RC § 2151.412(G) indicating a preference for

awarding custody of a child to a relative before a non-relative is precatory, not mandatory. In *re Halstead*, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Trial court did not abuse its discretion in failing to grant custody of the child to the grandmother, and in terminating all parental rights as to her grandchild, because, although she was considered, she was found to be of borderline intelligence, had some health problems, no job, and had a history of domestic violence and sexual abuse in her home. In *re Cohoon*, 2004 Ohio App. LEXIS 4020, 2004 Ohio 4430, (2004).

RC § 2151.412 requires a public children's service agency to prepare and maintain a case plan for any child for which the agency has temporary or permanent custody; in an action to grant permanent custody to a county agency of two minor children, despite the fact that the county agency did not complete a case plan for the children's father, the father was not prejudiced by any failure to file a case plan, and therefore, had no standing to appeal. In *re McCann*, 2004 Ohio App. LEXIS 260, 2004 Ohio 283, (2004).

The court's failure to journalize the case plan constituted harmless error. In *re Brown*, 142 Ohio App. 3d 193, 755 N.E.2d 365 (2001).

A parent has standing to assert that custody should have been granted to a relative rather than permanently to a children services agency. RC § 2151.41.2 does not require a court to favor a relative, rather than the children services agency, in granting custody. In *re Hiatt*, 86 Ohio App. 3d 716, 621 N.E.2d 1222 (1993).

Where evidence showed that agency had formulated and followed a case plan, lower court's failure to adopt and journalize plan was harmless error. In *re Beasley*, 1993 Ohio App. LEXIS 5410 (1993).

There is no need to implement a reunification plan when it would be futile to do so: *Elmer v. Lucas Cty. Children Serv. Bd.*, 36 Ohio App. 3d 241, 523 N.E.2d 540 (1987).

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to RC § 2151.41.2 and to hold semiannual reviews of the case plan pursuant to RC § 2151.41.6: OAG No. 99-041 (1999).

Applicability

Where a grandmother filed a dependency petition regarding a child pursuant to RC § 2151.27(A) and no children services agency provided services in the matter, the juvenile court did not commit any error in failing to comply with the case plan requirement of RC § 2151.412(A), as it had no applicability to the dependency action where the agency was not involved. In *re Brown*, 2006 Ohio App. LEXIS 3090, 2006 Ohio 3189, (2006).

Revised Code § 2151.41.2, requiring the children services agency to issue an "initial reunification plan" and a "comprehensive reunification plan," is not applicable where the temporary custody arrangement was voluntarily entered into by the parents and the agency and the original request of the agency was for permanent custody. In *re Pachin*, 50 Ohio App. 3d 44, 552 N.E.2d 655 (1988).

Revised Code §§ 2151.41.2 and 2151.41.4 are applicable only where the child or children have previously been determined dependent, neglected or abused, their temporary custody has been committed to a children services board, a welfare department or a certified organization, and an order is sought changing temporary to permanent custody. These sections are not applicable where the original request was for permanent custody, and an order of temporary custody was issued pending hearing on the complaint as provided by RC § 2151.33: In *re Covert*, 17 Ohio App. 3d 122, 17 Ohio B. 185, 477 N.E.2d 678 (1984).

Contagious disease of parent

Where a mother contracted a contagious disease, a county agency properly temporarily terminated her visitation with the children, pending an indication that she had taken the necessary medication in order to not expose the children to the disease.

Although the agency erred in terminating phone contact between the mother and her children pending her submission to a drug screening, as that was a substantive change that required modification of the case plan, pursuant to RC § 2151.412(E)(2), such did not require reversal of the trial court's grant of permanent custody to the agency under RC § 2151.414(C), as reasonable efforts at reunification had been made under RC § 2151.419(A)(1) and evidence supported the trial court's decision. In *re Townsend*, 2005 Ohio App. LEXIS 2355, 2005 Ohio 2473, (2005).

Foster care

When a child had been placed with certain foster parents since he was 10 weeks old, and developed a strong bond with the foster parents, it was not an abuse of discretion for a juvenile court to award the child's custody to the foster parents, instead of awarding custody to the child's aunt and uncle, who also sought custody, and had spent 18 hours with the child, despite the preference for placing children with extended family members, in RC § 2151.412(G). In *re Halstead*, 2005 Ohio App. LEXIS 902, 2005 Ohio 403, (2004).

Where there are visitations and an ongoing relationship between children in foster home placement and their mother, the likelihood that the foster parents will become the "psychological parents" of these children is quite negligible. In *re Neglected Children*, 65 Ohio Misc. 7, 18 Ohio Op. 3d 283, 416 N.E.2d 669 (CP 1979).

Incarcerated parent

There was no support for an incarcerated mother's argument that the duty of the children's services agency with custody of her children to make reasonable efforts to reunite her with her children included the duty to monitor or evaluate her efforts at reunification during her incarceration absent contact by her with the agency to make the agency aware of her efforts. In *re Vance*, 2003 Ohio App. LEXIS 6328, 2003 Ohio 6991, (2003).

When a mother whose parental rights were terminated complained that the children's services agency with custody of her children did not provide her with reunification services, under RC § 2151.412(F)(1)(b), after she was incarcerated, given the mother's significant involvement with the agency before her incarceration, her lack of commitment to using the resources, including parenting education, offered her, her continuous criminal activity, and her chance to tell her caseworker of programs she was involved in while incarcerated and to provide information about these programs, the agency had no further obligation to provide services to her while she was incarcerated. In *re Vance*, 2003 Ohio App. LEXIS 6328, 2003 Ohio 6991, (2003).

Privileges

Under RC § 4732.19 and RC § 2317.02(B), the testimony of the psychologist who conducted the mother's evaluation for the permanent custody proceeding was admissible as part of the case plan journalized under RC § 2151.412. In *re Morales/Mendez Children*, 2006 Ohio App. LEXIS 6349, 2006 Ohio 6403, (2006).

Where court-ordered treatment or services were ordered as part of a case plan journalized under RC § 2151.41.2 and/or were necessary or relevant to the proceedings under RC § 2151, a biological father's waiver of the statutory psychologist-client privilege was in effect when his psychologist testified; therefore, the trial court properly allowed the testimony because the communications were exempt under RC §§ 2317.02(B)(1)(b), 4732.19. In *re Aristotle R.*, 2004 Ohio App. LEXIS 189, 2004 Ohio 217, (2004).

In the absence of a specific statutory waiver or exception, the testimonial privileges established under RC § 2317.02(B)(1) (concerning communications between a physician and patient), RC § 4732.19 (concerning communications between a licensed psychologist and client), and RC § 2317.02(G) (concerning communications between a licensed counselor or licensed social worker and client) are applicable to communications made by a parent in the course of treatment ordered as part of a reunification plan in an action for dependency and neglect. In *re Wieland*, 89 Ohio St. 3d 535, 733 N.E.2d 1127, 2000 Ohio 233, (2000).

Reunification plan

In a parental rights termination proceeding pursuant to RC § 2151.414, the trial court was not required to make a finding that

the county social service agency made reasonable efforts to reunite the child with the mother pursuant to RC § 2151.419(A)(2), as two of her other minor children had been involuntarily removed from her care previously. The trial court made the requisite findings regarding both parents' lack of success in completing their case plans and the reasonable efforts made by the agency pursuant to RC § 2151.412, which was based on the parents' inability or unwillingness to provide an adequate permanent home and stable living conditions to raise the child, and the fact that they were dependents of society due to their situations, including the mother's mental illnesses and her refusal to take her medication. In re Shifflet, 2006 Ohio App. LEXIS 3521, 2006 Ohio 3576, (2006).

Because the children's services agency sought an award of permanent custody as the initial disposition, it was not required to file a case plan aimed at reunification (under RC § 2151.412(C)), unless the basis for the award was predicated upon RC § 2151.414(E)(1), which could not be determined since the trial court did not even identify the factors prescribed in RC § 2151.414(E) as the basis for its final order. In re Allbery, 2005 Ohio App. LEXIS 5866, 2005 Ohio 6529, (2005).

Although the county child welfare agency was statutorily required to develop case plans for children in their custody and the case plans should have included objectives for each of the parents, the trial court did not err in awarding permanent custody to the county child welfare agency without attempting to reunify the child with the mother, as its attempt to reunify the minor child with the mother would have been futile given the mother's little or no contact with the child for more than eight years, especially since testimony indicated the attempted reunification would have been traumatic for the minor child. In re Leitwein, 2004 Ohio App. LEXIS 1131, 2004 Ohio 1296, (2004).

Where an unidentified biological parent does not voluntarily step forward and identify himself as the parent of abused, neglected or dependent children and request that he be reunited with the children, such a parent is not denied due process of law when he is not provided with a comprehensive reunification plan prior to the court's divesting him of his parental rights. If, however, it comes to the social welfare agency's attention, through a paternity suit or otherwise, and prior to the court's granting permanent custody to the social welfare agency, that a previously unidentified individual is the biological parent of the children, the social welfare agency must acknowledge the fact of the children's biological parentage and include said parent as a party to the permanent custody proceedings: *Garabrant v. Lucas Cty. Children Services Bd.*, 47 Ohio App. 3d 119, 547 N.E.2d 997 (1988).

Where a child is temporarily committed under JuvR 7, the court is not required to order a reunification plan: In re Maloney, 24 Ohio St. 3d 22, 24 Ohio B. 18, 492 N.E.2d 805 (1986).

Ordinarily, a comprehensive reunification plan must include regular and frequent visitation and communication or other contact between the parents and child. However, in exceptional cases it is within the discretion of the juvenile court to deny visitation: In re Jones, 29 Ohio App. 3d 176, 29 Ohio B. 206, 504 N.E.2d 719 (1985).

Revised Code § 2151.41.2 does not require a juvenile court to order a reunification plan when it makes a dispositional order pursuant to RC § 2151.35.3(A)(4): In re Baby Girl Baxter, 17 Ohio St. 3d 229, 17 Ohio B. 469, 479 N.E.2d 257 (1985).

Any time a dependent child is temporarily placed with someone other than a parent, a reunification plan should be formulated. In cases where the child is placed with a relative, pursuant to RC § 2151.35.3(A)(2), the court should formulate the reunification plan itself or appoint an agency with some expertise in the area to formulate one: In re Patterson, 16 Ohio App. 3d 214, 16 Ohio B. 229, 475 N.E.2d 160 (1984).

In a case in which a social welfare agency moves for permanent custody of a child for adoptive placement, if the record reveals that the non-custodial parent has maintained a continuing interest in his or her child's welfare, RC § 2151.41.2(C) places a mandatory duty on the social welfare agency to prepare a comprehensive reunification plan for that non-custodial parent: In re Ball, 5 Ohio App. 3d 56, 5 Ohio B. 152, 449 N.E.2d 490 (1982).

Section 3 of Am. Sub. H.B. No. 695, concerning the phase-in of RC §§ 2151.41.2, 2151.41.3 and 2151.41.4, requires that a written comprehensive reunification plan be included in the

second annual review made after the effective date of the Act (October 24, 1980), of any child who is in temporary custody upon such effective date pursuant to court order under RC Chapter 2151, or pursuant to RC § 5103.15: In re Smith, 7 Ohio App. 3d 75, 7 Ohio B. 88, 454 N.E.2d 171 (1982).

Where children are adjudged neglected under RC § 2151.03 and committed to the temporary custody of a social agency, the agency should plan for the rehabilitation and reunification of the children with their family and the court should insist that the agency make a conscientious effort to bring the plan to fruition before considering the alternative of adoptive placement: In re Neglected Children, 65 Ohio Misc. 7, 18 Ohio Op. 3d 283, 416 N.E.2d 669 (CP 1979).

Termination of parental rights

Finding that permanent custody by Allen County Children's Services Board (CSB) was in the two children's best interests was proper as the mother failed to bond with the children, the CSB had had temporary custody for more than 12 of the last 22 consecutive months, the mother was involved with a known felon, whose children had been removed, and two experts opined that the mother could not adequately parent; while the mother had stable housing, which was a requirement of her case plan, she had not obtained it until after the permanent custody motion was filed. In re Hershberger, 2005 Ohio App. LEXIS 455, 2005 Ohio 429, (2005).

Mother failed continuously and repeatedly to substantially remedy the conditions causing her children to be placed outside of their home and follow a set case plan, thus, supporting the trial court's grant of permanent custody to children services by clear and convincing evidence. The mother, among other things, failed to visit the children on occasions, expressed hostility towards and was uncooperative with children services and others providing assistance to her children, overdosed on illegal drugs while the children were at home, and failed to provide food or other basic necessities. In re Archer, 2004 Ohio App. LEXIS 2551, 2004 Ohio 2916, (2004).

Mother's claim that a trial court erred in granting permanent custody of her minor child to a children services board lacked merit, as she did not object to the board's failure to file a case plan until 39 days after filing the complaint, although it was required to file same within 30 days pursuant to RC § 2151.412(C), nor did she object that the initial case plan allegedly did not address the problems giving rise to the child's removal. Further, the court found that the mother did not comply with most of her case plan requirements and that the board provided services in support of her case plan regarding housing and parenting skills. In re P. C., 2004 Ohio App. LEXIS 1088, 2004 Ohio 1230, (2004).

Evidence that (1) children's behavioral problems and developmental delays improved greatly after their being placed in foster care, (2) the foster parents addressed the children's medical problems which the parents had failed to treat, and (3) the parents had limited intelligence and an improvement in their mental health conditions would take intensive treatment for at least one year supported an award of permanent custody to a child protection agency. In re Kitana, 2004 Ohio App. LEXIS 3612, 2004 Ohio 3963, (2004).

Termination of a mother's parental rights and award of custody to appellee department of job and family services was affirmed where, inter alia, the child was placed after not being picked up at day care, where a psychologist expressed significant concerns about the mother's ability to provide a safe and nurturing environment for the child, and cited the mother's multiple health problems, low level of intelligence, and potential for personality disturbance as factors which prevented her from providing adequate parental care, where the mother had lost two prior children in permanent custody cases in another county, where the mother had a history of interacting with men who had lost their own children to permanent custody, and/or had criminal histories, and where the mother had moved four times within the last year and one-half, and relied on family members for transportation. In re Huston, 2003 Ohio App. LEXIS 6569, 2003 Ohio 7280, (2003).

Termination of father's parental rights reversed where trial court did not find that reunification was futile, where trial court did not require guardian ad litem's report to be timely filed, where children's services failed to timely file case plan showing whether

father agreed to abide by children's services instructions, and where children's services contributed to appearance of futility of reunification by its conduct: *Isaac v. Montgomery County Children's Servs. Bd.* (In re Richard), 1994 Ohio App. LEXIS 5612 (1994).

Visitation

Given the trauma caused by the visitation, the son's compelling concerns, and the recommendation of his counselor and guardian ad litem, the trial court did not err in terminating the mother's visitation with her son, who had been found dependent. In re *Unger Children*, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

[§ 2151.41.3] § 2151.413 Agency may file motion requesting permanent custody.

(A) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(2) of section 2151.353 [2151.35.3] of the Revised Code or under any version of section 2151.353 [2151.35.3] of the Revised Code that existed prior to January 1, 1989, is granted temporary custody of a child who is not abandoned or orphaned may file a motion in the court that made the disposition of the child requesting permanent custody of the child.

(B) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(2) of section 2151.353 [2151.35.3] of the Revised Code or under any version of section 2151.353 [2151.35.3] of the Revised Code that existed prior to January 1, 1989, is granted temporary custody of a child who is orphaned may file a motion in the court that made the disposition of the child requesting permanent custody of the child whenever it can show that no relative of the child is able to take legal custody of the child.

(C) A public children services agency or private child placing agency that, pursuant to an order of disposition under division (A)(5) of section 2151.353 [2151.35.3] of the Revised Code, places a child in a planned permanent living arrangement may file a motion in the court that made the disposition of the child requesting permanent custody of the child.

(D)(1) Except as provided in division (D)(3) of this section, if a child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, the agency with custody shall file a motion requesting permanent custody of the child. The motion shall be filed in the court that issued the current order of temporary custody. For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) Except as provided in division (D)(3) of this section, if a court makes a determination pursuant to division (A)(2) of section 2151.419 [2151.41.9] of the Revised Code, the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 [2151.41.7] of the Revised Code shall file a motion in the court that made the determination requesting permanent custody of the child.

(3) An agency shall not file a motion for permanent custody under division (D)(1) or (2) of this section if any of the following apply:

(a) The agency documents in the case plan or permanency plan a compelling reason that permanent custody is not in the best interest of the child.

(b) If reasonable efforts to return the child to the child's home are required under section 2151.419 [2151.41.9] of the Revised Code, the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home.

(c) The agency has been granted permanent custody of the child.

(d) The child has been returned home pursuant to court order in accordance with division (A)(3) of section 2151.419 [2151.41.9] of the Revised Code.

(E) Any agency that files a motion for permanent custody under this section shall include in the case plan of the child who is the subject of the motion, a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption.

(F) The department of job and family services may adopt rules pursuant to Chapter 119. of the Revised Code that set forth the time frames for case reviews and for filing a motion requesting permanent custody under division (D)(1) of this section.

HISTORY: 138 v H 695 (Eff 10-24-80); 142 v S 89 (Eff 1-1-89); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 176 (Eff 10-29-99); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

Cross-References to Related Sections

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Hearing on motion for permanent custody, RC § 2151.41.4.

Motion requesting disposition order upon expiration of temporary custody order, RC § 2151.41.5.

Ohio Rules

Motions, JuvR 19, 22.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care. OAC ch. 5101:2-42.

Acceptance of permanent custody by permanent surrender. OAC 5101:2-42-09.

Extension of "Agreement for Temporary Custody of Child," form 1645. OAC 5101:2-42-07.

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CASE NOTES AND OAG

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Constitutionality

With respect to termination of parental rights, RC § 2151.414(B)(1)(d) is constitutional on its face and RC § 2151.413 and RC § 2151.414 do not violate a parent's equal protection rights because they do not distinguish between groups of parents or treat similarly situated parents differently. The mother's unsupported assertions of unconstitutionality were insufficient to satisfy her burden, particularly in light of the well-recognized presumption of constitutionality. In *re* SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

That trial courts may come to different conclusions in different cases based upon different facts with respect to termination of parental rights under RC §§ 2151.413 and 2151.414 does not create a violation of the Equal Protection Clause; those statutes do not distinguish between groups of parents or treat similarly situated parents differently. In *re* B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Generally

Because the agency filed its permanent custody motion more than 12 months after the child was placed in temporary custody, the trial court did not err in denying the mother's motion to dismiss the permanent custody motion. In *re* SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Where a father's mother did not file a motion requesting legal custody of the father's children, pursuant to RC § 2151.353(A)(3), prior to the dispositional hearing wherein the children's permanent custody was granted to a county social service agency, the trial court was without authority to grant the custody of the father's children to his mother. In *re* Z.Y., 2006 Ohio App. LEXIS 260, 2006 Ohio 300, (2006).

Juvenile court's grant of permanent custody to a county social service agency pursuant to RC §§ 2151.413 and 2151.414 rather than to the children's maternal grandparents was supported by evidence that the agency placement was in the children's best interests, as they were receiving necessary counseling and services. Denial of the grandparents' request for custody was not an abuse of discretion, as they had not officially moved for such relief under RC § 2151.353(A)(3), but rather had merely sent correspondence to the juvenile court requesting such relief, and further, there was evidence that the children's best interests would not be served if they lived together due to acting out issues regarding sexual abuse that they suffered. In *re* Turner, 2006 Ohio App. LEXIS 4532, 2006 Ohio 4906, (2006).

Trial court did not err in denying the mother's motion to dismiss the permanent custody motion because the plain language of RC § 2151.413(D)(1) allows an agency to calculate the period of time that a child has been in the temporary custody using any period of a consecutive 22-month period, calculated from the time the child was adjudicated or 60 days after removal of the child from the home. In *re* S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Before a public children-services agency or private child-placing agency can move for permanent custody of a child on RC § 2151.414(B)(1)(d) grounds, the child must have been in the temporary custody of an agency for at least 12 months of a consecutive 22-month period. In *re* C.W., 104 Ohio St. 3d 163, 818 N.E.2d 1176, 2004 Ohio 6411, (2004).

Where a child had not been in an agency's custody for 12 months when it sought permanent custody, under RC § 2151.414(B)(1)(a), the trial court had to, and did, find that she could not be placed with either parent within a reasonable time or should not be so placed; it was not required to also find that she had been in the agency's care for 12 months out of a consecutive 22-month period. In *re* Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Trial court did not err in awarding county child welfare agency the permanent custody of the mother's minor child, as statutory

law permitted the county child welfare agency, which had temporary custody of a child, to file a motion requesting permanent custody of the minor child. In the minor child's case, the evidence showed that the minor child could not be placed with either parent within a reasonable amount of time and that permanent custody with the county child welfare agency was in the child's best interest. In *re* Leitwein, 2004 Ohio App. LEXIS 1131, 2004 Ohio 1296, (2004).

Finding that a child was in an agency's temporary custody for at least 12 months of a consecutive 22-month period precluded a determination required by RC § 2151.414(E) of whether parents had remedied conditions which caused removal of child; the trial court was not required to conduct an analysis under RC § 2151.414(E)(1), and an order terminating parental rights was affirmed. In *re* L.D., 2004 Ohio App. LEXIS 3655, 2004 Ohio 4000, (2004).

Child services agencies have no authority to file a motion for permanent custody of children on the basis that the children have been in the temporary custody of the agency for 12 or more months of a consecutive 22 month period prior to expiration of the entire 12-month period. A trial court's order granting the Wayne County Children Services Board's petition for permanent custody of three children and termination of their father's parental rights was reversed where the evidence clearly showed, and the trial court explicitly found, that the children were in temporary custody for only 10 months when the petition was filed. In *re* K. G., 2004 Ohio App. LEXIS 1290, 2004 Ohio 1421, (2004).

There was no error in terminating a parent's parental rights because legal custody of her children never had reverted to her; any temporary custody awarded to a county department of job and family services had not lapsed during an appeal by the parent where the trial court had continued the department's temporary custody of the children for 30 days. In *re* Robinson, 2003 Ohio App. LEXIS 4954, 2003 Ohio 5528, (2003).

Appeals court affirmed a termination of parental rights to one child adjudicated as abused under RC § 2151.031 and one adjudicated as dependent under RC § 2151.04 where substantial evidence, including the mother's abuse, alcohol use, and encouragement of theft, supported the trial court's best interest findings under RC § 2151.414(D). In *re* Large, 2003 Ohio App. LEXIS 4772, 2003 Ohio 5275, (2003).

RC § 2151.413 permits a public child services agency that has temporary custody of a child to file a motion requesting permanent custody of the child, and RC § 2151.414(A)(1) requires the trial court to hold a hearing regarding the motion for permanent custody; the order to grant permanent custody of a minor child to the child services department was affirmed because the evidence provided at hearing supported the finding that a legally secure permanent placement could not be achieved without terminating the parents' custody. In *re* Riley, 2003 Ohio App. LEXIS 3658, 2003 Ohio 4109, (2003).

The mother's homelessness and unstable relationships showed that awarding permanent custody to the agency was in the best interest of the children. In *re* Joshua B., 2003 Ohio App. LEXIS 2797, 2003 Ohio 3096, (2003).

Former RC § 2151.41.3(A) required that a children services agency seeking permanent custody of a child must have had temporary custody of the child for at least six months immediately preceding the filing of the motion for permanent custody. In *re* Hayes, 79 Ohio St. 3d 46, 679 N.E.2d 680 (1997).

Former RC § 2151.41.3, requiring an agency to wait six months before moving for permanent custody, was intended to allow time for the case plan to work. *Lorain County Children Servs. v. Keene*, 118 Ohio App. 3d 535, 693 N.E.2d 833 (1997).

In order to file a motion for permanent custody under RC § 2151.41.3(A), a children services agency must have current temporary custody pursuant to RC § 2151.35.3(A)(2). In *re* Miller, 101 Ohio App. 3d 199, 655 N.E.2d 252 (1995).

The extension of a temporary custody order by agreement of the parties did not require the children services agency to wait an additional six months from the time of the extension to file for permanent custody. In *re* Stokes, 1994 Ohio App. LEXIS 4018 (7th Dist. 1994).

Revised Code § 2151.41.3 does not provide the only method of obtaining permanent custody. RC § 2151.35 also allows the court to grant the agency permanent custody on the initial complaint of

the agency. A complaint seeking shelter care pending adjudication allows the agency to subsequently file an amended complaint seeking permanent custody and the amended complaint will relate back as though the agency had initially sought permanent custody as allowed by RC § 2151.35: In re Massengill, 76 Ohio App. 3d 220, 601 N.E.2d 206 (1992).

Adoption

Revised Code § 2151.41.3(E) does not require the agency to file an adoption plan either at any specific time or before permanent custody is granted: In re Cavender, 2001 Ohio App. LEXIS 1262 (12th Dist. 2001).

Amended case plan

The mother was not prejudiced by the fact that the children services agency did not file an amended case plan until the second day of trial, seven months after it moved for permanent custody: In re MacFarland, 1994 Ohio App. LEXIS 334 (9th Dist. 1994).

Appeal

Where a father's request for an order requiring a county agency to take permanent custody of his minor children pursuant to RC § 2151.413(C) was denied by the trial court, such order was not final and appealable pursuant to RC § 2505.02(B)(2) because a substantial right was not affected in the special proceeding pursuant to RC ch. 2151. As the father sought to have his parental rights terminated, he could have brought a declaratory judgment action under RC § 2721.03, a mandamus action under RC § 2731.04, or sought appropriate relief under other statutory provisions, as the statutory scheme under RC ch. 2151 was for preservation and restoration of parental rights, and accordingly, the appeal required dismissal. In re DeVore, 2006 Ohio App. LEXIS 4349, 2006 Ohio 4432, (2006).

Denial of motion

Although children had been in temporary custody of the county child services department for nearly two years, the trial court found that permanently severing the minor children's parental relationships was not in their best interests, particularly where, in light of the parents' divorce, the county department should have provided the father additional time to show that he was able to provide the children with a stable and nurturing home. In re Cunningham, 2004 Ohio App. LEXIS 720, 2004 Ohio 787, (2004).

Where, upon hearing a motion requesting permanent custody of a child, a court decides to deny the motion, the court may proceed in accordance with RC § 2151.41.5 and make any disposition listed in that statute, including placement of a child in long-term foster care: In re McDaniel, 1993 Ohio App. LEXIS 806 (4th Dist. 1993).

Hearing

In the permanent custody hearing, the magistrate erred by admitting the probation officer's hearsay testimony that the laboratory reports indicated that the mother's urine samples tested positive for marijuana; the reports were not admitted into evidence, the probation officer did not perform the tests or testify as to how the tests were performed, and the probation officer's testimony was offered to prove the truth of the matter asserted, that the mother tested positive for marijuana. In re McLemore, 2004 Ohio App. LEXIS 591, 2004 Ohio 680, (2004).

In considering a motion filed by a public children services agency requesting permanent custody of a child, the trial court is required to hold a hearing regarding the motion, pursuant to RC § 2151.414(A)(1), to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. In re Riley, 2003 Ohio App. LEXIS 3657, 2003 Ohio 4108, (2003).

Incarcerated parent

Trial court properly used the length of the father's incarceration as a relevant factor in the determination of the best interests of the children in terminating a father's parental rights; also, the trial court could have terminated the father's parental rights because of the length of time the children were in the temporary custody of the agency but the court was required to terminate the father's parental rights for failure to follow the case plan and for showing

a lack of commitment to the children. In re Myers, 2004 Ohio App. LEXIS 493, 2004 Ohio 539, (2004).

Notice

Revised Code § 2151.41.3 was violated where the mother did not receive notice of the dependency hearing: In re Brown, 98 Ohio App. 3d 337, 648 N.E.2d 576 (1994).

Planned permanent living arrangement

Because the agency filed a permanent custody motion pursuant to RC § 2151.413(D)(1) before the mother filed her planned permanent living arrangement (PPLA) motion, there the trial court did not err in denying her motion. Pursuant to RC § 2151.415(A), a party cannot file a PPLA motion when the court is required to make a permanent custody determination under RC § 2151.413(D)(1). In re SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Res judicata

Since a mother did not appeal from a trial court's award of permanent custody, res judicata barred the mother from challenging in her appeal from the trial court's later decision dismissing her motion for alternative disposition the trial court's award of permanent custody. Even if the mother had asserted assignments of error addressing the trial court's adoption of the magistrate's decision, the mother failed to file objections to the decision, and thus, pursuant to Ohio R. Juv. P. 40(E)(3)(d), she was precluded from assigning as error the trial court's adoption of the findings of fact and conclusions of law from that decision. In re K.B., 2006 Ohio App. LEXIS 2967, 2006 Ohio 3104, (2006).

Retroactivity

The 1996 amendment to RC § 2151.41.3, eliminating the requirement that a children services agency have temporary custody for at least six months before filing for permanent custody, did not apply to pending cases: In re Brenna E., 124 Ohio App. 3d 143, 705 N.E.2d 728 (1997).

Reunification provisions

RC § 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to RC § 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time: In re C.F., 113 Ohio St. 3d 73, 862 N.E.2d 816, 2007 Ohio 1104, (2007).

Court rejected a mother's contention that a children services agency failed to make reasonable efforts to implement the assigned case plan. The "reasonable efforts" requirement in RC § 2151.419 is not applicable to permanent custody cases involving RC §§ 2151.413 and 2151.414. In re V.M., 2006 Ohio App. LEXIS 4370, 2006 Ohio 4461, (2006), affirmed by 113 Ohio St. 3d 161, 2007 Ohio 1254, 863 N.E.2d 167, 2007 Ohio LEXIS 788 (2007).

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. In re R.A.M., 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Permanent custody sought subsequent to adjudication in a separate motion made under RC § 2151.413 is not subject to a hearing held under any of the statutes referred to in RC § 2151.419(A). Thus, RC § 2151.419(A) does not apply to permanent custody sought under RC § 2151.413 after adjudication and initial disposition. In re Samples, 2006 Ohio App. LEXIS 963, 2006 Ohio 1056, (2006).

Father's reliance on RC § 2151.419(A)(1) in a parental rights termination proceeding involving his two children was misplaced,

as it did not apply to the father's situation where the motion for permanent custody of his children was filed by an agency under RC § 2151.413. Accordingly, a reasonable efforts determination was not required and further, as the father was incarcerated, any such efforts would have been futile for purposes of reunification. In re Z.Y., 2006 Ohio App. LEXIS 260, 2006 Ohio 300, (2006).

Since a permanent custody hearing was held pursuant to a motion filed under RC § 2151.413, the statute requiring that a children services agency make reasonable efforts at reunification, RC § 2151.419(A), did not apply, and thus, the trial court was not required to find that the agency made reasonable efforts at reunification before awarding the agency permanent custody of the father's children. In re Bradley, 2006 Ohio App. LEXIS 2276, 2006 Ohio 2367, (2006).

Because a children services' board filed its motion for permanent custody under RC § 2151.413, the "reasonable efforts" requirement of RC § 2151.419(A) was not applicable; therefore, the trial court had authority to grant permanent custody to the board under RC § 2151.414(B)(1) when it found, inter alia, that the mother had abandoned the child during the mother's incarceration and that she had failed to secure permanent housing. In re S.P., 2005 Ohio App. LEXIS 1104, 2005 Ohio 1079, (2005).

Because the agency sought permanent custody of one of the children under RC § 2151.413, the trial court was not required to comply with RC § 2151.419(B)(1) by entering a specific listing of the facts leading to its decision. In re Miller, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

Mother's claim on appeal that a trial court erred in terminating her parental rights over her minor child without first making a finding that the agency had used reasonable and diligent efforts to reunify the mother with her child lacked merit, as there was no such finding required under RC § 2151.419, as such did not apply to permanent custody hearings under RC § 2151.414. The trial court followed the statutory requirements of RC § 2151.414 prior to granting the permanent custody motion under RC § 2151.413, and there was no duty on the agency to prove that it exerted reasonable and diligent efforts towards reunification under RC § 2151.414. In re C.W., 2005 Ohio App. LEXIS 6093, 2005 Ohio 6739, (2005).

Trial court properly found that the child services board was not required to attempt to reunite a minor child with her mother and father; the mother, who was incarcerated, had parental rights terminated for five different children on two prior occasions and the father for two children on one occasion. In re Richardson, 2004 Ohio App. LEXIS 1876, 2004 Ohio 2170, (2004).

There was clear, convincing evidence supporting termination of parental rights based on the parents' inability to provide an adequate living environment; while the agency was not required to reunite the child and her parents, efforts to reunite were made. In re Jackson, 2004 Ohio App. LEXIS 497, 2004 Ohio 542, (2004).

Ordinarily, at the time of a RC § 2151.413 filing, a child services agency will either have already complied with the requirement that it make a reasonable effort to return the child to its natural parent or parents, or the agency will have properly determined that any such effort would be futile, and the trial court will have made its findings accordingly; thus, a child services agency is not required to prove compliance with RC § 2151.419(A) when proceeding with a motion for permanent custody pursuant to RC § 2151.413. In re Christian, 2003 Ohio App. LEXIS 6662, 2003 Ohio 7333, (2003).

On its face, RC § 2151.419(A) is not applicable to motions to modify a disposition to permanent custody pursuant to RC § 2151.413. In re Christian, 2003 Ohio App. LEXIS 6662, 2003 Ohio 7333, (2003).

A children services board seeking permanent custody under RC § 2151.41.3 must satisfy the reasonable efforts requirement of RC § 2151.41.9 with respect to a natural parent whenever: (1) the board has not previously satisfied the reasonable efforts requirement with respect to that parent; and (2) the parent has not waived or abandoned his rights as a natural parent. In re Stevens, 1993 Ohio App. LEXIS 3526 (2nd Dist. 1993).

Section 3 of Am. Sub. H.B. No. 695, concerning the phase-in of RC §§ 2151.41.2, 2151.41.3 and 2151.41.4, requires that a written comprehensive reunification plan be included in the second annual review made after the effective date of the Act (October 24, 1980), of any child who is in temporary custody upon

such effective date pursuant to court order under RC Chapter 2151. or pursuant to RC § 5103.15: In re Smith, 7 Ohio App. 3d 75, 7 Ohio B. 88, 454 N.E.2d 171 (1982).

[§ 2151.41.4] § 2151.414 Hearing on motion for permanent custody; notice; determinations necessary for granting motion.

(A)(1) Upon the filing of a motion pursuant to section 2151.413 [2151.41.3] of the Revised Code for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem. The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent, and the name and telephone number of the court employee designated by the court pursuant to section 2151.314 [2151.31.4] of the Revised Code to arrange for the prompt appointment of counsel for indigent persons.

The court shall conduct a hearing in accordance with section 2151.35 of the Revised Code to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 [2151.35.3] of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody.

(2) The court shall hold the hearing scheduled pursuant to division (A)(1) of this section not later than one hundred twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline. The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than two hundred days after the agency files the motion.

If a motion is made under division (D)(2) of section 2151.413 [2151.41.3] of the Revised Code and no dispositional hearing has been held in the case, the court may hear the motion in the dispositional hearing required by division (B) of section 2151.35 of the Revised Code. If the court issues an order pursuant to section 2151.353 [2151.35.3] of the Revised Code granting permanent custody of the child to the agency, the court shall immediately dismiss the motion made under division (D)(2) of section 2151.413 [2151.41.3] of the Revised Code.

The failure of the court to comply with the time periods set forth in division (A)(2) of this section does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the

child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) With respect to a motion made pursuant to division (D)(2) of section 2151.413 [2151.41.3] of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child's best interest.

(C) In making the determinations required by this section or division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child. A written report of the guardian ad litem of the child shall be submitted to the court prior to or at the time of the hearing held pursuant to division (A) of this section or section 2151.35 of the Revised Code but shall not be submitted under oath.

If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

(D) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 [2151.35.3] or division (C) of section 2151.415 [2151.41.5] of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private

child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code;

(3) The parent committed any abuse as described in section 2151.031 [2151.03.1] of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so,

or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The parent is incarcerated for an offense committed against the child or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04†, 2905.05, 2907.07, 2907.08, 2907.09, 2907.12††, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161 [2923.16.1], 2925.02, or 3716.11 of the Revised Code and the child or a sibling of the child was a victim of the offense or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412

[2151.41.2] of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated pursuant to this section or section 2151.353 [2151.35.3] or 2151.415 [2151.41.5] of the Revised Code with respect to a sibling of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has committed abuse as described in section 2151.031 [2151.03.1] of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

(16) Any other factor the court considers relevant.

(F) The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section.

HISTORY: 138 v H 695 (Eff 10-24-80); 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 176 (Eff 10-29-99); 148 v H 448. Eff 10-5-2000.

† Repealed 7-1-96, division (E)(6).

†† Repealed 9-3-96, division (E)(6).

Cross-References to Related Sections

Administrative reviews of case plan; annual report, RC § 2151.41.6.

Alcohol or other drug testing and treatment of parent or other caregiver, RC § 2151.35.14.

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Disposition of abused, neglected or dependent child, RC § 2151.35.3.

Guardian ad litem, RC § 2151.28.1.

Hearing procedure and records of proceedings, RC § 2151.35.

Motion requesting disposition order upon expiration of temporary custody order, RC § 2151.41.5.
 Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.
 Summons, RC § 2151.28.

Ohio Rules

Dispositional proceedings, JuvR 29(F), 34, 35(A).
 Hearing procedures, JuvR 27, 29, 34.
 Motions, JuvR 19, 22.

Ohio Administrative Code

Department of job and family services, division of social services—
 Adoption. OAC ch. 5101:2-48.
 Preparation of child for adoptive placement. OAC 5101:2-48-14.
 Children services definition of terms: dispositional hearing; permanent commitment. OAC 5101:2-1-01.
 Substitute care. OAC ch. 5101:2-42.
 Authority to assume and retain custody of a child. OAC 5101:2-42-04.
 Obtaining permanent custody of child: termination of parental rights. OAC 5101:2-42-95.

Comparative Legislation

Termination of parental rights:
 42 USCS § 670 et seq
 CA—Cal Wel & Inst Code § 360 et seq
 FL—Fla. Stat. § 39.801 et seq
 IN—Burns Ind. Code Ann. § 31-35-2-1
 KY—KRS § 625.020 et seq
 MI—MCLS § 712A.19a
 NY—NY CLS Family Ct Act § 611 et seq
 PA—23 P.S. § 2511

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Constitutionality

Because Ohio's permanent custody statutory scheme reconciles a parent's constitutional right with the state's *parens patriae* interest in providing for the security and welfare of children under its jurisdiction, it does not unconstitutionally deprive parents of their parental rights. In re S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Court had previously weighed the assertion that RC § 2151.414(B)(1)(d) was unconstitutional since it created an irrebuttable presumption of parental unfitness, and on each occasion, it had found the argument to lack merit. There was no reason to diverge from this precedent, and thus, the court found that § 2151.414(B)(1)(d) is not unconstitutional. In re V.M., 2006 Ohio App. LEXIS 4370, 2006 Ohio 4461, (2006), affirmed by 113 Ohio St. 3d 161, 2007 Ohio 1254, 863 N.E.2d 167, 2007 Ohio LEXIS 788 (2007).

RC § 2151.414 did not deprive a parent of due process rights in a parental rights termination proceeding, as due process guarantees and safeguards were incorporated to protect the rights of the parents as well as the need of the State to protect the interests of the children. In re Morris, 2006 Ohio App. LEXIS 3122, 2006 Ohio 3231, (2006).

With respect to termination of parental rights, RC § 2151.414(B)(1)(d) is constitutional on its face and RC § 2151.413 and RC § 2151.414 do not violate a parent's equal protection rights because they do not distinguish between groups of parents or treat similarly situated parents differently. The mother's unsupported assertions of unconstitutionality were insufficient to satisfy her burden, particularly in light of the well-recognized presumption of constitutionality. In re SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Trial court erred by terminating the mother's parental rights as it neither adhered to, nor complied with the basic procedural

safeguards mandated within RC § 2151.414 and RC § 2151.353. By denying the mother proper notice, a recitation of her rights, and proper participation in the proceedings, as well as by denying her a continuance, and failing to appoint her counsel during the hearing for neglect and dependency, as required by Ohio R. Juv. P. 4, the trial court did not comply with the basic constitutional requirements set forth in both the Ohio and United States Constitutions. In *re* Sheffey, 167 Ohio App. 3d 141, 854 N.E.2d 508, 2006 Ohio 619, (2006).

Mother failed to rebut the presumption of constitutionality of the reunification provision in the permanent custody statute, RC § 2151.414(B)(1)(d), regarding a child having been in the temporary custody of the children's services agency for 12 of the previous 22 months. In *re* Unger Children, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

Although trial courts may come to different conclusions in different cases based upon different facts with respect to termination of parental rights under RC §§ 2151.413 and 2151.414 does not create a violation of the Equal Protection Clause; those statutes do not distinguish between groups of parents or treat similarly situated parents differently. In *re* B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Revised Code § 2151.41.4 represents a reasonable attempt to safeguard the rights of children and does not on its face violate the equal protection rights of mentally disabled parents: In *re* Moore, 2000 Ohio App. LEXIS 4009 (12th Dist. 2000).

Proceeding with a permanent custody hearing pursuant to amended RC § 2151.41.4 where a temporary custody order exists is not an *ex post facto* application since the amendments to the statute are essentially procedural: *Sanders v. Motorists Ins. Cos.*, 1991 Ohio App. LEXIS 1878 (1991).

Revised Code § 2151.41.4 is not *per se* unconstitutional when applied to retarded parents: In *re* Cannon, 1990 Ohio App. LEXIS 5896 (1990).

Generally

RC § 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to RC § 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time. The trial court satisfied its duty under RC § 2151.414(D) and properly exercised its discretion to consider the wishes of the children as expressed through their guardian *ad litem*. The statute does not impose the additional requirement that the trial court also consider whether the children want to testify or whether testifying would be detrimental to them: In *re* C.F., 113 Ohio St. 3d 73, 862 N.E.2d 816, 2007 Ohio 1104, (2007).

Prior adjudication of permanent custody does not constitute a *de facto* termination of parental rights as to children born later. The trial court erred in finding the child to be dependent where the agency failed to provide current, affirmative evidence of the parents' unfitness and inability to care for the child: In *re* Nicholas P., 169 Ohio App. 3d 570, 863 N.E.2d 1102, 2006 Ohio 6213, (2006).

When, in a permanent custody case, a mother appealed the trial court's conclusion that her child could not or should not be placed with a parent, under RC § 2151.414(B)(1)(a), because the mother did not remedy the conditions that brought her child into care, under RC § 2151.414(E)(1), it was unnecessary to address this argument because the trial court also found, under RC § 2151.414(E)(11), that the mother had her parental rights terminated as to the child's sibling and the child's father demonstrated a lack of commitment to the child in that he failed to regularly support, visit or communicate with the child, under RC § 2151.414(E)(14), and abandoned the child, under RC § 2151.414(E)(10), which the mother did not contest, and these uncontested findings were sufficient to statutorily compel the trial court, under RC § 2151.414(E), to find that the child could not or should not be placed with a parent, nor did the mother contest

that such a finding was statutorily compelled. In *re* P. B., 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

When the parental rights of a mother to four of her five prior children had been involuntarily terminated, and permanent custody of her sixth child was being sought, the trial court had to find, under RC § 2151.414(E)(11), that the child could not be returned to her within a reasonable time or should not be returned. In *re* M.C., 2006 Ohio App. LEXIS 944, 2006 Ohio 1041, (2006).

In a permanent custody hearing, if a child was not abandoned or orphaned, the focus turned to whether the child could not be placed with either parent within a reasonable period of time or should not be placed with the parents, and, under RC § 2151.414(E), the trial court had to consider all relevant evidence before making this determination, and was required to enter such a finding if it determined, by clear and convincing evidence, that one or more of the factors enumerated in RC § 2151.414(E)(1) through (16) existed with respect to each of the child's parents. In *re* Bentley, 2006 Ohio App. LEXIS 2991, 2006 Ohio 3133, (2006).

Trial court did not err when it adopted the closing argument of the children's service's agency into its permanent custody judgment because the findings were consistent with the evidence presented. Also, the error in the judgment entry was not evidence that the court was acting as an impartial fact finder when there was additional evidence on the record to support the decision to find that the mother had abandoned her daughter. In *re* Kangas, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

Trial court properly determined that a family services department used reasonable efforts to assist a mother in completing her case plan and used reasonable efforts to prevent the removal of the mother's child. The record was replete with evidence to establish that, although the mother worked on her case plan, she made no progress toward alleviating the core concerns despite the department's reasonable efforts to reunify the family. In *re* Mastache, 2006 Ohio App. LEXIS 6853, 2006 Ohio 6937, (2006).

Trial court did not err in awarding permanent custody to the agency where the mother and all of the children had severe emotional issues that would require therapy for a considerable length of time and the children's behaviors prevented them from being able to live together. The children were not entitled to appointment of independent counsel where they expressed conflicting feelings about returning home: In *re* Graham, 167 Ohio App. 3d 284, 854 N.E.2d 1126, 2006 Ohio 3170, (2006).

Trial court's decision awarding permanent custody of a mother's three children to a family services agency was not deficient on the ground that it failed to specifically address all of the factors set forth in RC § 2151.414(D). Trial court stated it had considered all of the factors of § 2151.414(D), and the trial court's finding, read in toto, supported such a statement given the nature of the testimony presented during the dispositional hearings. In *re* Bodenheimer, 2006 Ohio App. LEXIS 3131, 2006 Ohio 3245, (2006).

Because both parents' prior loss of permanent custody of the child's six siblings satisfied the predicate of RC § 2151.414(E)(11), the trial court was required to enter a finding that the child could not be placed with either parent within a reasonable time or should not be placed with either parent. In *re* Melchizedek M., 2006 Ohio App. LEXIS 2961, 2006 Ohio 3062, (2006).

Incarcerated parent was denied due process where she did not receive the required notice and opportunity to participate in the proceedings leading to termination of parental rights. A trial court should only grant permanent custody as the initial disposition in extreme situations where reunification is not possible. Prior adjudication of permanent custody as a parent's other children does not result in a *de facto* termination of parental rights as to the child in question in the proceeding: In *re* Sheffey, 167 Ohio App. 3d 141, 854 N.E.2d 508, 2006 Ohio 619, (2006).

Right to file a petition for child custody is substantive, and JuvR 10 must be read in conjunction with the limitations expressed in RC §§ 2151.414(F) and 2151.353(E)(2): In *re* McBride, 110 Ohio St. 3d 19, 850 N.E.2d 43, 2006 Ohio 3454, (2006).

There was sufficient evidence from which a trial court could conclude that a mother was unable to provide for her son's needs, in that she did not have stable housing and could not provide evidence that she had a job. Thus, the trial court's decision

granting permanent custody to the mother was supported by sufficient evidence. In re D.B., 2006 Ohio App. LEXIS 483, 2006 Ohio 522, (2006).

Since the children were in the temporary custody of the agency for more than 12 months out of a consecutive 22-month period under RC § 2151.414(B)(1)(d), the trial court was required only to determine the best interests of the children by clear and convincing evidence. Trial court's finding that a five-year-old was too young to express her wishes was not supported by clear and convincing evidence. The agency made sufficient efforts to accommodate a parent's inability to speak English by providing him with an interpreter and a Spanish-speaking attorney. In re Lopez, 166 Ohio App. 3d 688, 852 N.E.2d 1266, 2006 Ohio 2251, (2006).

Clear and convincing evidence supported a trial court's judgment granting a child's permanent custody to an agency because, under RC § 2151.414(B)(1)(a), the child had been in an agency's custody for more than 12 months of a consecutive 22-month period, and she could not or should not be placed with her parents, given her father's history of sexual offenses and low cognitive functioning. In re King, 2006 Ohio App. LEXIS 707, 2006 Ohio 780, (2006).

Trial court found by clear and convincing evidence that a child could not be placed with her parents within a reasonable time due to the applicability of RC § 2151.414(E)(2), (9), (12), and (15), as the parents were addicted to substances of abuse, had been arrested and incarcerated multiple times each, had severe mental histories, failed in their case plans with a goal of reunification, and had another daughter removed from their custody. In re Morris, 2006 Ohio App. LEXIS 3122, 2006 Ohio 3231, (2006).

There was no error in finding that the children could not be placed with the mother within a reasonable time or in terminating her parental rights, under RC § 2151.414(E), because the mother failed to substantially remedy the conditions that caused her children to be removed from the home. The mother did nothing about her alcohol and drug dependency, her involvement in violent relationships, and her lack of stability. In re T. E., 2006 Ohio App. LEXIS 204, 2006 Ohio 254, (2006).

Finding that the two children were more bonded with the foster parents than their biological parents was not against the manifest weight of the evidence. Although there was some evidence that the mother had a strong relationship with her daughters, that factor alone was not sufficient to find that the trial court's judgment was against the manifest weight of the evidence because the trial court found, under RC § 2151.414(D), that the mother's inability to guarantee the safety of her children overrode the fact that she may have been bonded with her children. The mother had consistently failed to both recognize threats to the children's safety and to take all reasonable steps to protect the children from those threats. In re Jones, 2006 Ohio App. LEXIS 3256, 2006 Ohio 3364, (2006).

It was not error for a trial court to find there was clear and convincing evidence that awarding permanent custody of a mother's children to an agency was in their best interests, under RC § 2151.414(D) because merely granting the agency their legal custody would allow the mother to impede and possibly manipulate the stability of the children's placements through residual rights association and available future court actions. In re Graham, 167 Ohio App. 3d 284, 854 N.E.2d 1126, 2006 Ohio 3170, (2006).

Award of permanent custody of parents' children to a children services agency pursuant to RC § 2151.414 was in the best interests of the children because the mother never made progress on her case plan, and while the father initially made progress, he continued to have problems with domestic violence and eventually failed to regularly visit the children. Moreover, the children's foster family expressed a desire to adopt three of the four children, and the fourth child was in the foster care of another family and had made significant strides since joining the family. In re A. S., 2006 Ohio App. LEXIS 2868, 2006 Ohio 2977, (2006).

Grant of permanent custody of a father's child to a children services agency under RC § 2151.414 was in the child's best interests. While the father had been given almost two years, he had done almost nothing to work toward reunification with the child; instead, during the two-year period, the father had been convicted of domestic violence and had tested positive for

marijuana use. In re Z. D., 2006 Ohio App. LEXIS 2858, 2006 Ohio 2978, (2006).

Common pleas court's decision that granting permanent custody to a county children services agency was in the best interests of the children under RC § 2151.414(D) was not against the manifest weight of the evidence. The mother had demonstrated a lack of commitment to her children by choosing abusive relationships without recognizing the effect of the relationships on her children, and while in the mother's care, the children suffered significant emotional trauma because of their unstable environment. In re D.B., 2006 Ohio App. LEXIS 410, 2006 Ohio 479, (2006).

Trial court's grant of permanent custody to a county social service agency was proper where RC § 2151.414(B)(1)(d) applied to one child, § 2151.414(B)(1)(a) applied to three other children, § 2151.414(E) applied to the parents with respect to all of the children, and it was in the children's best interests upon consideration of all of the relevant factors, including those listed in RC § 2151.414(D); the mother had a severe mental illness, the children were previously removed from her care, and there was no commitment by either father. In re M.E., 2006 Ohio App. LEXIS 1689, 2006 Ohio 1837, (2006).

Where a father was not able to take custody of his children due to his incarceration, he failed to communicate with the children despite his time in prison, the mother was unable to have custody due to her severe chemical dependency problems, and further, where the children had bonded with the foster family and it was found to be in their best interests to terminate the father's parental rights and to grant permanent custody to the county social service agency, pursuant to RC § 2151.414(B), (D) and (E), such decision was affirmed on appeal. The father showed no commitment toward the children, had did not make any provisions for them, he was incarcerated and had an extensive criminal history, and the permanent custody determination was in their best interests. In re Z.Y., 2006 Ohio App. LEXIS 260, 2006 Ohio 300, (2006).

Trial court's finding that it was in the best interest of a mother's son that a county children services agency should be given permanent custody of the son was proper in light of the fact that the son's foster family expressed an interest in adopting the son, the son had developed an attachment to his foster family, and the mother was absent during the early months of the son's psychological and emotional development. In re V.H., 2006 Ohio App. LEXIS 488, 2006 Ohio 532, (2006).

Trial court's determination that it was in the best interest of the children to grant permanent custody to the children's services agency was not against the manifest weight of the evidence because the father had failed to complete the requirements of the prior case plans, both children had extensive developmental problems and the father was unwilling and/or unable to meet the children's needs, the father did not have even basic parenting skills, and there was a family that was willing to adopt both children. In re Zurfley/Chatman/Black Children, 2006 Ohio App. LEXIS 602, 2006 Ohio 683, (2006).

It was in the child's best interest to grant permanent custody to the agency RC § 2151.414(D) because the father had missed over half of the visitations and most of the doctor's appointments, the home was filthy and inadequate for a child, the father did not even know how to change the child's diaper or change her clothing, the child was not bonded with the father but had bonded with her foster parents, and they were considering adopting her. In re H.M.S., 2006 Ohio App. LEXIS 614, 2006 Ohio 701, (2006).

Record reflected competent, credible evidence for the trial court to have found that an award of permanent custody to the agency was in the best interest of the children, pursuant to RC § 2151.414(D), because there was very little bonding between the children and the parents, the children had not spent any significant time living with the parents, and the children were bonded to each other and their foster family and wanted to be adopted by them. In re J.S., 2006 Ohio App. LEXIS 615, 2006 Ohio 702, (2006).

There was clear and convincing evidence, under RC § 2151.414, that permanent custody was in the children's best interests as the mother minimized the children's abuse, refused to acknowledge the abuse until trial, tried to coach them out of their stories, continued her relationship with the children's abuser, and

forced the children to spend time in their abuser's presence. The simplest section to apply was RC § 2151.414(E)(6) because the mother pled guilty and was convicted of four violations of RC § 2919.22(A) against her four children. In *re Samples*, 2006 Ohio App. LEXIS 963, 2006 Ohio 1056, (2006).

Sufficient evidence supported a trial court's finding that, pursuant to RC § 2151.414(D), it was in the best interest of a mother's son to be permanently placed in the custody of a children services agency since the son was in need of a legally secure placement given the mother's failure to maintain a stable living situation and her failure to remain sober; the mother failed to make progress toward the case plan goals, failing to address substance abuse issues, not completing parenting classes, and discontinuing counseling; and the son had spent only the first two months of his life in the mother's custody and had bonded with his foster family. In *re J.S.*, 2006 Ohio App. LEXIS 1050, 2006 Ohio 1150, (2006).

There was no abuse of discretion in finding that granting permanent custody of the child to the agency was in the child's best interest, pursuant to RC § 2151.414(D) and RC § 2151.353, because the agency had been working with the parents to remedy the same problems in connection with the older sibling for over a year and neither parent was willing or able to provide a stable home for the newborn child. The father made no attempt to communicate with his newborn child, nor did he inquire as to her well-being; he did not make any attempt to contact the agency regarding the child; he did not attend the adjudication and disposition hearing; and, even though the father was incarcerated, he had an obligation to provide for his child. In *re Jamilah P.*, 2006 Ohio App. LEXIS 1511, 2006 Ohio 1631, (2006).

Granting permanent custody of the children to the agency was in the best interest of the children because the mother's parental rights had involuntarily been terminated with respect to siblings of the children, the interactions between the children and the mother were very limited as the mother's frequent failures to attend visitations demonstrated a lack of concern for the children. The mother also failed to complete her case plan because she did not complete her domestic violence counseling. In *re G.S.*, 2006 Ohio App. LEXIS 2389, 2006 Ohio 2530, (2006).

There was no error in granting permanent custody of the mother's children to the agency because the trial court did not rely solely upon the mother's poverty to determine the permanent custody award. The trial court noted that the mother admitted her inability to care for the children and determined that the children's best interests warranted granting the agency permanent custody. Thus, the trial court did not rely upon one factor alone, but looked to all of the statutory factors to determine that the agency should receive permanent custody of the two children. In *re Link*, 2006 Ohio App. LEXIS 476, 2006 Ohio 529, (2006).

Grant of permanent custody of a mother's daughter to a children services agency was in the daughter's best interest. While the mother had completed anger management and parenting classes, she was not implementing what she learned, and more significantly, the mother repeatedly ran away from authorities, demonstrating that she was placing her own wants and needs ahead of those of her daughter. In *re M. R.*, 2006 Ohio App. LEXIS 2406, 2006 Ohio 2558, (2006).

Termination of a father's parental rights was in the best interest of his son because the father had spent more than half of the son's life having no involvement with him, he did not seem to be working toward reuniting with his child, he had a long history of domestic violence and had not completed anger management classes that were part of his case plan, and the son was in need of a legally secure placement. In *re J. N.*, 2006 Ohio App. LEXIS 2410, 2006 Ohio 2557, (2006).

Record contained competent and credible evidence supporting a trial court's conclusion, pursuant to RC § 2151.414(A) and (B), that it was in the best interest of two children to be placed in the permanent custody of a children services agency. The evidence showed that the children had been in the temporary custody of the agency for over 37 months out of the last 41 months; that the children had poor interaction and relationships with the mother and father due to the mother's mental handicaps and the father's anger management issues; that the children had successful relationships with their foster family; and that, because of the children's developmental delays, they needed special care and a

permanent, structured environment which the parents could not provide. In *re Elliott*, 2006 Ohio App. LEXIS 1527, 2006 Ohio 1618, (2006).

Clear and convincing evidence showed it was in the best interest of a mother's children, under RC § 2151.414(D), to grant their permanent custody to an agency because the mother did not make adequate progress toward the goals of her case plan as (1) she did not initiate or complete many of its components, (2) while she attended anger management counseling, she was discharged because she did not admit that there was an anger management problem in her family, despite its history of domestic violence and the children's violence, (3) she did understand the need to secure adequate housing, to help the family financially, or a need to behave appropriately in the children's presence, (4) she was unemployed, (5) she lived at a campground, despite its rule that she could not live there more than 60 days at a time, and (6) she did not recognize the mental health issues her children faced or their need for treatment. In *re T.C.*, 2006 Ohio App. LEXIS 35, 2006 Ohio 61, (2006).

Nothing prohibited the trial court from considering and relying upon evidence that occurred after the children's services agency filed the permanent custody request. The court could properly have considered the mother's conduct, as well as other relevant evidence, when it considered the children's best interests. In *re Brown*, 2006 Ohio App. LEXIS 2719, 2006 Ohio 2863, (2006).

While a trial court properly concluded that a father's child could not or should not be placed with the father within a reasonable time due to the fact that the father had previously had his parental rights involuntarily terminated, the evidence did not support the trial court's determination that granting permanent custody to the family services agency was in the child's best interest because the reason that the child was removed from his mother's care had nothing to do with the father; however, the father and the child were never given a chance to develop any type of custodial history together. Moreover, the guardian ad litem opined that a case plan should be developed for the father and stated that he could not recommend permanent custody to the agency until the parents were given an opportunity to work on their problems. In *re Banks*, 2006 Ohio App. LEXIS 7009, 2006 Ohio 7082, (2006).

Because neither the father nor his brother filed a motion requesting legal custody of the children prior to the dispositional hearing, the trial court was not required to consider the father's brother as a placement option, pursuant to RC § 2151.353, in the permanent custody proceeding. Assuming, arguendo, that the father or the father's brother had a proper motion before the trial court, the trial court did not abuse its discretion in not granting legal custody to father's brother because the brother and his girlfriend were not able to adequately care for the children. In *re Zurfley/Chatman/Black Children*, 2006 Ohio App. LEXIS 602, 2006 Ohio 683, (2006).

Upon a permanent custody petition, clear and convincing evidence supported the trial court's determination that the younger child could not be placed with the father within a reasonable time as the father failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home, and he was incarcerated for an offense committed against one of the children. In *re Miller*, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

While the trial court nominally followed the statutory machinery of the best interest analysis, it did not make specific, meaningful findings under RC § 2151.414(D)(1) relating to the interrelationship of the children with the mother, in that it failed to mention the ample testimony from the department's witnesses regarding the strong bond between the mother and the children, and it failed to consider relevant evidence pertaining to § 2151.414(D)(1), (2), and (4), including the fact that the mother's son stated that he wanted to live with the mother. Furthermore, the trial court made no finding as to why placement with the mother could not be achieved, which was especially important in light of the fact that the mother had progressed in, if not met, each of her case plan goals. In *re Janson*, 2005 Ohio App. LEXIS 6027, 2005 Ohio 6712, (2005).

Termination of parental rights constituted error where the agency did not properly prove the elements of RC § 2151.414(E)(1), (2), (3), (4), or (12). The children were denied

proper legal representation by their guardian ad litem: In re Alexis Kaye K., 160 Ohio App. 3d 32, 825 N.E.2d 1148, 2005 Ohio 1380, (2005).

Clear and convincing evidence supported the determination that a child was in the custody of a county social service agency for at least 12 months out of a consecutive 22-month period, and that it was in the child's best interest to grant permanent custody to the agency and to terminate the parental rights of the mother and father. The trial court considered the factors under RC § 2151.414(D)(1)-(5), including that the mother had other children removed pursuant to § 2151.414(E)(11), that she had not succeeded at some of the primary issues in her case plan such as addressing her substance abuse and mental health issues, and the child had bonded with his foster family who wished to adopt him. In re C.W., 2005 Ohio App. LEXIS 6093, 2005 Ohio 6739, (2005).

Trial court properly considered the factors under RC § 2151.414(D) in determining that it was in the child's best interest that permanent custody be awarded to a county children services board, including the fact that the father had only visited the child once prior to the hearing, that the child had bonded with her foster family, that the father had a history of felony convictions and repeated incarcerations, and that the father had tested positive for cocaine the week before the hearing. In re Woods, 2005 Ohio App. LEXIS 3284, 2005 Ohio 3561, (2005).

Agency presented clear and convincing evidence, pursuant to RC § 2151.414(D), that it was in the best interests of the children to be placed in the permanent custody of the agency because the mother did not complete any aspect of her case plan; she continued to live with the father; she failed to follow mental health recommendations and attend parenting classes; and she had previously lost permanent custody of one child, and surrendered custody of another child. In re Zink, 2005 Ohio App. LEXIS 3214, 2005 Ohio 3460, (2005).

Evidence supported a trial court's determination that a grant of permanent custody of a father's child to a county social service agency was in the child's best interest, pursuant to the factors under RC § 2151.414(E), where the mother did not have custody of her other children, she used drugs and alcohol, she and the father had a long history with the agency, the father was the subject of sexual abuse charges, and factors under § 2151.414(E)(4), (11), and (16) further supported the finding that the child could not and should not be returned to either parent within a reasonable time. In re West, 2005 Ohio App. LEXIS 2779, 2005 Ohio 2978, (2005).

There was clear and convincing evidence to support the trial court's award of permanent custody as being in the child's best interest, under RC § 2151.414(D), because the mother failed to take advantage of the services provided by refusing to allow a parent-aide into the home and failing to attend out-patient drug treatment. She continued to test positive for marijuana; failed to find stable and clean housing; failed to find steady employment; and failed to consistently attend the child's medical and therapy appointments. Because the child suffered from numerous medical conditions, she needed constant attention and help and she needed a safe and secure home so as not to injure herself or become ill and the mother failed to demonstrate that she was capable or willing to provide her child with the care and home she needed and deserved. In re P.S., 2005 Ohio App. LEXIS 3766, 2005 Ohio 4157, (2005).

Agency presented clear and convincing evidence, pursuant to RC § 2151.414(D), that it was in the best interests of the children to be placed in the permanent custody of the agency because the father failed to take any responsibility for the situations which resulted in the removal of the children; did not comply with any aspect of his case plan; threatened the agency and the caseworkers; he had mental health problems that were potentially dangerous to the children; he admitted to drug use; and he had a criminal record which included a conviction for child endangering, which resulted in the involuntary termination of his parental rights with respect to his other children. In re Zink, 2005 Ohio App. LEXIS 3214, 2005 Ohio 3460, (2005).

Finding that permanent custody by Allen County Children's Services Board (CSB) was in the two children's best interests was proper as the mother failed to bond with the children, the CSB had had temporary custody for more than 12 of the last 22 consecutive months, the mother was involved with a known felon,

whose children had been removed, and two experts opined that the mother could not adequately parent; while the mother had stable housing, she had not obtained it until after the permanent custody motion was filed. In re Hersherberger, 2005 Ohio App. LEXIS 455, 2005 Ohio 429, (2005).

Evidence supported a trial court's determination that termination of parental rights was in a child's best interest, pursuant to RC § 2151.414(D), where it reviewed the statutory factors and found that there was a lack of communication and interaction between the child and his parents, the child had a good relationship with his foster parents, he had been living apart from the parents for more than half of his life, the child had severe medical needs which were not being met by his parents, and certain of the findings of RC § 2151.414(E) existed. In re B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Clear and convincing evidence was available at the time of disposition for the trial court's consideration of each of the RC § 2151.414(D) factors, and the evidence supported a finding that a grant of permanent custody was in the child's best interests. The mother had voluntarily admitted herself for psychiatric hospitalization when she became afraid of physically harming her son (she admitted to thoughts of suffocating him with a pillow and cutting the throats of two other young children in the home); the child had significant developmental delays but an adoptive home had been identified that was able to meet his special needs; and the guardian ad litem report was properly before the trial court for consideration, under Ohio R. Juv. P. 34(B)(2), as it was relevant and material. In re Erich L., 2005 Ohio App. LEXIS 2748, 2005 Ohio 2945, (2005).

Clear and convincing evidence supported the finding that permanent custody with the agency was in the child's best interest because, pursuant to RC § 2151.414(D)(1), regarding the interaction and interrelationship of the child, the mother had not demonstrated an ability to meet the special needs of her son and the evidence weighed in favor of termination. The child had a problem making attachments with people and he exhibited angry outbursts, tantrums, manipulative behavior, cruelty to animals, and sexual behavior. In re D.M., 2005 Ohio App. LEXIS 6067, 2005 Ohio 6740, (2005).

Trial court's decision, pursuant to RC § 2151.414(D), awarding permanent custody of a mother's four children to a county children services board was not against the manifest weight of the evidence, in that, while the mother did complete portions of her case plan, she failed to complete the majority of the case plan requirements; the evidence showed that the mother could not provide a secure environment for the children; the mother had not participated in individual counseling as recommended, had not maintained stable employment or housing, and continued to lack understanding of critical parenting skills; and the children had been in the temporary custody of the board well over the 12 or more months of the consecutive 22-month period in § 2151.414(B)(1). In re S.B., 2005 Ohio App. LEXIS 3591, 2005 Ohio 3889, (2005), dismissed by 2005 Ohio 6428, 2005 Ohio App. LEXIS 5783 (Ohio Ct. App., Butler County Dec. 5, 2005).

Trial court's failure to specifically discuss each of the factors of RC § 2151.414(D) when it rendered its decision to grant permanent custody of a mother's children to a social services agency was not reversible error, as there was no statutory requirement that a trial court had to list those factors or conditions that it found applicable before making its determination that a child could not be placed with either parent, or that permanent custody was in the child's best interest. In re Ch. O., 2005 Ohio App. LEXIS 1024, 2005 Ohio 1013, (2005).

While a juvenile court is required to consider all of the enumerated factors pursuant to RC § 2151.414(D), the Third District Court of Appeals of Ohio does not require that each factor be specifically discussed in the judgment entry; while there must be some indication on the record that all of the factors in the statute were considered, a juvenile court is not required to utter any magic or talismanic wording to pass statutory muster. In re Hersherberger, 2005 Ohio App. LEXIS 455, 2005 Ohio 429, (2005).

Where the mother had her parental rights to the child's siblings terminated, the trial court was required to enter a finding that the child could not be placed with the mother within a reasonable

period of time. Since the trial court needed to find one factor to enter a finding that the children should not be placed with the parent within a reasonable period of time, any error of the requirement that the mother have no contact with the father was harmless. In re Spangler, 2005 Ohio App. LEXIS 3210, 2005 Ohio 3450, (2005).

Juvenile court did not err in failing to include a specific written discussion of the RC § 2151.414(D)(5) factors as it clearly considered the RC § 2151.414(D) factors; even if such a discussion was required, any error was harmless as the RC § 2151.414(E)(7)-(11) factors were inapplicable. In re Hershberger, 2005 Ohio App. LEXIS 455, 2005 Ohio 429, (2005). Court found that RC 2151.414(E)(1) and (16) applied to biological mother because she had continuously and repeatedly failed to substantially remedy the substantive abuse and inadequate child care problems which prompted the removal of her sons, despite the establishment of a case plan for eventual reunification of the mother and children, which required the mother to obtain a drug and mental health diagnostic assessment and apply for and maintain adequate housing. In re Denzel M., 2004 Ohio App. LEXIS 3620, 2004 Ohio 3982, (2004).

Juvenile court erred in terminating the parental rights of the mother and in granting permanent custody of the minor child to the county children's services board, as the conflicting and problematic opinions of the multiple witnesses at the permanent custody hearing, plus the evidence showing that the mother had only a limited opportunity to show that she had the ability to care for the minor child, meant that the required clear and convincing evidence did not support the termination of the mother's parental rights. In re K. S., 2004 Ohio App. LEXIS 2370, 2004 Ohio 2660, (2004).

Trial court did not err in awarding county child welfare agency the permanent custody of the mother's minor child, as statutory law permitted the county child welfare agency, which had temporary custody of a child, to file a motion requesting permanent custody of the minor child. In the minor child's case, the evidence showed that the minor child could not be placed with either parent within a reasonable amount of time and that permanent custody with the county child welfare agency was in the child's best interest even though placement with the family was preferred whenever possible. In re Leitwein, 2004 Ohio App. LEXIS 1131, 2004 Ohio 1296, (2004).

Pursuant to RC § 2151.414(D), a juvenile court must find clear and convincing evidence of both prongs of a two-prong test prior to terminating parental rights; in an action to terminate parental rights, the trial court found that the first prong of a permanent custody test was satisfied because a minor child had been in county custody for more than 12 of the 24 months prior to the hearing and that an award of permanent custody to the county was in the best interests of the minor child because the father had failed to make efforts to establish an ongoing relationship with his daughter. In re T. S., 2004 Ohio App. LEXIS 13, 2004 Ohio 32, (2004).

Though a trial court properly found that a father had abandoned his child, it erred in terminating his parental rights as it failed to make findings showing it considered all the factors of RC § 2151.414 in determining the best interest of the child. In re Cravens, 2004 Ohio App. LEXIS 2109, 2004 Ohio 2356, (2004).

Failure by a trial court to make explicit findings that permanent custody is in the best interest of the child amounts to reversible error if it is raised by either of the parents on appeal of a termination decision. Where neither parent whose rights were terminated challenged the fact that a trial court did not make explicit findings, the appellate court would not address that issue and, instead, confined its review to whether there was evidence before the trial court to support a finding that permanent custody was in the child's best interest. In re T.O., 2004 Ohio App. LEXIS 1423, 2004 Ohio 1605, (2004).

Agency's motion for permanent custody did not require the additional findings pursuant to RC § 2151.414(E) because the juvenile court found that the children had been in foster care for 18 consecutive months prior to the permanent custody hearing, and that the children were abandoned. In re Morgan, 2004 Ohio App. LEXIS 3653, 2004 Ohio 4018, (2004).

Although the trial court erred as a matter of law when it based its finding for permanent custody on RC § 2151.414(E)(1), that

reasonable efforts to reunify the parent and child were exercised, the error was harmless because there was competent, credible evidence to support the trial court's finding that, pursuant to RC § 2151.414(E)(4), the mother demonstrated a lack of commitment toward the child. In re Nibert, 2004 Ohio App. LEXIS 379, 2004 Ohio 429, (2004).

Where a child had not been in an agency's custody for 12 months when it sought permanent custody, under RC § 2151.414(B)(1)(a), the trial court had to, and did, find that she could not be placed with either parent within a reasonable time or should not be so placed; it was not required to also find that she had been in the agency's care for 12 months out of a consecutive 22-month period. In re Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Pursuant to RC § 2151.414(B)(1), when a state agency moves for permanent custody, the trial court is first required to determine by clear and convincing evidence that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion, and in making that determination, the court must consider the factors enumerated in RC § 2151.414(D); in an appeal by a grandmother from the grant of permanent custody of two grandchildren, the trial court properly analyzed the statutory criteria for granting permanent custody to the county, and found clear and convincing evidence to do so. In re McCann, 2004 Ohio App. LEXIS 260, 2004 Ohio 283, (2004).

Award of permanent custody to a county children services board was reversed where the parents did not complete their case plan in large part because they lacked a reliable form of transportation, and the board did not provide sufficient transportation assistance and made very little effort to schedule visitations closer to or in the parents' home; the parents did not have an adequate opportunity to show that they could provide legally secure placement following the initial removal, and there was not clear and convincing evidence in the record that the parents could not provide a legally secure home, under RC § 2151.414(D). In re Knuckles, 2003 Ohio App. LEXIS 3926, 2003 Ohio 4418, (2003).

Award of permanent custody to a family services agency was supported by clear and convincing evidence that the children could not, within a reasonable time period, be placed with the children's mother who did not comply with her case plan or provide any corroborating documentation or witnesses for her claims; the trial court was required to enter a finding that the children could not be placed with the mother within a reasonable time if any of the factors set forth in RC § 2151.414(E) applied, and, in the instant case, the trial court specifically found that the mother failed continuously and repeatedly to substantially remedy the conditions that caused the children to be removed from the home. In re D. F., 2003 Ohio App. LEXIS 2883, 2003 Ohio 3221, (2003).

Trial court is not required to determine, in a parental rights termination proceeding under RC § 2151.414(B)(1)(d), that the parent is expressly unfit to raise his child, nor is there any requirement that a trial court acknowledge that a parent has a constitutional right to raise his own child, because once a finding is made that the 12-month time requirement has been satisfied, the court goes on to the next step, which is the best interests analysis; RC § 2151.414(B)(1)(d) does not deprive a parent of fundamentally fair procedures, and the "fundamental liberty interest" that a parent has in the care, custody, and management of a child and the "basic civil right" to raise his or her children is not absolute and is always subject to the ultimate welfare of the child. In re Stillman, 155 Ohio App. 3d 333, 801 N.E.2d 475, 2003 Ohio 6228, (2003).

Trial court did not violate the biological father's constitutionally-protected liberty interest in the care and custody of his daughter by granting permanent custody of the daughter to the county children's welfare agency, as the State proved by clear and convincing evidence that granting permanent custody of the daughter in the county children's welfare agency was in the best interest of the daughter and that the daughter could not be placed with the parents within a reasonable amount of time. In re Baby Girl Elliott, 2003 Ohio App. LEXIS 5220, 2003 Ohio 5876, (2003).

Permanent custody award was affirmed where, although a GAL failed to issue a written report, no objection was made at the hearing and, there was no manifest injustice to have warranted

the use of the plain error doctrine; the award was supported by sufficient evidence where the trial court heard enough testimony before the GAL's oral report to conclude that the mother failed continuously and repeatedly to substantially remedy the conditions causing her child to be placed outside her home. In re R. C., 2003 Ohio App. LEXIS 6433, 2003 Ohio 7062, (2003).

Where the juvenile court's findings of fact and conclusions of law stated in part that all three children at issue were in need of a safe and permanent home which neither of their parents were able and/or unwilling to provide, the juvenile court amply considered whether the legally secure placement of the children could be obtained without the grant of permanent custody to the county children services department. In re Christian, 2003 Ohio App. LEXIS 6662, 2003 Ohio 7333, (2003).

Award of custody to a parent was proper despite a private agency's motion for permanent custody where the parent was willing and enthusiastic and had bonded with the child, where a legally secure placement was possible, and where the agency had delayed in permitting visitation with the parent and was reluctant in its attempts to reunify the child and the parent. In re J. H., 2003 Ohio App. LEXIS 5016, 2003 Ohio 5611, (2003).

In a termination of parental rights proceeding, substantial completion of case plan does not preclude a grant of permanent custody to a social services agency, and the appellate court must consider whether a parent substantially remedies the conditions that cause a child's removal under RC § 2151.414(E)(1). In re Conn, 2003 Ohio App. LEXIS 4804, 2003 Ohio 5344, (2003).

Issues concerning extension of temporary custody essentially become moot after a court grants an agency's motion for permanent or legal custody. The mother's compliance with the case plan was immaterial where returning the children to her would subject them to violence by her husband. In re Nice, 141 Ohio App. 3d 445, 751 N.E.2d 552, 2001 Ohio 3214, (2001).

The evidence clearly supported the award of permanent custody to the agency. In re Nicholas H., 137 Ohio App. 3d 442, 738 N.E.2d 896 (2000).

In a proceeding for termination of parental rights, the parent should have been permitted to rebut the testimony of the guardian ad litem. Public agencies should assist a parent in implementing a reunification plan. In re Sadiku, 139 Ohio App. 3d 263, 743 N.E.2d 507 (2000).

Termination of parental rights was proper where the sole parent was not providing for the special needs of a child with Down's syndrome and was not cooperating with the case plan. The court is not required to consider placement with a relative before granting permanent custody. In re Patterson, 134 Ohio App. 3d 119, 730 N.E.2d 439 (1999).

Permanent custody may not be granted unless the trial court finds clear and convincing evidence that one or more of the eight enumerated factors in RC § 2151.414(E) exist. In re William S., 75 Ohio St. 3d 95, 661 N.E.2d 738, 1996 Ohio 182, (1996).

Leaving children basically unattended with a loaded, unsecured gun is sufficient to support a finding of neglect and dependency. An order of permanent commitment or long-term foster care may be justified where a parent has repeatedly failed to supervise and provide adequate care for the children. Skeen v. Gullett, 1994 Ohio App. LEXIS 2746 (1994).

A court is required to grant permanent custody to a children services agency where there is clear and convincing evidence meeting the statutory criteria. In re Doe Children, 93 Ohio App. 3d 134, 637 N.E.2d 977 (1994).

Admission of testimony of the mother's psychiatrist in violation of RC §§ 2317.02 and 4732.19 at the hearing on termination of parental rights was prejudicial. Parents' constitutional rights may not be abridged by a cursory judgment. The court is required by the statute to find, by clear and convincing evidence, that certain criteria have been met, and the court must state those findings on the record, such that it is clear to all parties that the decision is supported by the facts. In re Brown, 98 Ohio App. 3d 337, 648 N.E.2d 576 (1994).

Revised Code § 2151.414(E) does not limit the trial court's determination of whether a child cannot be placed with either of his parents within a reasonable period of time or should not be placed with his parents to the specified factors, but explicitly notes that the court "shall consider all relevant evidence". In re Kasler, 1991 Ohio App. LEXIS 2673 (4th Dist. 1991).

Evidence that the parents were uncooperative with caseworkers from the children's services agency reflects adversely on the parent's ability to care for their children since the parents are fully aware that failure to abide by the agency's guidelines could result in the divestiture of their rights. The evidence that the father had sexually abused the children was overwhelming. The unsuitability of each parent must be considered separately. In re Pieper Children, 74 Ohio App. 3d 714, 600 N.E.2d 317 (1991).

Before a trial court may terminate parental rights and grant permanent custody to a county children services board, RC § 2151.414(A) requires the trial court to determine: (1) that the board has made a good faith effort to implement the initial and subsequent reunification plans; (2) that the parents have acted so as to leave the child without adequate parental care and that they will continue to do so in the near future; and (3) that it is in the best interests of the child to permanently terminate parental rights. In re Lay, 43 Ohio App. 3d 78, 539 N.E.2d 664 (1987).

Before temporary custody can be converted to permanent custody, RC § 2151.414 requires a court to examine the factors listed in RC § 2151.414(A)(1) through (3). In re Jones, 29 Ohio App. 3d 176, 29 Ohio B. 206, 504 N.E.2d 719 (1985).

Revised Code § 2151.414(A) lists numerous determinations to be made by the juvenile court during a hearing upon a motion for permanent custody, but the statute does not require these determinations to be listed in the court's judgment entry, and thus, the failure to do so is not error. Such determinations would be appropriately included within the court's findings of fact and conclusions of law, if they were requested by any of the parties pursuant to RC § 2151.414(B). In re Covin, 8 Ohio App. 3d 139, 8 Ohio B. 196, 456 N.E.2d 520 (1982).

Children of a family have a right to the companionship of their siblings. The role of the State should be to do everything that can be done to keep the children of a family together so that they may enjoy the advantages of mutual companionship, love and protection. In re Neglected Children, 65 Ohio Misc. 7, 18 Ohio Op. 3d 283, 416 N.E.2d 669 (CP 1979).

Abandonment

Agency's motion for permanent court commitment under RC § 2151.414 was properly granted as the mother had abandoned the child, as defined in RC § 2151.011(C), in that she had no contact with the child for more than ninety days. The fact that the mother later resumed contact with the child after the period of abandonment was immaterial, and the mother's attempt to justify the abandonment with her contention that she was working on her sobriety was insufficient justification for maintaining no contact with the child. In re D.P., 2007 Ohio App. LEXIS 1550, 2007 Ohio 1703, (2007).

Situations may exist in which abandonment, for permanent custody determinations can be established without the passage of 90 days. However, before a department of children's services initiates a motion for permanent custody on the grounds of presumed abandonment, 90 days must have passed without visit or contact before such motion can be initiated. In re Scullion Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 888, 2007 Ohio 929, (Mar. 2, 2007).

Although the trial court's finding of abandonment was against the manifest weight of the evidence, since 90 days had not passed without visit or contact by the mother before the motion was filed, the determination of permanent custody of the children with the agency did not require reversal because the trial court found an alternate, independent ground for terminating parental rights in that the children could not, or should not, be placed with either parent. In re Scullion Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 888, 2007 Ohio 929, (Mar. 2, 2007).

Since a trial court made a finding that a mother's child had been abandoned under RC § 2151.414(B)(1)(b), which the mother did not dispute, the trial court was not required to make a finding that the agency made reasonable case planning efforts under RC § 2151.419(A)(1). In re Stafford, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 826, 2007 Ohio 928, (Mar. 5, 2007).

Termination of a mother's parental rights was warranted since the mother had abandoned her daughter under RC § 2151.011(C), in that she failed to maintain contact with her for more than 90 days. In re M. R., 2006 Ohio App. LEXIS 2406, 2006 Ohio 2558, (2006).

Evidence supported trial court's finding that a mother had not abandoned her children who had been removed from her custody, where the children were placed with the children's maternal aunt and uncle, and the evidence presented included the mother's making contact with the aunt several times, but the aunt either forgot or simply decided not to tell the children; the same evidence that supported the finding that the children had not been abandoned sufficiently supported the trial court's conclusion that the children could or should be placed with mother within a reasonable time, pursuant to RC § 2151.414(E). In re N.B., 2003 Ohio App. LEXIS 3295, 2003 Ohio 3656, (2003), criticized by In re D.J., 2006 Ohio 6304, 2006 Ohio App. LEXIS 6276 (Ohio Ct. App., Montgomery County Dec. 1, 2006).

As children were abandoned by their parents pursuant to RC § 2151.414(B)(1)(b), the fact that the trial court also found that termination of the parents' rights was proper because the children were within the agency's custody for the requisite period of time under § 2151.414(B)(1)(d) was harmless error where the calculation of the time period was erroneous; the custody award was in the best interests of the children pursuant to § 2151.414(D). In re Franklin, 2006 Ohio App. LEXIS 4737, 2006 Ohio 4841, (2006).

Mother's substance abuse caused her to abandon her children and she could not rely upon her substance abuse as a justification for the children's abandonment. In re Phillips, 2005 Ohio App. LEXIS 3453, 2005 Ohio 3774, (2005).

Trial court properly found that three children were abandoned and could not be placed with their mother within a reasonable time where the mother had not had contact with the children for a nine-month period, which was well beyond the statutory 90-day period, and the mother failed to rebut the presumption of abandonment; the trial court was not required to show that the children were in a child services board's custody for 12 or more months of a consecutive 22-month period. In re Phillips, 2005 Ohio App. LEXIS 3453, 2005 Ohio 3774, (2005).

Because a children services' board filed its motion for permanent custody under RC § 2151.413, the "reasonable efforts" requirement of RC § 2151.419(A) was not applicable; therefore, the trial court had authority to grant permanent custody to the board under RC § 2151.414(B)(1) when it found, *inter alia*, that the mother had abandoned the child during the mother's incarceration and that she had failed to secure permanent housing. In re S.P., 2005 Ohio App. LEXIS 1104, 2005 Ohio 1079, (2005).

Although the trial court found three statutory reasons to justify the decision to grant permanent custody of a father's five children to a county agency, and the father only appealed the finding of abandonment under RC § 2151.414(B)(1)(b), in the interests of justice, the court reviewed that finding and determined that it was not against the manifest weight of the evidence. The record revealed that the father was aware that the children were in foster care and not with the mother, and although he admitted that he could have contacted them, instead he chose not to, nor did he provide any child support for them. In re Bailey Children, 2005 Ohio App. LEXIS 2783, 2005 Ohio 2981, (2005).

Because both prongs of the permanent custody test were satisfied, the trial court properly terminated the mother's parental rights and placed the child in the permanent custody of the agency, pursuant to RC § 2151.414. The fact that the mother had not visited the child for more than eight months was sufficient to support a presumptive finding of abandonment, under RC § 2151.011(C), and the evidence demonstrated that the mother kept moving and did not inform the agency of her whereabouts. In re B. C. M., 2005 Ohio App. LEXIS 1735, 2005 Ohio 1818, (2005).

As a father failed to visit or communicate with his child for 90 days, and the trial court found that a family services agency did not interfere with his attempts at visitation, the father failed to present any evidence which would rebut the presumption of abandonment, as contained in RC § 2151.011(C); therefore, the trial court properly found he had abandoned the child. In re Cravens, 2004 Ohio App. LEXIS 2109, 2004 Ohio 2356, (2004).

Where the mother wanted the child to remain in foster care until he was 18, would not permit him to return home, and refused to cooperate with children services or to participate in reunification efforts, the mother had effectively abandoned the child, permitting the award of permanent custody to the county

children services. In re Beasley, 2003 Ohio App. LEXIS 3207, 2003 Ohio 3462, (2003).

The court lawfully awarded permanent custody of the baby to the children services agency where the mother abandoned it in the trash and neither the mother nor the father nor any of the grandparents demonstrated a level of commitment to the baby that would militate against the award of permanent custody. In re Baby Girl Doe, 149 Ohio App. 3d 717, 778 N.E.2d 1053, 2002 Ohio 4470, (2002), appeal denied by 97 Ohio St. 3d 1425, 2002 Ohio 5820, 777 N.E.2d 278, 2002 Ohio LEXIS 2759 (2002).

The children were presumptively abandoned where the mother did not visit them for more than ninety days while they were in foster care. Thus the agency was not required to prove that it made sufficient reunification efforts. The best interests of the children supported the award of permanent custody where the parent was an active drug user who had made no effort to quit and obtain a stable situation. In re Starkey, 150 Ohio App. 3d 612, 782 N.E.2d 665, 2002 Ohio 6892, (2002).

Adequate parental care

The term "adequate parental care" does not require that both parents must be found capable of providing such care; the failure of one parent to provide adequate parental care does not automatically mean the failure of both. In re Lay, 43 Ohio App. 3d 78, 539 N.E.2d 664 (1987).

Revised Code § 2151.41.4 sets out several factors to be considered in determining the existence of adequate parental care. They include, *inter alia*, the extent to which the parents have conformed to court-ordered reunification plans; their existing mental and emotional status; and any physical, emotional, or mental neglect of the child. In re Lay, 43 Ohio App. 3d 78, 539 N.E.2d 664 (1987).

Admissions

Trial court's failure to comply with JuvR 29(D), concerning admissions, constitutes plain error in cases involving termination of parental rights. In re A.C., 160 Ohio App. 3d 457, 827 N.E.2d 824, 2005 Ohio 1742, (2005).

Juvenile Rule 34 does not require the court to engage in a colloquy with a parent in a RC § 2151.41.4 proceeding. A parent's admission in a dispositional hearing that a child's best interest would be served by permanent placement elsewhere than with the parent is not a matter that requires protections similar to JuvR 29(D). In re Lakes, 149 Ohio App. 3d 128, 776 N.E.2d 510, 2002 Ohio 3917, (2002).

Noncompliance with JuvR 29(D) rendered the termination of parental rights invalid. In re Etter, 134 Ohio App. 3d 484, 731 N.E.2d 694 (1998).

Adoption, generally

The adoptability of a child is only one of a number of relevant factors that the court must consider in a permanent custody case and the fact that a child has special needs does not mandate a finding that the child could not be adopted. In re Seymour, 1994 Ohio App. LEXIS 3375 (4th Dist. 1994).

Where a court finds ample cause for termination of parental rights, it will not be deterred from doing so by the fact that siblings may be adopted separately. In re Justice, 1993 Ohio App. LEXIS 3871 (1993).

Agency custody for 12 months

Father's sole assignment of error, contending that the trial court erred in finding that his children could not be placed with either parent within a reasonable time, was without merit because the trial court never made this finding. Instead, the trial court found that RC § 2151.414(B)(1)(d) applied as the children had been in the agency's temporary custody for more than 12 months of a consecutive 22-month period. In re Sowers, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1740, 2007 Ohio 1935, (Apr. 17, 2007).

Trial court's finding, which no party appealed, that the children of a mother and a father had been in the custody of the family services agency for 12 or more months in a consecutive 22-month period, coupled with a showing that permanent custody was in the children's best interest, provided a sufficient basis for the court to affirm the trial court's judgment granting the agency's motion for

permanent custody. In re Marple, 2007 Ohio App. LEXIS 1696, 2007 Ohio 1879, (2007).

Because the termination of parental rights is the family law equivalent of the death penalty, a trial court's failure to enter an appropriate RC § 2151.414(B)(1) finding constitutes plain error. Trial courts have the mandatory duty to fully comply with the permanent custody statutes and may not award permanent custody without making the requisite findings. In re McCain, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1297, 2007 Ohio 1429, (Mar. 23, 2007).

Trial court committed plain error in finding that RC § 2151.414(B)(1)(d) applied to a permanent custody case. Pursuant to § 2151.414(B)(1)(d), the child entered the temporary custody of the agency sixty days after she was removed from her home, which was June 28, 2005. When the agency filed the permanent custody motion in May of 2006, the child had not continuously been in the agency's custody for twelve months of a consecutive twenty-two month period. In re McCain, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1297, 2007 Ohio 1429, (Mar. 23, 2007).

When a trial court determined, in permanent custody proceedings, that a child had been in the custody of an agency for 12 or more months of a consecutive 22-month period, under RC § 2151.414(B)(1)(d), and the record supported this determination, it did not then have to go on and determine whether the child could or should be placed with a parent, under RC § 2151.414(B)(1)(a). In re J.W., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1273, 2007 Ohio 1419, (Mar. 27, 2007).

When a trial court calculated whether a mother's children had been in an agency's custody for more than 12 months of a 22-month period, under RC § 2151.414(B)(1)(d), it was error to find, under RC § 1.45, that any portion of a month the children were in the agency's custody was counted as a full month because, in counting months, pursuant to § 1.45, the statute explicitly required computation "from a particular day" until "the same numerical day in the concluding month," so the statute did not provide that a portion of a month could be counted as an entire month. In re A. C., 2006 Ohio App. LEXIS 3264, 2006 Ohio 3337, (2006).

When a trial court calculated whether a mother's children had been in an agency's custody for more than 12 months of a 22-month period, under RC § 2151.414(B)(1)(d), the operative beginning date was 60 days after they were removed from their home, and the operative ending date was the date on which the agency filed a motion for their permanent custody. In re A. C., 2006 Ohio App. LEXIS 3264, 2006 Ohio 3337, (2006).

Trial court did not err when it granted permanent custody of the mother's children to the agency because, although R.C. § 2151.414(B)(1)(a) did not apply, the trial court properly found that R.C. § 2151.414(B)(1)(d) was applicable because the children had been in the temporary custody of the agency for a period in excess of 12 of the prior 22 consecutive months. In re Canterucci Children, 2006 Ohio App. LEXIS 4910, 2006 Ohio 4969, (2006).

When a trial court calculated whether a mother's children had been in an agency's custody for more than 12 months of a 22-month period, under RC § 2151.414(B)(1)(d), the mother conceded that it was not error for the trial court to combine the period during which the children were in the agency's custody in a prior case with the period during which the children were in the agency's custody during the current case. In re A. C., 2006 Ohio App. LEXIS 3264, 2006 Ohio 3337, (2006).

Trial court properly found that the requirement of RC § 2151.414(B)(1)(d) was satisfied because, at the time the agency filed its motion, the child had been in the custody of the agency for 12 months of a consecutive 22-month period. In re SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

RC § 2151.414(B)(1)(d) was inapplicable to a father's child with respect to a permanent custody proceeding, as the child's temporary custody with a county children service agency was terminated and legal custody of the child was returned to the mother, such that the child was only in the temporary custody of

the agency for eight months and 16 days. In re Miajanigue W, 2006 Ohio App. LEXIS 6271, 2006 Ohio 6295, (2006).

In permanent custody proceedings, a trial court improperly found that a mother's youngest child could not be placed with either parent within a reasonable time because RC § 2151.414(B)(1)(a) was inapplicable since all three of the mother's children had been in the temporary custody of a county children's services agency for 12 of the 22 prior months. The trial court's alternate finding under RC § 2151.414(B)(1)(d), however, was independently sufficient as a basis to grant the agency's motion for permanent custody. In re Parks, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

Award of permanent custody of a mother's child to a children services agency was supported by the trial court's finding, pursuant to RC § 2151.414(B)(1)(d), that the child had been in the temporary custody of the agency for a period in excess of twelve of the prior twenty-two consecutive months. In re Parks, 2006 Ohio App. LEXIS 5835, 2006 Ohio 5890, (2006).

Award of permanent custody of a mother's child to a children services agency was supported by the trial court's finding, pursuant to RC § 2151.414(B)(1)(d), that the child had been in the temporary custody of the agency for a period in excess of twelve of the prior twenty-two consecutive months. In re Elder, 2006 Ohio App. LEXIS 5834, 2006 Ohio 5889, (2006).

While a mother contended on appeal that the trial court erred when it found that the mother's children could not be placed with her within a reasonable period of time, since the children were in the custody of the agency for twelve or more months of a consecutive twenty-two month period, pursuant to RC § 2151.414(B), the trial court did not need to determine that the children could not or should not be placed with the mother within a reasonable period of time. In re K.R., 2006 Ohio App. LEXIS 5751, 2006 Ohio 5801, (2006).

Trial court's decision that permanent custody should be granted pursuant to RC § 2151.414(B)(1)(d) was not against the manifest weight of the evidence since the record contained evidence that the child had been in the temporary custody of the family services agency for more than 12 months. The father's arguments that the father's home was never investigated to determine whether it would be a proper placement and that he was never added to the case plan were irrelevant to a determination under § 2151.414(B)(1)(d). In re Weaver, 2006 Ohio App. LEXIS 5665, 2006 Ohio 5677, (2006).

Trial court's decision made the requisite finding that the children were in the custody of the agency for 12 months of a consecutive 22-month period and the evidence supported the trial court's findings. Since the motion was brought pursuant to RC § 2151.414(B)(1)(d), the court's holding was premised on RC § 2151.414(B)(1)(d), which the evidence supported and thus, the trial court did not violate the mother's equal protection and due process rights through its reference to whether or not the children could be placed with the parents. In re S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

While a trial court found, pursuant to RC § 2151.414(B)(1)(a) that a mother's children could not or should not be placed with the mother within a reasonable period of time, this subsection was not applicable to the case since, under § 2151.414(B)(1)(a), the children must not have been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period, and the children had been in the agency's custody for more than 12 of the prior 22 consecutive months. The court agreed with the trial court's finding that § 2151.414(B)(1)(d), which allowed the grant of permanent custody if the children had been in the temporary custody of the agency for 12 of the prior 22 consecutive months, was applicable to the case. In re Canterucci Children, 2006 Ohio App. LEXIS 4910, 2006 Ohio 4969, (2006).

Trial court determined that there was some controversy as to the use of RC § 2151.414(B)(1)(d) and it also made findings regarding § 2151.414(B)(1)(a) with respect to a grant of permanent custody of parents' child to a county agency; although the additional consideration under § 2151.414(B)(1)(d) was not necessary because the adjudication was to have been based on § 2151.414(B)(1)(a), the additional finding was merely harmless

error. In re Morris, 2006 Ohio App. LEXIS 3122, 2006 Ohio 3231, (2006).

Termination of a father's parental rights was proper on the ground that the father's son had been in the permanent custody of the agency for 12 months out of a consecutive 22-month period. Thus, the fact that the evidence did not support a finding of abandonment under RC § 2151.011(C), in that the caseworker and the foster mother testified that the father made one telephone call to the son during his three-month absence, did not require reversal of the permanent custody order. In re J. N., 2006 Ohio App. LEXIS 2410, 2006 Ohio 2557, (2006).

Since a mother's children had been in the temporary custody of a children services agency for more than 12 out of the last 22 months, pursuant to RC § 2151.414(B)(1)(d), the trial court was not required to make a finding that the children could not be returned within a reasonable time. In re Chestnut, 2006 Ohio App. LEXIS 611, 2006 Ohio 684, (2006).

Children services agency was properly awarded permanent custody of a mother's child pursuant to RC § 2151.414. Since the evidence showed that the child had been in the custody of the agency for more than 12 months of a consecutive 22-month period under § 2151.414(B)(1)(d), the trial court was not required to address the mother's compliance with her case plan. In re S.M., 2006 Ohio App. LEXIS 2386, 2006 Ohio 2529, (2006).

Where a mother did not dispute the fact that three of her minor children had been in the temporary custody of a county social service agency for 12 or more months out of the past 22 months, pursuant to RC § 2151.414(B)(1)(d), but she disputed that such was an appropriate basis for termination of her parental rights, such argument lacked merit, as it was a statutorily authorized basis for termination. The trial court had also found support for termination pursuant to § 2151.414(B)(1)(a), and as such, § 2151.414(B)(1)(d) was merely an additional, cumulative reason for termination. In re Amber M.L., 2005 Ohio App. LEXIS 3804, 2005 Ohio 4172, (2005).

When an agency sought permanent custody of a child based on an allegation, under RC § 2151.414(B)(1)(d), that the child had been in its custody for 12 of the last 22 months, the time period between the filing of the agency's motion making that allegation and the hearing on the motion did not apply to a calculation of the 12-month time period, and, as the agency filed its permanent custody motion less than 12 months after it received temporary custody of the child, the requirements of the statute were not met, but the child's mother did not raise this error at trial, so it was waived, and, given the fact that the mother had died, it was not appropriate to apply a plain error analysis. In re Roberts, 2005 Ohio App. LEXIS 2656, 2005 Ohio 2843, (2005).

There was no violation of RC § 2151.414(B)(1) on the ground that permanent custody was granted before the expiration of the 12-month period from the time of placement of the child because § 2151.414(B)(1)(a) authorized an award of permanent custody if the child could not be placed with either of her parents within a reasonable time and did not require the expiration of a 12-month period. In re Woods, 2005 Ohio App. LEXIS 3284, 2005 Ohio 3561, (2005).

Trial court's finding, under RC § 2151.414(B)(1)(d), that the children had been in the temporary custody of the agency for 12 of the previous consecutive 22 months, was independently sufficient to use as a basis to grant the agency's motion for permanent custody and was not against the manifest weight of the evidence. In re Langford, 2005 Ohio App. LEXIS 2196, 2005 Ohio 2304, (2005).

Where a mother's child had been in the temporary custody of an agency for 12 months out of a consecutive 22-month period, it was unnecessary on appeal to review the trial court's determination that the child could not and should not be returned to the mother's custody within a reasonable time, as the initial finding was sufficient on its own, pursuant to RC § 2151.414(B)(1)(d), to support the grant of permanent custody to the agency. In re Lewis/Louk Children, 2005 Ohio App. LEXIS 2233, 2005 Ohio 2344, (2005).

As a mother's children had been in the custody of a social services agency for 12 or more months of a consecutive 22-month period, as required by RC § 2151.414(B), the trial court was not obligated to make a determination under RC § 2151.414(E) that the mother had failed continuously and repeatedly to substantially

remedy the conditions that caused the children to be removed from her home; rather, the trial court only had to make a best interests of the children determination, pursuant to RC § 2151.414(D), which it did upon a finding that the mother could not stay off of drugs and had committed criminal acts. In re Ch. O., 2005 Ohio App. LEXIS 1024, 2005 Ohio 1013, (2005).

Where appellant mother's children had been in the custody of a children's services agency for 16 of the previous 22 consecutive months, the trial court did not err in finding that the requirement of RC § 2151.414(B)(1)(d) had been met. In re Joiner, 2004 Ohio App. LEXIS 1017, 2004 Ohio 1158, (2004), appeal denied by 102 Ohio St. 3d 1425, 2004 Ohio 2003, 807 N.E.2d 368, 2004 Ohio LEXIS 998 (2004).

Trial court properly granted permanent custody to a children service agency and terminated the rights of the parents, based on RC § 2151.414(B)(1)(d), where the parties' two minor daughters had been in the agency's custody for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, and termination was in the children's best interests; the trial court was not required to determine whether the children could or should have been placed with either parent within a reasonable time, given that the first factor was found, and further, the children appeared very happy in their foster care arrangement, having bonded with the family. In re Brown, 2004 Ohio App. LEXIS 3667, 2004 Ohio 4044, (2004), appeal denied by 103 Ohio St. 3d 1495, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2585 (2004).

Finding that a child was in an agency's temporary custody for at least 12 months of a consecutive 22-month period precluded a determination required by RC § 2151.414(E) of whether parents had remedied conditions which caused removal of child; the trial court was not required to conduct an analysis under RC § 2151.414(E)(1), and an order terminating parental rights was affirmed. In re L.D., 2004 Ohio App. LEXIS 3655, 2004 Ohio 4000, (2004).

Pursuant to RC § 2151.414(D), a juvenile court must find clear and convincing evidence of both prongs of a two-prong test prior to terminating parental rights; in an action to terminate parental rights, the trial court found that the first prong of a permanent custody test was satisfied because a minor child had been in county custody for more than 12 of the 24 months prior to the hearing and such was in the best interest of the child. In re T. S., 2004 Ohio App. LEXIS 13, 2004 Ohio 32, (2004).

Before a public children-services agency or private child-placing agency can move for permanent custody of a child on RC § 2151.414(B)(1)(d) grounds, the child must have been in the temporary custody of an agency for at least 12 months of a consecutive 22-month period. In re C.W., 104 Ohio St. 3d 163, 818 N.E.2d 1176, 2004 Ohio 6411, (2004).

Child services agencies have no authority to file a motion for permanent custody of children on the basis that the children have been in the temporary custody of the agency for 12 or more months of a consecutive 22 month period prior to expiration of the entire 12-month period. A trial court's order granting the Wayne County Children Services Board's petition for permanent custody of three children and termination of their father's parental rights was reversed where the evidence clearly showed, and the trial court explicitly found, that the children were in temporary custody for only 10 months when the petition was filed. In re K. G., 2004 Ohio App. LEXIS 1290, 2004 Ohio 1421, (2004).

Pursuant to RC § 2151.414(B)(1)(d), when a child has been in a children services agency's temporary custody for 12 or more months of a consecutive 22 month period ending on or after March 18, 1999, a trial court need not find that the child cannot or should not be placed with either parent within a reasonable time, and instead, may consider only the best interests of the child; the trial court was not required to find that the child cannot or should not be placed with either parent within a reasonable time based upon the amount of time that a minor child was in foster care and separated from his mother and father because of their inability to properly raise the child. In re Riley, 2003 Ohio App. LEXIS 3657, 2003 Ohio 4108, (2003).

Where children were adjudicated dependent within 60 days of being removed from their parents' home, the statutory calculation pursuant to RC § 2151.414(B)(1)(d) began on the date of adjudication; from that date to the date of the permanent custody

hearing the children were in temporary custody of the children's services agency for 17 months, which was statutorily sufficient. In *re* Sessoms, 2003 Ohio App. LEXIS 4775, 2003 Ohio 5281, (2003).

Basis existed for granting permanent custody to the county welfare agency on its motion to obtain permanent custody of the minor children of the parents, as the children had been in the temporary custody of one or more public service agencies for 12 months or more of a consecutive 22-month period and the relevant factors used to determine the best interests of the children appeared to weigh in favor of granting permanent custody, but the trial court's failure to consider two statutory best interest factors required that the case be remanded for new findings of fact and conclusions of law regarding those factors. In *re* Myers, 2003 Ohio App. LEXIS 2492, 2003 Ohio 2776, (2003).

Appeal

When, in a permanent custody case, a trial court erroneously used the time between filing and hearing the permanent custody motion to find the subject children were in the custody of a children's services agency for more than 12 of the last 22 months, under RC § 2151.414(B)(1)(d), requiring a remand, a new evidentiary hearing was not required on remand because the record from the prior hearing allowed the trial court to find, under RC § 2151.414(B)(1), that the children could not be returned to either parent within a reasonable time. In *re* Arnold, 2006 Ohio App. LEXIS 2608, 2006 Ohio 2794, (2006).

Mother's failure to file objections to a magistrate's decision at the trial court level and her failure to provide the trial court with a transcript or affidavit precluded the appellate court from considering the transcript she submitted on appeal in support of her claim that the trial court erred by failing to consider and weigh the best interest factors contained in RC § 2151.414(D). In *re* Maxwell, 2006 Ohio App. LEXIS 472, 2006 Ohio 527, (2006).

Where the appellate court reversed and remanded based on the admission of inadmissible hearsay evidence at the first hearing on termination of parental rights, the trial court should have conducted an entirely new hearing. In *re* Walker, 162 Ohio App. 3d 303, 833 N.E.2d 362, 2005 Ohio 3773, (2005).

Trial court did not show in its judgment entry that it engaged in the requisite analysis under RC § 2151.414(E) before terminating the father's parental rights. Therefore, it could not be determined on review whether the judgment was against the manifest weight of the evidence, or whether a timely filed case plan and reasonable efforts at reunification were required for a valid order. In *re* McGiffin, 2005 Ohio App. LEXIS 5868, 2005 Ohio 6528, (2005).

Mother facing possible termination of parental rights could appeal from the adjudicatory ruling after that hearing or after the case was disposed of by the dispositional hearing. In *re* A.C., 160 Ohio App. 3d 457, 827 N.E.2d 824, 2005 Ohio 1742, (2005).

Denial of the foster parents' motion to intervene (Ohio R. Civ. P. 24) was not a final appealable order, pursuant to RC § 2905.02(B), since the denial did not affect a substantial right; there was no judgment entry either granting or denying the agency's motion for permanent custody, or granting a disposition and placement of the minor child. Nor did dismissal of the foster parents' motion for custody, pursuant to RC § 2151.353(A)(3), affect a substantial right so as to make the denial of the motion a final appealable order because, since legal custody and permanent custody were alternative disposition choices, RC § 2151.353(A)(3) did not authorize the foster parents to intervene in the adjudicatory permanent custody proceeding (RC § 2151.414) and move for legal custody of the children. In *re* Fell, 2005 Ohio App. LEXIS 2457, 2005 Ohio 2415, (2005).

Grant of permanent custody was required to be reversed where the trial court adopted a magistrate's decision which failed to discuss all five factors contained in RC § 2151.414(D)(1) through (5). In *re* Bentley, 2004 Ohio App. LEXIS 3180, 2004 Ohio 3513, (2004).

Appeals court affirmed termination of parental rights (TPR) and transfer of permanent custody to a children's services board (CSB) under RC § 2151.414(B); after a remand, the trial court made its findings independently of the magistrate's findings, making the magistrate's findings moot. In *re* McColloch, 2003 Ohio App. LEXIS 5115, 2003 Ohio 5739, (2003).

In a permanent custody proceeding under RC § 2151.413, the trial court failed to mention any of the best interests factors or the statutory provision relating to such factors to show that they were considered, and the case was remanded. In *re* Brooks, 2003 Ohio App. LEXIS 4805, 2003 Ohio 5348, (2003).

Applicability

Strictures of RC § 2151.414(E)(1) were not pertinent to a case involving a trial court's grant of legal custody of a mother's four children to the children's grandparents because § 2151.414(E)(1) is applicable only in those cases in which a public children services agency seeks permanent custody of a child. In *re* Christopher M., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 975, 2007 Ohio 1040, (Mar. 9, 2007).

Where children had been removed from their mother's care and adjudicated as neglected, and thereafter, the social service agency that had temporary custody of the children sought to modify the custody to permanent custody, RC § 2151.353 was not applicable; rather, the proceeding was governed by RC § 2151.414(B). In *re* Ch. O., 2005 Ohio App. LEXIS 1024, 2005 Ohio 1013, (2005).

Revised Code §§ 2151.41.2 and 2151.41.4 are applicable only where the child or children have previously been determined dependent, neglected or abused, their temporary custody has been committed to a children services board, a welfare department or a certified organization, and an order is sought changing temporary to permanent custody. These sections are not applicable where the original request was for permanent custody, and an order of temporary custody was issued pending hearing on the complaint as provided by RC § 2151.33. In *re* Covert, 17 Ohio App. 3d 122, 17 Ohio B. 185, 477 N.E.2d 678 (1984).

Best interest of child

While a juvenile court is not required to enumerate and discuss every statutory factor listed in RC § 2151.414(D) in making a best interest determination, there must be some indication in the record that the court at least considered all of the required factors. In *re* G.N., 170 Ohio App. 3d 76, 866 N.E.2d 32, 2007 Ohio 126, (2007).

Judgment awarding permanent custody of a child under RC § 2151.414 to a children services agency was improper because the trial court failed to address all relevant factors in determining the best interest of child, specifically failing to address the interaction and interrelationship of the child with either parent, failing to consider the child's need for a legally secure permanent placement, and failing to set forth its reason for acting against the guardian ad litem's recommendation that the agency's motion for permanent custody be denied. In *re* D.H., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1605, 2007 Ohio 1762, (Apr. 16, 2007).

In light of the extended period of time that the children of a mother and a father had been in the custody of the family services agency, the mother's ten-year alcohol problem, the father's history of domestic violence, the lack of extended family support, the young ages of the children, and the report of the guardian ad litem, the trial court's decision to permanently sever the parental relationship as in the best interest of the children was supported by reliable, credible and competent evidence. In *re* Marple, 2007 Ohio App. LEXIS 1696, 2007 Ohio 1879, (2007).

As there was sufficient evidence to support termination of parental rights under RC § 2151.414(B)(1)(a), the fact that the parents' child was not living in the agency's custody for the requisite period of time when the motion for permanent custody was made was inconsequential under § 2151.414(B)(1)(d), although there was sufficient time to meet the requirements when an amended motion for that relief was filed. The best interest of the child pursuant to § 2151.414(D) was satisfied by termination of parental rights, as the relationship between the parties was minimal, the child was more talkative and bonded closer with her foster parents, and guardian ad litem for each of the parents and for the child all recommended permanent custody be granted to the agency. In *re* L.M., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1462, 2007 Ohio 1596, (Apr. 5, 2007).

Award of permanent custody of a father's children to a family services agency was properly found to be in the children's best interest as the evidence showed that the children had been

heavily involved with the agency for an extensive portion of their young life; that the father had an unmistakable pattern of inappropriate parenting, removal from the home, "half-hearted progress" by the parents sufficient to return the children to the home, relapse, and then yet another removal from the home; and that the father's extensive history of drug and alcohol abuse precluded him from providing a legally secure, permanent home for the children. In re Joseph C.P., 2007 Ohio App. LEXIS 1397, 2007 Ohio 1528, (2007).

When, in a permanent custody proceeding, a trial court did not, as required by RC § 2151.414(D)(2), determine whether the child could express his wishes and, if so, what those wishes were, this was reversible error because, *inter alia*, it was impossible, without this information, to determine whether the child should have separate legal counsel due to having a position which conflicted with that of his guardian ad litem. In re J.W., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1273, 2007 Ohio 1419, (Mar. 27, 2007).

When, in a permanent custody proceeding, a trial court stated that "the wishes of the child are not expressed and not inconsistent with the position of the Guardian ad Litem (GAL). The maturity of the child is age 4," this was insufficient to find the child's wishes, as required by RC § 2151.414(D)(2), because it did not address the child's wishes or whether he was capable of expressing those wishes, and there was no evidence in the record regarding these issues, as, *inter alia*, the GAL's report and testimony did not indicate whether the child could express his wishes and, if so, what they were. In re J.W., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1273, 2007 Ohio 1419, (Mar. 27, 2007).

Trial court committed reversible error when it granted an agency permanent custody of a child because it did not, as required by RC § 2151.414(D)(2), determine whether the child was mature enough to express his wishes regarding permanent custody, and, if he was, whether those wishes conflicted with the position of his guardian ad litem. In re J.W., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1273, 2007 Ohio 1419, (Mar. 27, 2007).

Grant of permanent custody of a mother's five- and one-half-year old child to a children services agency was in the child's best interest under RC § 2151.414(D) as the child lived in a loving foster home and shared a strong bond with her foster family while she did not share a strong bond with her mother and her mother's boyfriend, the guardian ad litem recommended that the agency be granted permanent custody, and the child, who had lived in the agency's custody for over two years, needed a permanent, secure home, which the mother could not provide as her mental health and the medical needs of her two younger special needs children interfered with her ability to properly care for the child. In re Johnston, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 796, 2007 Ohio 907, (Feb. 26, 2007).

Evidence supported a trial court's finding that granting permanent custody of parents' children to a children services agency was in the children's best interest under RC § 2151.414 as the evidence showed that the children had been in the custody of the agency for 23 consecutive months; that the parents missed more than 100 of the more than 200 visits with their children; that the parents failed to complete additional parenting classes that were recommended; that they failed to follow through on counseling as required by the case plan; and that they failed to provide a safe, clean, and healthy environment for their children. In re Sowers, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1740, 2007 Ohio 1935, (Apr. 17, 2007).

Permanent court commitment was in the best interest of a mother's child as the mother had drug and alcohol use issues, never had any drug treatment, and admitted marijuana usage with nonchalant indifference at trial. Additionally, the mother had abandoned the child without any contact for two substantial periods, she lacked stable housing, and her employment was unsteady and less than occasional. In re D.P., 2007 Ohio App. LEXIS 1550, 2007 Ohio 1703, (2007).

While a mother's children had been in the temporary custody of a family services agency for more than 12 months of a consecutive 22-month period, there was no indication that the trial court considered the factors listed in RC § 2151.414(D) when determining whether an award of permanent custody to the agency was

in the children's best interest; thus, the order awarding permanent custody to the agency was improper. In re A.F., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1509, 2007 Ohio 1646, (Apr. 9, 2007).

Trial court's award of permanent custody of six of a mother's children to a children services agency and of the seventh child to her father was in the children's best interest. The testimony showed that the mother's retardation prevented her from having adequate parenting skills; that, despite the efforts of the agency and other professionals, the mother had shown no improvement since the children were first removed from the home four years earlier; and that the mother did not have the ability to improve in the future. In re Buck, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1358, 2007 Ohio 1491, (Mar. 22, 2007).

Record revealed sufficient competent, credible evidence to support a finding that permanent custody was in the child's best interest because, at the time of the hearing, she was nearly six years old and had been in the agency's custody her entire life. She was in a specialized foster home and in therapy for ADHD, PTSD, and behavioral problems and her foster parents wanted to adopt her. In re T.W., 2007 Ohio App. LEXIS 1320, 2007 Ohio 1441, (2007).

Trial court did not abuse its discretion in denying the request for an extension of time or in finding that it was in the children's best interest to grant permanent custody to the agency because placement with the paternal aunt and her husband was considered, but it was in the children's best interest to create immediate permanency in their lives. There was a concern with adding four children, ages one year to five years, to the new marriage and blended family of the aunt and her new husband and the children had little time to get to know the husband. In re Avon, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1306, 2007 Ohio 1431, (Mar. 23, 2007).

Trial court's determination that it was in the best interest of the children to grant permanent custody to the department was not against the manifest weight or sufficiency of the evidence because the psychologist's report detailed the severe trauma and abuse the children suffered at the hands of their mother. The case worker testified that the children were improving in their foster home, and that there was interest in adopting them. In re Scullion Children, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 888, 2007 Ohio 929, (Mar. 2, 2007).

Award of permanent custody of a mother's child to a children services agency was in the child's best interest as the child had been in the same foster home since shortly after her birth, she was doing well in the foster home, and the mother had not visited with the child for a period of more than six months. In re Stafford, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 826, 2007 Ohio 928, (Mar. 5, 2007).

Trial court did not abuse its discretion by concluding that granting permanent custody to the agency was in the child's best interests because the mother had her parental rights terminated with respect to siblings of the child. Only one of the best interest factors set forth in RC § 2151.414(D) had to be resolved in favor of the award of permanent custody in order for the trial court to terminate parental rights. In re Z.T., 2007 Ohio App. LEXIS 759, 2007 Ohio 827, (2007).

Trial court's finding that permanent custody was in the best interest of a mother's child was supported by the evidence. The evidence showed that the child had only interacted with the mother for 17 hours over a 44-month period, that there was little bonding between the mother and the child, that the child was in need of a legally secure placement, that the mother continued to exhibit difficulties with anger management and drug and alcohol addiction, and that the child enjoyed a loving and stable environment with her foster family. In re V.M., 2006 Ohio App. LEXIS 4370, 2006 Ohio 4461, (2006), affirmed by 113 Ohio St. 3d 161, 2007 Ohio 1254, 863 N.E.2d 167, 2007 Ohio LEXIS 788 (2007).

Trial court did not err in finding that it was in the best interest of the child for permanent custody to be granted to the agency, based on RC § 2151.414(D) and (E), because the mother failed to cooperate with the prior case plan, placement with relatives was unavailable, and the child had never been with nor bonded to the mother and was in a home placement with his siblings and available for adoption. The mother had clearly not benefited from the past services and information provided to her as she continued

to display extreme impatience and administer severe and inappropriate discipline toward the children. In re Craig, 2006 Ohio App. LEXIS 2908, 2006 Ohio 3026, (2006), writ of certiorari denied by 127 S. Ct. 1816, 167 L. Ed. 2d 327, 2007 U.S. LEXIS 3103, 75 U.S.L.W. 3497 (U.S. 2007).

Trial court had sufficient evidence to find by clear and convincing evidence that the child's best interests were served by placing him in the permanent custody of the agency to facilitate his adoption into a permanent home because the child was bonded to his foster parents and foster siblings, the mother repeatedly missed visits with the child and grew more distant, and the child was too young to give a valid opinion of his wishes. Also, because housing, employment, domestic violence, and drug abuse were remaining issues in the mother's life, permanently placing the child with her was not a viable option. In re SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Trial court properly concluded that it was in a child's best interest to grant permanent custody of her to a children's services agency. The evidence showed that the child shared a loving relationship with her foster parents and had become integrated into the family, that the guardian ad litem recommended that the trial court award the agency permanent custody, and that the child had been in her foster home since April of 2005 and was shuffled among relative placements before that time. In re McCain, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1297, 2007 Ohio 1429, (Mar. 23, 2007).

Grant of permanent custody of three children of a mother and a father to a children's services agency was properly found to be in the children's best interest under RC § 2151.414. The record showed that the mother did not complete the requirements of her case plan and did not interact with the children during visits while the father had an extensive criminal record with multiple incarcerations. In re Cutright, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 996, 2007 Ohio 1079, (Mar. 8, 2007).

Evidence supported the determination that custody with the grandparents, after the mother's parental rights were terminated, was not in the children's best interest because the grandmother had refused to sign release forms allowing the agency to assess the current emotional health of the subject children's older siblings and the grandfather had not demonstrated any interest in the children. In re Reardon Children, 2006 Ohio App. LEXIS 567, 2006 Ohio 629, (2006).

Trial court did not abuse its discretion by denying the grandmother's motion for legal custody in the permanent custody proceeding because the evidence indicated that the grandparents had acted inappropriately during visits with the children by arguing with the parents, the grandparents refused to allow the agency case workers into their house for a home study to determine whether their house was appropriate for children, and the grandparents testified that they lied to agency workers while the mother absented herself for a year with one of her children. There was also concern about grandfather's alcohol consumption and failure to successfully complete alcohol counseling and, if granted custody, the grandparents would have allowed the parents back into their house. In re J.S., 2006 Ohio App. LEXIS 615, 2006 Ohio 702, (2006).

Where a county agency initially sought permanent custody of a father's child, pursuant to RC § 2151.353 it was not required to show reasonable efforts to reunify the child with her father; further, permanent custody with the agency was shown to be in the child's best interests pursuant to RC § 2151.414(E)(13) and (16), as the father had a history of incarcerations and drug addictions, he did not indicate an intention to change his behavior, and the best interest of the child was served by her custody with the agency for purposes of a stable family environment, potentially with the foster family who wished to adopt her. In re Bodenheimer, 2006 Ohio App. LEXIS 3143, 2006 Ohio 3253, (2006).

Trial court's finding, in a permanent custody case, that it was in a child's best interest to grant her permanent custody to an agency properly considered, under RC § 2151.414(D)(1), the child's interaction with the child's mother, and a grant of permanent custody was proper because the evidence demonstrated that the mother's erratic behavior negatively affected her ability to interact

with the child and that the mother showed very poor judgment in matters that had a direct bearing on the mother's ability to provide for the child's safety and well-being. In re P. B., 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

Trial court's finding that a grant of custody of a mother's two children to a children's services agency was in the children's best interests was supported by the evidence. The case worker's testimony showed that the mother and the children did not have a strong bond but that the children did have a strong bond with their foster mother. In re Canterucci Children, 2006 Ohio App. LEXIS 4910, 2006 Ohio 4969, (2006).

There was clear and convincing evidence to support the grant of permanent custody of the child to the agency, pursuant to RC § 2151.414(B)(1)(a) and (E) because the mother was very obsessed with the medical concerns of her daughter and blew them out of proportion (even calling 911 once when the child had a cold); the record would also have supported a finding under RC § 2151.414(B)(1)(d). Further, the trial court's grant of permanent custody of the child to the agency was made in the consideration of the child's best interests and did not constitute an error or an abuse of discretion because, although the mother had made marked progress in her psychiatric treatment, she had reverted to her earlier hostile behavior and unwarranted fixation on the child's medical status. In re Kyler-Lowther, 2006 Ohio App. LEXIS 4744, 2006 Ohio 4836, (2006).

Termination of the father's parental rights was in the best interest of the children because the children were bonded with each other and with the mother but not with the father. While the evidence supported a finding that the father could not provide a legally secure permanent placement for the children, the agency failed to present clear and convincing evidence that the mother could not provide a permanent home for her children because the mother had never harmed her children and she always provided sufficient housing and care for the children. In re E. T., 2006 Ohio App. LEXIS 2308, 2006 Ohio 2413, (2006).

Evidence supported a trial court's finding that an award of permanent custody to a children services agency was in the child's best interest. The child stated that he wanted to stay with his foster parents, and the evidence showed that no bond existed between the child and the mother. In re S.M., 2006 Ohio App. LEXIS 2386, 2006 Ohio 2529, (2006).

Competent, credible evidence supported a trial court's finding, under RC § 2151.414(D), that it was in a child's best interests to grant her permanent custody to an agency because (1) she was doing well in her foster home and was developmentally on track, (2) she was well bonded with her foster family and less bonded or comfortable with her parents, (3) the interaction between the child and her foster parents was more positive than the interaction between the child and her father, as she was resistant to the father during visits and he did not display appropriate parenting, under RC § 2151.414(D)(1). In re King, 2006 Ohio App. LEXIS 707, 2006 Ohio 780, (2006).

Trial court did not err when it found that awarding a children services agency permanent custody of a mother's son was in the son's best interest where the evidence showed that the agency made reasonable efforts to reunify the mother with the son and provided many services, including providing the mother with one-on-one drug rehabilitation counseling and access to anger management training; that, while the mother had success with her substance abuse issues, concerns were noted regarding the mother's comprehension of the concepts that were taught; that the mother completed only a small number of the anger management and domestic violence classes and had difficulty with comprehension; and that the mother did not have appropriate housing or adequate supplies for the son. In re Norman F., 2006 Ohio App. LEXIS 6720, 2006 Ohio 6810, (2006).

Trial court properly concluded that permanent custody was in the best interests of a mother's children because the evidence showed that the mother had not demonstrated the ability to care for one of the children, who was autistic; that the children began to experience significant behavioral problems upon being returned to their mother; that the mother had tested positive for cocaine use; and that she had been inconsistent with her mental health medication. In re Morales, 2006 Ohio App. LEXIS 6356, 2006 Ohio 6384, (2006).

Weight of the evidence did support a finding that legal custody

to the friend was in the child's best interest because the trial court was persuaded by the fact that the mother had visited with her child only seven times in the previous three years, and that she had made the choice to move to Minnesota and leave her daughter behind. Therefore, the mother had not maintained her bond and her relationship with her daughter. In re S.J., 2006 Ohio App. LEXIS 6335, 2006 Ohio 6381, (2006).

Evidence supported the trial court's decision to award the agency permanent custody of the child because the child could not and should not have been returned to either parent within a reasonable time since the mother had previously had her parental rights terminated with respect to two children, she voluntarily relinquished custody of two other children, and the father never been involved in the child's life. The trial court carefully analyzed the best interest factors and found that the mother abused cocaine while breast feeding, the child tested positive for cocaine, and the only father figure the child had known was the mother's abusive boyfriend. In re Harness, 2006 Ohio App. LEXIS 6311, 2006 Ohio 6359, (2006).

Clear and convincing evidence supported trial court's award of permanent custody of a father's child to a county children service agency and the termination of his parental rights pursuant to RC § 2151.414(E)(4) and (14), based on the lack of visitation, support, and communication that the father had with his child and the best interest of the child pursuant to § 2151.414(D). In re Mijanigue W, 2006 Ohio App. LEXIS 6271, 2006 Ohio 6295, (2006).

Clear and convincing evidence supported a trial court's finding that an award of permanent custody of a father's children to a children services agency was in the children's best interest under RC § 2151.414(D). The children, who were ages three and one, were in need of a legally secure placement, and because of the father's drug addiction and their mother's incarceration, this goal could not be achieved without a grant of permanent custody to the agency. In re Christopher G., 2006 Ohio App. LEXIS 6267, 2006 Ohio 6294, (2006).

Evidence supported a determination that it was in the child's best interest to grant permanent custody to a county children service agency pursuant to RC § 2151.414(D) and to terminate the parental rights of the child's mother, as the parents had no relationship with the child, the child was too young to indicate what was in his best interest although the guardian ad litem opined that the best interest of the child was served by custody with the agency, the child was not in the agency's temporary custody for 20 months but he had been out of the mother's care for his entire life, and the mother and legal custodian were both inappropriate caregivers for the child. In re I. J., 2006 Ohio App. LEXIS 6257, 2006 Ohio 6263, (2006).

Grant of permanent custody of a father's child to a children services agency was in the child's best interest, in that the evidence showed that the child was thriving in the care of her maternal aunt and uncle and that the aunt and uncle, who had adopted the child's half brother, had expressed an interest in adopting the child. In re M. L., 2006 Ohio App. LEXIS 5893, 2006 Ohio 5931, (2006).

Mother did not show that a trial court's finding that the award of permanent custody of the mother's child to a family services agency was in the child's best interest under RC § 2151.414 was erroneous. The agency did not have to prove that it investigated and ruled out the potential placement of the child with all known relatives, even those who had not shown an interest in caring for the child. In re C.W., 2006 Ohio App. LEXIS 5653, 2006 Ohio 5635, (2006).

Evidence showed that granting a family services agency permanent custody of a mother's three children was in the children's best interests, in that two of the children had bonded with their foster parents, the children had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period, and the children needed a legally secure permanent placement. In re Coon, 2006 Ohio App. LEXIS 5621, 2006 Ohio 5629, (2006).

RC § 2151.414(D) does not give special weight to any of the factors listed therein for determining the best interest of a child. A court need not determine that termination of parental rights is the only option. In re Schaefer, 111 Ohio St. 3d 498, 857 N.E.2d 532, 2006 Ohio 5513, (2006).

In a termination of parental rights proceeding under RC § 2151.414, the evidence supported the trial court's determination that the award of permanent custody to the agency was in the child's best interests. The court noted that, while the child's aunt expressed some interest in the child and a home study was commenced, she was uncooperative and also made no effort to contact the child. In re Wilks, 2006 Ohio App. LEXIS 5396, 2006 Ohio 5404, (2006).

Testimony supported the trial court's finding that granting permanent custody to the agency was in the children's best interest because the case worker testified that the children did not have a strong bond with their mother but did have a significant bond with their foster mother. The children had no separation issues after leaving the mother, acted differently than they did outside the presence of their mother, and a therapist testified that the mother displayed a lack of enthusiasm about visiting with her children, a lack of energy during the visits, and a lack of expressing verbal cues to the children and reciprocity. In re Canterbury Children, 2006 Ohio App. LEXIS 4910, 2006 Ohio 4969, (2006).

Trial court had sufficient evidence to find by clear and convincing evidence that the children's best interests were served by placing them in the permanent custody of the agency, under R.C. § 2151.414, to facilitate permanent placement for them because the parents failed to establish a stable and safe home and income sufficient to meet the children's needs and failed to remedy the situation that caused the removal of the children. Because at the time that the agency filed its motion for permanent custody, the children had been in the agency's custody of for 12 months of a consecutive 22-month period, the trial court properly found that the requirement of R.C. § 2151.414(B)(1)(d) was satisfied. In re S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Juvenile court's grant of permanent custody to a county social service agency pursuant to RC §§ 2151.413 and 2151.414 rather than to the children's maternal grandparents was supported by evidence that the agency placement was in the children's best interests, as they were receiving necessary counseling and services. Denial of the grandparents' request for custody was not an abuse of discretion, as they had not officially moved for such relief under RC § 2151.353(A)(3), but rather had merely sent correspondence to the juvenile court requesting such relief, and further, there was evidence that the children's best interests would not be served if they lived together due to acting out issues regarding sexual abuse that they suffered. In re Turner, 2006 Ohio App. LEXIS 4832, 2006 Ohio 4906, (2006).

Grant of permanent custody of a father's children to a family services agency was in the best interest of the children. The children were doing well in a foster home where they had been since they were removed from their father's home, and there was another foster home interested in adopting the children. In re Davidson-Rush, 2006 Ohio App. LEXIS 4781, 2006 Ohio 4873, (2006).

Trial court did not err in finding that it was in the child's best interest that it grant permanent custody of the child to the agency, pursuant to RC § 2151.414(D), because the father did not have a strong connection with the child and, although he claimed that he wanted custody of his son, his actions and inactions demonstrated otherwise. He admitted that he did not comply with the case plan, that he voluntarily terminated visitation, that he moved without informing the agency, and that he refused to let the case worker into his residence. In re Oaks, 2006 Ohio App. LEXIS 4787, 2006 Ohio 4857, (2006).

Trial court's finding that it was in the best interest of the child to grant permanent custody to the agency, under R.C. § 2151.414, was not against the manifest weight of the evidence because, during the course of the case plan, the father moved to Arizona without prior notification to the agency, discontinued psychiatric treatment, and was incarcerated for 90 days. Upon his return from Arizona, his involvement in treatment programs was at best sporadic and inconsistent and he continued to live with his mother, who had a long history with the agency, and the father had not exercised any visitation with his infant daughter in almost

12 months. In re Definbaugh/Mansfield, 2006 Ohio App. LEXIS 4743, 2006 Ohio 4831, (2006).

Grant of custody of a mother's two children was in the children's best interest. While the mother was dealing with stressors other than those involved in simply taking care of the children, the mother appeared to place blame on others and, despite her efforts and counseling for two years, was still unable to cope with and solve problems on her own. In re Charles B., 2006 Ohio App. LEXIS 4712, 2006 Ohio 4801, (2006).

Termination of the mother's parental rights was in the best interest of the child, pursuant to RC § 2151.414(D), because there was no bond between the mother and her child and the child had several medical conditions that required special care, including asthma, numerous allergies, and serious skin condition, and the mother had no idea how to treat his conditions. Additionally, the mother had a serious mental illness and consistently failed to take her medication and to be treated. In re E. H., 2006 Ohio App. LEXIS 4648, 2006 Ohio 4724, (2006).

Best interest factors favored an award of legal custody to the relatives because the agency presented substantial evidence that it was in the children's best interest based on the fact that the mother had pled guilty to child endangerment and the mother's continued inability to obey the law demonstrated that she was unable to provide the children stability and routine. Further, each of the children has adjusted well to living with the relatives and had shown marked improvement in both their behaviors and academic achievements when placed in a stable environment; the mother had never been able to provide such an environment. In re T. A., 2006 Ohio App. LEXIS 4397, 2006 Ohio 4468, (2006).

Trial court's finding that it was in the children's best interest to grant permanent custody to the agency pursuant to RC § 2151.414, was not against the manifest weight of the evidence because the agency used reasonable efforts to reunify the family and the mother failed to remain drug free, testing positive for marijuana a mere two weeks before the hearing. The evidence also indicated that it was the third removal of the children from mother's home; the children had been in mother's custody for only two of the last 12 years; and the issues which caused the first removal in 1994, remained at the time of the instant permanent custody hearing. In re Hinkley/Altier Children, 2006 Ohio App. LEXIS 3790, 2006 Ohio 3827, (2006).

Record contained some evidence that the children's best interests were served by awarding permanent custody to the agency because of the mother's failure to provide a stable, permanent home for the children, which demonstrated a lack of commitment to her children. Additionally, she gave birth to two additional children during the pendency of the case; she surrendered the three older children to the agency's custody because she could not properly care for them, yet now claimed that she could care for two infants and her three older children. In re Pettiford, 2006 Ohio App. LEXIS 3572, 2006 Ohio 3647, (2006).

Record contained competent, credible evidence to support the trial court's judgment granting permanent custody of the mother's two children to the agency because attempts at reunification with the children had been unsuccessful. The children needed a safe and secure environment, the mother demonstrated an unwillingness to work with professionals in order to provide such an environment for her children, and, although the children may have been bonded with the mother, evidence in the record established that they thrived while in the care of foster parents. In re Jones, 2006 Ohio App. LEXIS 3255, 2006 Ohio 3363, (2006).

Grant of permanent custody of a father's nine-year-old daughter to a children services agency was in the daughter's best interest. The evidence showed that the daughter stated that she wanted to live with her foster parent and that the daughter had not had a stable, permanent home for more than one-half of her life, and the daughter deserved more than to be placed into an environment where there was no guarantee that the parents would be able to properly parent the daughter. In re Gallion, 2006 Ohio App. LEXIS 3095, 2006 Ohio 3204, (2006).

Record supported the trial court's finding that granting permanent custody to the agency was in the child's best interests, pursuant to RC § 2151.414(D). The inadequacy of the home and failure of the mother to provide for the basic needs of the child, her failure to maintain stable housing and employment, as well as her repeated failures to commit to the requirements of the case

plan all demonstrated that a legally secure placement could only be achieved by granting permanent custody to the agency. In re English, 2006 Ohio App. LEXIS 2952, 2006 Ohio 3067, (2006).

Record supported the trial court's finding that granting permanent custody to the agency was in the children's best interests. The lack of supervision, the inadequacy of the home, and failure of the parents to provide for the basic needs of the children, their failure to maintain stable housing and employment, as well as the parents' repeated failures to commit to the requirements of the case plan all demonstrated that a legally secure placement could only be achieved by granting permanent custody to the agency, pursuant to RC § 2151.414(D)(4). In re Shrider, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Determination that an award of permanent custody to a family services agency, not the children's paternal grandmother, was in the children's best interests under RC § 2151.414 was proper as the evidence showed that the grandmother had allowed the father to have unauthorized access to the children; that the grandmother had repeatedly characterized the daughter as slow or learning disabled and as a liar who could not be trusted; that, for some time, she had dismissed the daughter's allegations of sexual abuse against the father; and that the daughter had never verbalized any interest in living with, or being visited by, the grandmother. In re McCluskey, 2006 Ohio App. LEXIS 3970, 2006 Ohio 4034, (2006).

Trial court properly concluded that the grant of permanent custody was in the best interests of a mother's children because the evidence showed that the mother had failed to comply with most of her case plan, including the plan's requirements that she complete psychiatric counseling and that she undergo chemical dependency treatment; that the guardian ad litem testified that the mother was unable to provide a stable home for the children, noting that the mother's four boys shared similar stories and had similar violent tendencies; and that the mother had never been observed applying anything that she may have learned in the parenting classes. In re A. T., 2006 Ohio App. LEXIS 3883, 2006 Ohio 3919, (2006).

Trial court's best interest determination pursuant to RC § 2151.414(D)(1)-(5) in a parental rights termination proceeding concerning the father's minor son included findings that the child was removed at birth and seven months later he had a minimal relationship with relatives, the guardian ad litem recommended termination, the foster home that the child had resided in since birth provided him a good home, the mother's other children were not in her custody and two of three had been the subject of involuntary termination proceedings, and the father had criminal violations for non-support and domestic violence; as to RC § 2151.414(E)(7)-(11), the trial court relied on the termination of the mother's parental rights over her other two children and a host of other factors. In re Shifflet, 2006 Ohio App. LEXIS 3521, 2006 Ohio 3576, (2006).

Permanent custody of a mother's three children was properly granted to family services agency as the award was in the children's best interests. Since the children's grandparents had little contact with the children, since the children had been doing well with their foster parents, who wished to adopt them, and since placement with the grandparents would have facilitated the mother and father with continued involvement with the children which could place the children in danger, the trial court did not err in failing to place the children with their grandparents under RC § 2151.412(G). In re Bodenheimer, 2006 Ohio App. LEXIS 3131, 2006 Ohio 3245, (2006).

Trial court's consideration of the factors relevant to its disposition of a child in a parental rights termination proceeding was supported by the evidence pursuant to RC § 2151.414(D) where the child's grandparents were not deemed suitable alternatives to custody with a county agency due to the child's severe medical problems, the fact that the grandparents' habit of smoking would exacerbate the medical issues, as well as the fact that the grandfather had been previously convicted of domestic violence, the grandmother had severe back problems, and they lost their home to a recent bankruptcy. In re Morris, 2006 Ohio App. LEXIS 3122, 2006 Ohio 3231, (2006).

Competent, credible evidence supported a trial court's finding that, by clear and convincing evidence, children could not be placed with their father within a reasonable time and should not

be placed with him, under RC § 2151.414(B)(1)(a), because, under RC § 2151.414(E)(4), the father showed a lack of commitment to completing a case plan designed to reunify him with the children because (1) he was unemployed at the time of trial, (2) he did not have adequate housing, (3) his parental education course was cancelled after he missed four sessions, (4) he refused three of four drug tests, and, when he was tested, he tested positive for methamphetamine and marijuana, and (5) he stopped visiting the children due to an outstanding arrest warrant, and, when he was eventually arrested and incarcerated, further visits could not occur. In re R.A.M., 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Trial court did not err in determining that neither a grandmother nor an aunt were suitable placements for a father's 10 children after it determined that his parental rights were to be terminated, and its award to a county social service agency of permanent custody of the children was proper, as relative placement was given appropriate consideration pursuant to RC §§ 2151.353(A)(3), 2151.414(D), and 2151.412(G), to the extent the latter statute was applicable, and neither relative was suitable based on a variety of considerations and factors, as well as their custodial history with these and other children. In re Hilyard, 2006 Ohio App. LEXIS 1807, 2006 Ohio 1965, (2006).

Child's best interests require permanency and a safe and secure environment. In re T.W., 2005 Ohio App. LEXIS 5964, 2005 Ohio 6633, (2005).

There was clear and convincing evidence to support the trial court's determination that termination of a mother's parental rights in two minor children, and a grant of permanent custody to a county social service agency, was in the children's best interests pursuant to RC § 2151.414(D), as the mother had not provided appropriate and safe housing, although she completed a parenting class program her skills were not enhanced, she did not meet the children's needs, and it was questionable whether she would have the skills to properly parent the children in the foreseeable future. The mother did not complete the goals of her case plan, and under a best interest analysis, the children were bonded with their foster family and they had gained stability there. In re Rollison, — Ohio App. 3d —, — N.E. 2d —, 2005 Ohio App. LEXIS 6073, 2005 Ohio 6769, (Dec. 19, 2005).

Trial court's finding that the best interests of a father's five children were to grant their permanent custody to a county agency was not against the manifest weight of the evidence, as the children had various psychological and behavioral problems, there were no relatives willing to take placement of them, and the children were properly receiving services for the first time, as they were within the temporary custody of the agency; further, the father was an uninvolved parent. In re Bailey Children, 2005 Ohio App. LEXIS 2783, 2005 Ohio 2981, (2005).

In a termination of parental rights proceeding, a trial court properly found that it was in the best interests of a mother's children to terminate her parental rights based on (1) her lack of cooperation with her treatment plan, (2) her severe substance abuse, (3) her frequent incarcerations, (4) her inability to provide a safe and stable home for the children, (5) her two convictions for endangering one of the children, (6) her current drug trafficking charges, and (7) her domestic violence with her husband. In re Walker, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

Custody of the child to the agency was in the child's best interest, pursuant to RC § 2151.414, because, although the cousin was a very giving and caring person, she had too much on her plate and had spread herself too thin already for custody of the child. She also had budgeting issues and was unable to set parameters for the children and to stick to them. In re Woods, 2005 Ohio App. LEXIS 3286, 2005 Ohio 3563, (2005).

Termination of a father's parental rights was in a child's best interest where: (1) the father had made little progress on his case plan, (2) the father could not provide for the child's Attention Deficit/Hyperactivity Disorder, (3) the father's housing might not be suitable for the child, (4) the child was doing well in foster care, (5) the parties agreed that the child should live with another child, who was in foster care, and (6) the father had not visited the child during a six-month period. In re J. O., 2005 Ohio App. LEXIS 2298, 2005 Ohio 2399, (2005).

When considering the placement of a child in the context of a permanent custody proceeding, the mere existence of the child's

good relationship with proposed custodians is insufficient, as, overall, the court is concerned with the best interest of the child, not the mere existence of a relationship. In re T.W., 2005 Ohio App. LEXIS 5964, 2005 Ohio 6633, (2005).

Although a blood relationship and family unity are factors to consider when determining the best interest of a child in a permanent custody proceeding, neither one is controlling. In re T.W., 2005 Ohio App. LEXIS 5964, 2005 Ohio 6633, (2005).

Trial court's decision, pursuant to RC § 2151.414(D), that permanent custody was in the best interest of a mother's four children was supported by competent evidence, in that the children had been in foster care for a long time; the children viewed their foster parents as the parental figures in their lives; while the mother seemed to have a bond with the children, the relationship was observed by caseworkers to be more that of a sibling than of a parent; the children separated easily from the mother when the visits were over; the children needed a secure, permanent placement due to the abuse that they had suffered; the father of two of the children had been found guilty of unlawful sexual conduct with a minor and sexual battery while living with the mother and the children; and the children's guardian ad litem advocated that the motion for permanent custody be granted. In re S.B., 2005 Ohio App. LEXIS 3591, 2005 Ohio 3889, (2005), dismissed by 2005 Ohio 6428, 2005 Ohio App. LEXIS 5783 (Ohio Ct. App., Butler County Dec. 5, 2005).

In a permanent custody proceeding in which the great-uncle and great-aunt of the subject children sought their custody, the trial court appropriately found, under RC § 2151.414(D), that the children's best interests were served by granting their permanent custody to an agency, with continued placement in the children's foster home. While the great-uncle and great-aunt had a positive bond with the children, they did not believe that the children's parents had harmed them, despite the parents being convicted of child endangerment and attempted murder regarding the children due to the father's physical abuse of them and the mother allowing the father to have access to one of the children after he had abused the other one. In re T.W., 2005 Ohio App. LEXIS 5964, 2005 Ohio 6633, (2005).

Termination of a mother's parental rights was in the best interests of three children where: (1) the children did not bond with their mother, but had bonded to their foster mother, (2) a child services agency had temporary custody of the children for 16 months of a consecutive 22-month period ending on or after March 18, 1999, (3) the children did not wish to be returned to their mother unless the situation changed drastically, and it had not, (4) the children had emotional difficulties resulting from their mother's relationship with one partner, and (5) the mother had abandoned the children. In re Donell F., 2005 Ohio App. LEXIS 3806, 2005 Ohio 4175, (2005).

Trial court's finding that the best interest of the child was served by granting permanent custody to the agency was not against the manifest weight of the evidence because, as a whole, the evidence indicated that the interaction between the mother and her daughter was traumatic; the daughter was strongly bonded to her foster parents; the mother was not mentally capable of rectifying the problems which led to the daughter's temporary custody with the agency; and the daughter's need for a legally secure permanent placement with a safe, stable home environment could not be achieved without a grant of permanent custody to the agency. In re Unger Children, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

Trial court's finding that it was in the children's best interests for permanent custody to be granted to the agency was supported by sufficient evidence because the mother had a difficult time supervising the children during visitation and her bond with one child was very strained; that same child refused to attend visits during the last several months and became sullen and withdrawn after visiting with her mother; the mother did not attend the visitation the week of the trial; and the guardian ad litem recommended that the agency's motion for permanent custody be granted. In re Langford, 2005 Ohio App. LEXIS 2196, 2005 Ohio 2304, (2005).

Based upon the evidence and the report of the guardian ad litem, the trial court's decision to grant permanent custody to the agency, pursuant to RC § 2151.414, was supported by clear and convincing evidence and was in the children's best interests. The

mother's housing and financial stability were inadequate, she would need assistance in assuming the care of even one child (as she was mildly retarded and the children had psychiatric problems), and there had been incidents of domestic violence with her current husband. In re Jesus, 2005 Ohio App. LEXIS 2152, 2005 Ohio 2266, (2005).

There was clear and convincing evidence that the child could not be reunited with her mother and that it was in the child's best interest to grant permanent custody with the agency and to terminate her parental rights, pursuant to RC § 2151.414. Although the mother completed most of her case plan goals, and had a stable income, she violated the no-contact order by living with her boyfriend (who had gone to prison for molesting one of the mother's other children), which showed that she was not able to put the child's needs above her own desires and the child's safety. In re D. B., 2005 Ohio App. LEXIS 1972, 2005 Ohio 2016, (2005).

Clear and convincing evidence supported the conclusion that an award of permanent custody to the agency was in the best interest of the children. Pursuant to RC § 2151.414(D), the trial court determined that the mother could not properly deal with her children's behavioral problems; the children had been removed from her care on numerous occasions; she had physically abused them; none of the relatives who filed motions for legal custody had any cognizable right to associate with them, stood in loco parentis to the children, or expressed any interest in them; and none of the other relatives were a suitable placement. In re Nicholas A., 2005 Ohio App. LEXIS 2028, 2005 Ohio 2104, (2005).

Trial court clearly had an adequate basis to find that it was in the child's best interests, under RC § 2151.414(D), to be placed in the legal custody of her aunt and uncle, pursuant to RC § 2151.415(A)(3). The child was removed when she was five months old upon discovery of physical injuries, she had lived outside her mother's home for 18 months, the guardian ad litem strongly recommended legal custody be granted to the relatives, the father was incarcerated and the mother failed to remedy the conditions that resulted in the child being removed from the home, the mother had unresolved issues concerning her impulse control and self-esteem, and the mother had not ended her relationship with the boyfriend who was suspected of physically abusing the child, despite a court order. In re Starks, 2005 Ohio App. LEXIS 1824, 2005 Ohio 1912, (2005).

Trial court properly found that permanent custody with the agency was in the child's best interest, pursuant to RC § 2151.414(D), because the evidence indicated that she had been in the custody of the agency since her birth, had never lived with her mother, and that her relationship with her mother was "nonexistent." In contrast, the guardian ad litem testified that the child was in an adoptive home and bonded to her foster family. In re D.W., 2005 Ohio App. LEXIS 1793, 2005 Ohio 1867, (2005).

Best interest factors clearly weighed in favor of permanent custody to the agency because the mother had minimal interaction with the child, he had never met his siblings, and the only family he had ever known was his foster family. Also, the mother had little contact with the child, did essentially nothing to work toward reunification, and admittedly had a serious problem with cocaine addiction, yet she did not take even the first step toward resolving that problem. In re B. C. M., 2005 Ohio App. LEXIS 1735, 2005 Ohio 1818, (2005).

There was ample evidence before the trial court from which it could reasonably have concluded that permanent custody was in the best interests of the children, pursuant to RC § 2151.414. The evidence demonstrated that, while the children were living with the mother, their needs, especially their medical needs, were not being met and the agency had received 49 referrals on the family, involving allegations that the mother had left her children with inappropriate caregivers, that she failed to return home or to pick up her children when she was expected, and there were also concerns of alcohol usage by the mother. In re A. B., 2005 Ohio App. LEXIS 1244, 2005 Ohio 1273, (2005).

Permanent custody of the 11-month-old twins was in the best interests of the children because there was no error in the trial court's finding that, following physical abuse, the children needed a permanent, stable home and that granting permanent custody to the agency would facilitate that need. The children's wishes were

also noted, as expressed through their guardian ad litem. In re Mark B., 2005 Ohio App. LEXIS 1209, 2005 Ohio 1220, (2005).

Determination that it was in the best interest of the children to be permanently placed in the custody of the agency was supported by clear and convincing evidence. Both the amended magistrate's decision and the trial court's judgment entry stated that the factors contained in RC § 2151.414(D) were considered, and that the best interest of the children would be served by a grant of permanent custody to the agency. In re Bentley, 2005 Ohio App. LEXIS 1195, 2005 Ohio 1257, (2005).

Termination of a father's parental rights and an award of permanent custody to the Franklin County Children's Services were in the best interest of a child as permanent custody was the only available avenue for the child to have a secure and permanent placement; the child's respite care provider showed an interest in adopting her and would provide a secure home. In re M.B., 2005 Ohio App. LEXIS 987, 2005 Ohio 986, (2005).

After making the finding that the children had been in the temporary custody of the agency for 12 months of a 22-month period, the trial court determined permanent custody to the agency was in the best interest of the children by considering all the relevant factors listed in RC § 2151.414(D); specifically, the trial court found that the children had had no contact with any paternal relatives, the father's sister did not have the ability to provide care for the children, and the father's repeated incarceration precluded him from providing care for his child. In re Davis, 2005 Ohio App. LEXIS 357, 2005 Ohio 411, (2005).

Trial court had competent, credible evidence before it that granting permanent custody to the agency was in the children's best interests because the mother did not believe her son's allegations of sexual abuse by her boyfriend, she married the boyfriend soon after the allegations were made, and she had other children removed from her custody due to similar allegations. In re Moore, 2005 Ohio App. LEXIS 100, 2005 Ohio 136, (2005).

Trial court erred in terminating a father's parental rights as it failed to make findings showing it considered all the factors of RC § 2151.414 in determining the best interest of the child. In re Cravens, 2004 Ohio App. LEXIS 2109, 2004 Ohio 2356, (2004).

Trial court properly determined by clear and convincing evidence that termination of the parents' parental rights and permanent custody with a county agency was in the two minor children's best interest, as the evidence showed that children could not be placed with either of the parents within a reasonable time or that such placement was in the children's best interests. In re Hollon, 2004 Ohio App. LEXIS 2508, 2004 Ohio 2866, (2004).

Where the grandmother, who took care of the children, was no longer willing or able to take care of them, the children's mother was deceased, and the children's fathers had not been involved in their lives, the trial court did not abuse its discretion in finding, pursuant to RC § 2151.414, that it was in the children's best interest to be placed in the permanent custody of the Montgomery County Children Services Board; on remand in the case, the trial court did as instructed by the appellate court when the trial court considered the Board's motion for permanent custody in accordance with RC § 2151.353. In re Muldrew, 2004 Ohio App. LEXIS 1781, 2004 Ohio 2044, (2004).

Where an older child expressed a desire to stay with her foster parents, both children were developmentally behind at the time of removal, one child had behavioral problems and was behind in school as well as her immunization, the younger child was not walking or talking at the time of removal, and both children had made significant advances on those issues at the time of the hearing, the trial court properly found that, based on the best interests of the children, they were in need of a legally secure permanent placement. In re Paris, 2004 Ohio App. LEXIS 1707, 2004 Ohio 1962, (2004).

Grant of permanent custody to a Children Services Board was in the best interest of the children, as the mother's parental rights to her two other children previously had been terminated under RC §§ 2151.353, 2151.414, or 2151.415, and evidence supported the trial court's findings under the RC § 2151.414(D)(1)-(5) factors, as the mother's interactions with her children were poor and had not progressed, she resisted treatment of her borderline personality disorder and continued to abuse crack cocaine, the older child had bonded with the foster family, the children had been in the Board's custody significant portions of their lives and

needed a secure placement. In re J.G., 2004 Ohio App. LEXIS 2237, 2004 Ohio 2513, (2004).

Although a mother visited her child regularly, the best interests of the child required the termination of the mother's parental rights pursuant to RC § 2151.414(D)(1)-(4) and the grant of permanent custody to Lorain County Children's Services as a result of the mother's failure to comply with most of the case plan set out for her by not showing any improvement in her parenting skills, failing to establish an emotional connection with the child, the child's increased aggressive behavior toward the mother, and the mother's failure to attend to her mental health issues. In re V.Y., 2004 Ohio App. LEXIS 1442, 2004 Ohio 1606, (2004).

Trial court did not err in finding that it was in the best interest of the children pursuant to RC § 2151.414 to grant permanent custody where the stepfather, in part, was moderately mentally retarded and the stepfather's coping style led to ineffective parenting; the children had special needs and required a structured environment that the stepfather and mother could not provide, and the children thrived in foster care. In re Caine, 2004 Ohio App. LEXIS 2035, 2004 Ohio 2270, (2004).

It was in the children's best interest for permanent custody to be granted to the agency because, although the parents loved their children, the evidence indicated that they did not interact appropriately with them, had a very difficult time controlling all five of their children at the same time, had a pattern of poor supervision, a lack of discipline, and a difficult time following through with any discipline strategies they were taught, and when the children returned to foster care after the failed attempt at reunification, they showed signs of neglect; further, the parents had been noncompliant when it came to doing what was required to meet the children's basic needs. In re Myers, 2004 Ohio App. LEXIS 637, 2004 Ohio 657, (2004).

Order terminating a mother's parental rights and awarding permanent custody of her child to a children services board was reversed where the trial court made no findings as to whether the custody award was in the best interests of the child. In re M.B., 2004 Ohio App. LEXIS 564, 2004 Ohio 597, (2004).

Testimony from a caseworker from the Department of Children and Families stating that the father had no contact with the Department regarding his children, provided them no care, custody, control, or involvement in the 18 months preceding the best interest hearing, when coupled with an indirect expression from the children that they supported an award of permanent custody to the Department as such would be in their best interest, supported the trial court's best interest finding. In re Foresha/Kinkel Children, 2004 Ohio App. LEXIS 547, 2004 Ohio 578, (2004).

Competent, credible evidence of the strength of the child's bond to his foster parents and siblings and the limited interaction between father and son supported the conclusion that permanent custody with foster parents was in the child's best interest. In re Wright, 2004 Ohio App. LEXIS 960, 2004 Ohio 1094, (2004).

There was sufficient evidence for the trial court to conclude that permanent custody of the children served their best interest because there was no evidence to indicate the mother had any ability to parent the children now or in the future; both children could not and should not be placed with the mother within a reasonable time; despite diligent reasonable efforts by the agency to remedy the problems which caused removal of the children, the mother failed continually and repeatedly for a period of six months or more to substantially remedy the conditions causing their removal; and the mother demonstrated a lack of commitment towards the children and had failed to provide an adequate home for them. In re Hutzel, 2004 Ohio App. LEXIS 3942, 2004 Ohio 4337, (2004).

Award of permanent custody to the agency was proper as the testimony showed by clear and convincing evidence that it was in the best interests of the children to have them permanently removed from the mother because the children had been abandoned and had been in foster care for 18 consecutive months prior to the permanent custody hearing. The juvenile court also properly considered the interrelationship of the children with the mother; the mother's relationship with her abusive husband, as well as the effect that relationship had on the children; the wishes of the children; the children's history, noting the mother's past relationships with men who had abused the children; the chil-

dren's need for legal security, noting the children had great potential and were very adoptable, as well as that they needed and deserved a stable future; and the mother's inability to provide that type of stability. In re Morgan, 2004 Ohio App. LEXIS 3653, 2004 Ohio 4018, (2004).

Mother's great aunt was found not to be a suitable placement for infant child instead of the agency in a termination of parental rights case, even though the great aunt was a licensed foster parent because the child had been injured (a scalding accident) while the mother and child stayed in her home and because the great aunt had not exercised the visitation to which she was entitled; the child was also doing well with the child's current foster parents. In re Nelson, 2004 Ohio App. LEXIS 242, 2004 Ohio 268, (2004).

Order terminating a father's parental rights was upheld because the father admitted an inability to handle the children and that they were doing better in foster care; it took the father, who was schizophrenic and an admitted alcoholic, nearly two years to begin the individual counseling ordered in the original case plan. Hence, termination of parental rights was in the best interest of the children pursuant to RC § 2151.414(B)(1). In re Bradley John B., 2004 Ohio App. LEXIS 1175, 2004 Ohio 1328, (2004).

Since the evidence showed that the minor son had been in the custody of the county family welfare agency for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, and because it showed that the best interest of the child dictated a legally secure permanent placement away from the mother, the trial court did not err in terminating her parental rights in the minor son. In re Krems, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

Where a trial court found that the child's mother had abandoned her, and that it was in the child's best interests to grant permanent custody to an agency due to the father's drug use and failure to complete his case plan, it properly granted permanent custody of the child to the agency. In re Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Evidence that (1) a child had little bonding with his mother, (2) his father failed to have any contact with him for his first 19 months, (3) the guardian ad litem believed it was in the child's best interest to grant permanent custody to a children's services agency, (4) the child had been in the custody of a foster family since birth and had bonded with them, and (5) the mother failed to comply with a case plan and failed to show she had quit using illegal drugs was sufficient to show that granting the agency permanent custody was in the child's best interest under RC § 2151.414(D). In re Davis, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

Evidence that (1) children's behavioral problems and developmental delays improved greatly after their being placed in foster care, (2) the foster parents addressed the children's medical problems which the parents had failed to treat, and (3) the parents had limited intelligence and an improvement in their mental health conditions would take intensive treatment for at least one year supported an award of permanent custody to a child protection agency. In re Kitana, 2004 Ohio App. LEXIS 3612, 2004 Ohio 3963, (2004).

Trial court properly entered a judgment that terminated the mother's parental rights in her minor son, as the trial court followed the proper procedure in doing so by scheduling a hearing and providing notice to interested parties, and as the evidence produced at that hearing showed that termination was in the best interest of the child since the best interest of the minor son dictated a legally secure permanent placement away from the mother, and as the minor son had been in the temporary custody of the county family welfare agency for more than 12 months of a consecutive 22-month period. In re Krems, 2004 Ohio App. LEXIS 2250, 2004 Ohio 2446, (2004).

Where a mother was unable to provide her children with the basic necessities of medical care, food, clothing, and a stable home and failed to follow through with a case plan, the trial court did not err in granting permanent custody of the children to a county agency. In re Brock, 2003 Ohio App. LEXIS 4964, 2003 Ohio 5543, (2003).

Evidence that a mother failed to cooperate in family counseling, refused to address the sex abuse of her two boys by their older

brother, and failed to recognize the boys' special needs, was sufficient to show that the boys could not be reunited with their mother in a reasonable period of time. In re M.H., 2003 Ohio App. LEXIS 6445, 2003 Ohio 7053, (2003).

Trial court properly terminated a mother's parental rights because the record, which included the mother's repeated failures properly to care for the children and the fact that a grandmother's home was not a viable place for the children, supported the finding that termination was in the children's best interest. In re Schueler, 2003 Ohio App. LEXIS 3127, 2003 Ohio 3443, (2003).

Trial court's findings concerning best interests and its decision to grant permanent custody to the agency was not against the manifest weight of the evidence as the older child became upset after visits with her mother, the younger child was disengaged and had little attachment with her mother, the children were bonded with their foster parents, and the older child indicated that she did not want to return to the mother's custody. In re Utt Children, 2003 Ohio App. LEXIS 4063, 2003 Ohio 4576, (2003).

Evidence that the parent had not taken the actions necessary to regain her children, who were flourishing in foster care, and had failed to challenge the trial court's findings supported trial court's award of permanent custody to a department of job and family services. In re Robinson, 2003 Ohio App. LEXIS 4954, 2003 Ohio 5528, (2003).

Award of the permanent custody of children to the county and termination of the parents' rights were affirmed where the mother failed to show that she remedied the conditions that resulted in the children's removal under RC § 2151.414(B)(1)(d) and the manifest weight and sufficiency of the evidence supported the decision. In re Conn, 2003 Ohio App. LEXIS 4804, 2003 Ohio 5344, (2003).

There was sufficient evidence in the record to support the trial court's determination to terminate a mother's parental rights in her minor child, and the evidence was clear and convincing that such action was in the child's best interests pursuant to RC § 2151.414(D) and (E); the child had been removed from the mother's home and placed in the custody of the agency for over two years, the mother had mental illnesses, had exhibited little affection for the child, the child had bonded with her foster family, and the mother was uncooperative during the parenting program. In re R.K., 2003 Ohio App. LEXIS 5675, 2003 Ohio 6333, (2003).

Four of five of the relevant best-interest-of-the-children factors supported the trial court's finding that terminating the mother's parental rights in her older child and her twin children was in their best interests, and, thus, the trial court did not err in finding that clear and convincing evidence existed to support the finding that granting permanent custody of those children to the county welfare agency was proper. In re C.H., 2003 Ohio App. LEXIS 6190, 2003 Ohio 6854, (2003).

Determination that it was in the child's best interest to grant the agency permanent custody was supported by competent, credible evidence; the father failed to utilize many of the services the agency made available to him, he was tardy in initiating the process for making the court-ordered child support payments, he did not make his first payment until after the agency initiated permanent custody proceedings, and, finally, he was informed that if he did not successfully and timely complete the objectives in the case plan, his parental rights could be terminated. In re Salsgiver, 2003 Ohio App. LEXIS 5708, 2003 Ohio 6420, (2003).

Findings that the mother's children could not or should not be placed with her within a reasonable time and that the grant of permanent custody to the State was in the children's best interest were proper and well supported; the children had been in state care for 12 or more of the past consecutive 22 months, the mother was often in jail, the paternal grandparents were interested in adopting the two younger children and those children were doing well under their care and re-integration with the mother was likely to cause the older child increased emotional stress. In re Hull, 2003 Ohio App. LEXIS 5705, 2003 Ohio 6352, (2003).

Trial court may grant permanent custody to a social services agency if a hearing is held and it is shown by clear and convincing evidence that it is in the best interest of the child to grant such custody, and if any of the factors of RC § 2151.414(B)(1) have been met; further, the trial court must assess the factors of RC

§ 2151.414(D) in making its determination that permanent custody in the agency is in the children's best interest. In re Kincer, 2003 Ohio App. LEXIS 5689, 2003 Ohio 6356, (2003).

Trial court can only grant permanent custody of a minor child to a social service agency upon initially determining that one of four conditions of RC § 2151.414(B)(1) exists, and then upon a determination by clear and convincing evidence that it is in the best interests of the child to make such a permanent custody award; clear and convincing evidence is an intermediate standard of proof, being more than a mere preponderance but not to the extent of such certainty as is required beyond a reasonable doubt, nor does it mean clear and unequivocal. In re R.K., 2003 Ohio App. LEXIS 5675, 2003 Ohio 6333, (2003).

Trial court acted properly after evidence that the children had been sexually and physically abused and the mother continued to put them in situations where they could be harmed demonstrated that transferring permanent custody to the county department of job and family services was in the best interest of the child. In re Tiffany Y., 2003 Ohio App. LEXIS 5564, 2003 Ohio 6203, (2003).

Grant of permanent custody to the family services department was proper where the department had had custody of the child for nearly 25 months at the time of the hearing, the child had had no interaction with his parents since his removal, the guardian ad litem recommended the custody, and the father was convicted of rape and sexual battery against another child. In re Goff, 2003 Ohio App. LEXIS 5444, 2003 Ohio 6089, (2003).

In granting custody to the child's maternal great grandmother, the trial court used the RC § 2151.414(D) factors properly to determine that the grant of custody was in the child's best interest; the great grandmother provided a stable home, the child was doing well in the placement, and the great grandmother intended to allow the child and the former primary caregiver to maintain a relationship. In re Rowe, 2003 Ohio App. LEXIS 5403, 2003 Ohio 6062, (2003).

Termination of parental rights was in the best interest of the children because both parents failed to remedy the problems that initially caused the children to be removed from the home, including the lack of stable housing and the mother's disobedience of an order not to contact the father, who had a history of domestic violence. In re Blunt, 2003 Ohio App. LEXIS 5028, 2003 Ohio 5646, (2003).

There was some competent, credible evidence that granting permanent custody to the agency was in the children's best interests as the mother's history of placing her children in harm's way outweighed her minimal, tardy efforts to comply with the case plan. In re West, 2003 Ohio App. LEXIS 5650, 2003 Ohio 6299, (2003).

Termination of the mother's parental rights was in the best interest of the child because the mother had difficulty bonding with the child, refused to talk with her during visitation, could only concentrate on one child at a time, and refused to continue to feed her after the child spit up on her; the evidence reflected that the child needed a legally-secure placement. In re Estep, 2003 Ohio App. LEXIS 4565, 2003 Ohio 5084, (2003).

Order terminating a mother's parental rights was reversed because the trial court failed to consider the factors enumerated in RC § 2151.414(D) in deciding that placing the child in the permanent custody of a county child services board was in the child's best interest. In re C. M., 2003 Ohio App. LEXIS 4553, 2003 Ohio 5040, (2003).

Trial court did not err under RC § 2151.414(D) in finding that it was in the children's best interests to place them in the agency's permanent custody; the mother showed little progress on any of the goals in her case plan, the children had been residing outside of the mother's house for large portions of their lives and the children bonded with the foster parent. In re J. B., — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 4310, 2003 Ohio 4786, (Sept. 10, 2003).

Where a mother's immaturity and failure to cooperate made it difficult to provide for a child's needs and the child could not be returned to the mother within a reasonable time, pursuant to the factors of RC § 2151.414(D), permanent custody with a county children's services agency was in the child's best interest. In re Duvall, 2003 Ohio App. LEXIS 3816, 2003 Ohio 4313, (2003).

With respect to termination of parental rights, if a juvenile court determines that one of the four circumstances listed in RC

§ 2151.414(B)(1)(a)-(d) is present, then the juvenile court must proceed to the second prong of the analysis regarding the child's best interests. In re Meyer, 2003 Ohio App. LEXIS 4090, 2003 Ohio 4605, (2003), appeal dismissed by 2004 Ohio 1724, 2004 Ohio App. LEXIS 1535 (Ohio Ct. App., Ashtabula County Jan. 30, 2004), criticized by In re S.B., 2005 Ohio 3163, 2005 Ohio App. LEXIS 2941 (Ohio Ct. App., Cuyahoga County June 23, 2005).

There was sufficient evidence to support the trial court's finding that it was in the children's best interests pursuant to RC § 2151.414 that the mother's parental rights were terminated, as the children had special needs, the mother was a drug addict and had an unstable lifestyle, the children were in need of a secure placement, and the children had bonded with their foster family. In re Marlow, 2003 Ohio App. LEXIS 3976, 2003 Ohio 4456, (2003).

Awarding permanent custody to the father was in the child's best interest, and the benefits of stability and permanence significantly outweighed the potential harm of severing the bond with the biological parents, who had inherent intellectual, attitudinal, and psychological limitations that rendered reunification efforts meaningless. In re Matuszczak, 2003 Ohio App. LEXIS 2609, 2003 Ohio 2892, (2003).

Pursuant to RC § 2151.414(D)(1), one of the factors that the trial court must consider in determining whether permanent custody is in the child's best interest is the child's interaction with his parents and other caregivers; in an action adjudicating a minor child to be dependent, because the minor's mother ignored recommendations of caseworkers, and failed to complete a reunification plan, family court found permanent county custody was in the child's best interest. In re Beasley, 2003 Ohio App. LEXIS 2557, 2003 Ohio 2857, (2003).

A parent's opinion that she is a good parent and does not need to cooperate in remedying numerous parenting deficiencies is not sufficient to preclude a grant of permanent custody under RC § 2151.414 where it is clearly in the child's best interests. The court is not required to provide findings of fact and conclusion of law unless requested. In re Eppinger, 1994 Ohio App. LEXIS 681 (8th Dist. 1994).

An otherwise "fit" parent may be found unsuitable when an award of custody to the parent would be detrimental to the child. In re Higby, 81 Ohio App. 3d 466, 611 N.E.2d 403 (1992).

Burden of proof

A state seeking permanent custody must prove its allegations by clear and convincing evidence. It is not incumbent on an objecting parent to prove anything. In re Mesko, 1997 Ohio App. LEXIS 1645 (7th Dist. 1997).

Case plan, generally

Court rejected the mother's contention that a county children services agency failed in its obligation to provide child visitation. While the caseworker conceded that she failed to provide visitation as required by the case plan approved by the trial court, the caseworker's lack of diligence in implementing the case plan did not constitute reversible error because permanent custody proceedings had already been implemented at the time that the mother finally contacted the caseworker and because, despite the caseworker's efforts to contact the mother, she did not know the mother's whereabouts prior to the time that the mother contacted her. In re V.H., 2006 Ohio App. LEXIS 488, 2006 Ohio 532, (2006).

Upon a permanent custody petition, clear and convincing evidence supported the finding that the father failed to remedy the conditions that caused the younger child's removal because, although the father completed one case plan, he failed to successfully complete the subsequent case plan; further, the record supported the conclusion that the successful completion of the case plan, in 2002, did not remedy the problems that caused the child to be removed in 2003. In re Miller, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

Parent's compliance with the case plan is only one element to be considered by a trial court in considering the best interests of the children in a termination of parental rights proceeding pursuant to RC § 2151.414(E). In re Conn, 2003 Ohio App. LEXIS 4804, 2003 Ohio 5344, (2003).

Any failure to inform a parent at the initial shelter-care hearing

of the possible consequences of failing to conform to the case plan was cured well before his parental rights were terminated: In re Moore, 153 Ohio App. 3d 641, 795 N.E.2d 149, 2003 Ohio 4250, (2003).

Child's right to counsel

In proceedings that granted a motion filed by a county children's services agency for permanent custody of a mother's three children under RC § 2151.414(B)(1), a trial court did not err in failing to appoint an attorney for each child. The appointment of separate attorneys was required only when a conflict existed between the role of a guardian ad litem and that of an attorney under Ohio R. Juv. P. 4(C)(2), and no evidence was presented to show that a conflict existed between the performance of the children's attorney as their appointed counsel under RC § 2151.352 and her role as their guardian ad litem. In re Parks, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

Trial court did not err by not appointing, pursuant to Ohio R. Juv. P. 4(C)(2), a separate attorney and a separate guardian ad litem to represent a mother's child in a permanent custody proceeding because there was no evidence that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. In re Parks, 2006 Ohio App. LEXIS 5835, 2006 Ohio 5890, (2006).

Trial court did not err by not appointing, pursuant to Ohio R. Juv. P. 4(C)(2), a separate attorney and a separate guardian ad litem to represent a mother's child in a permanent custody proceeding because there was no evidence that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. In re Elder, 2006 Ohio App. LEXIS 5834, 2006 Ohio 5889, (2006).

Trial court did not err in appointing the guardian ad litem (GAL) to serve in a dual capacity as GAL and as legal counsel for the children in a permanent custody proceeding instead of appointing an independent attorney to represent the children. Neither the trial court nor the parties identified a conflict with the dual representation, and the court could discern no conflict. In re B.K., 2006 Ohio App. LEXIS 4359, 2006 Ohio 4424, (2006).

Trial court did not err in not appointing an attorney to represent a mother's children in a permanent custody proceeding since the statements by the two older children that they loved their mother and missed her did not constitute evidence that they had an affirmative desire to live with their mother on a permanent basis that was in conflict with their guardian ad litem's recommendation that permanent custody be granted to the agency. Moreover, the second oldest son lacked maturity to understand the proceedings. In re A. T., 2006 Ohio App. LEXIS 3883, 2006 Ohio 3919, (2006).

Trial court erred by failing to appoint the child's guardian ad litem to act as her attorney and did not make any determination as to whether the child possessed the competency and maturity to express her own wishes. However, the error did not require reversal because the child's wishes were evidenced by the guardian ad litem's report and witness testimony and were consistent with the guardian ad litem's recommendation. In re Kangas, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

In a permanent custody hearing, a magistrate adequately considered the issue of whether independent counsel should be appointed for a mother's children and properly found such counsel was not required because the children made conflicting statements about whether or not they wanted to live with their mother. In re Graham, 167 Ohio App. 3d 284, 854 N.E.2d 1126, 2006 Ohio 3170, (2006).

Under the circumstances, appointment of counsel for the children in the permanent custody proceeding was not required because the children lacked the necessary maturity to give any credible testimony to the court about their wishes with regard to custody. In re Shrider, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Trial court erred by failing to appoint counsel after a possible conflict became known between the child's wishes and the recommendation of the guardian ad litem during the permanent custody hearing and thus, the child was entitled to counsel pursuant to RC § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). An attorney would have been required to provide zealous representation for his client and make every

legitimate effort to secure an order allowing the child to have continued contact with her father, which the guardian ad litem could not do and remain consistent with his recommendation. In re H.R., 2006 Ohio App. LEXIS 1472, 2006 Ohio 1595, (2006).

Trial court did not commit plain error in failing to appoint independent counsel for the children because the record did not disclose any conflict between the wishes of the children and the recommendations of the guardian ad litem. In re Reardon Children, 2006 Ohio App. LEXIS 567, 2006 Ohio 629, (2006).

Without any evidence of the children's wishes before it (in the permanent custody hearing pursuant to RC § 2151.414), the trial court did not make, and could not have made, the meaningful determination required as to whether the children needed separate counsel, pursuant to RC § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). The guardian ad litem's report, which was filed during the hearing, did not take a position on what the best interest of the children was. In re T.V., 2005 Ohio App. LEXIS 3884, 2005 Ohio 4280, (2005).

Pursuant to RC § 2151.352, as clarified by JuvR 4(A) and JuvR 2(Y), a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances: In re Williams, 101 Ohio St. 3d 398, 805 N.E.2d 1110, 2004 Ohio 1500, (2004).

Community control conditions

Where the offender was convicted of felonious assault against her children, a condition of community control that she not have any contact with those children was reasonably related to the crimes for which she was convicted and to her rehabilitation: State v. McClure, 159 Ohio App. 3d 710, 825 N.E.2d 217, 2005 Ohio 777, (2005).

Contagious disease of parent

Where a mother contracted a contagious disease, a county agency properly temporarily terminated her visitation with the children, pending an indication that she had taken the necessary medication in order to not expose the children to the disease; although the agency erred in terminating phone contact between the mother and her children pending her submission to a drug screening, as that was a substantive change that required modification of the case plan, pursuant to RC § 2151.412(E)(2), such did not require reversal of the trial court's grant of permanent custody to the agency pursuant to RC § 2151.414(C), as reasonable efforts at reunification had been made under RC § 2151.419(A)(1) and evidence supported the trial court's decision. In re Townsend, 2005 Ohio App. LEXIS 2355, 2005 Ohio 2473, (2005).

Continuance

In a termination of parental rights proceeding, the trial court did not err in denying the father's request for an extension of time to attempt to regain custody of the child because, at the time that the adjudicatory hearing was scheduled in the matter, the father agreed to immediately proceed to the dispositional hearing following adjudication. Further, the father's testimony during the adjudication hearing showed that, even if the trial court had granted his request for a continuance, the father would not have cooperated with the family services agency, in that the father asserted that he had a God-given right to permanent custody of his child and that the agency had no reason to ask him to fulfill certain requirements to gain custody of his child. In re Weaver, 2006 Ohio App. LEXIS 5665, 2006 Ohio 5677, (2006).

Mother's prior failures to appear at court hearings and the fact that she was represented by counsel compelled the conclusion that the trial court did not err in denying the mother's motions for a continuance of a permanent custody hearing under Ohio R. Juv. P. 23. In re Distafano, 2006 Ohio App. LEXIS 4347, 2006 Ohio 4430, (2006).

Trial court did not abuse its discretion in denying the mother's request for a continuance for the permanent custody hearing because the mother called the court but gave multiple excuses as to why she could not attend. Additionally, the mother had failed to attend the previous three review hearings and her attorney had not spoken to her for four months. In re Brown, 2006 Ohio App. LEXIS 3892, 2006 Ohio 3933, (2006).

Trial court did not err in denying a mother's motion for a continuance of a permanent custody hearing because one continuance had already been granted at the mother's request, the attorney had three months to consult with the imprisoned mother, and there is no requirement in RC § 2151.414 that a court appointed special advocate be present at the hearing. In re Hickman, 2006 Ohio App. LEXIS 2784, 2006 Ohio 2867, (2006).

Trial court did not abuse its discretion in denying a mother's motion for continuance of a permanent custody hearing in order to allow home studies to be completed on the child's maternal aunt and maternal grandmother because no interested persons had filed a motion seeking custody of the child, as outlined in RC § 2151.353(A)(3); the agency had previously investigated the grandmother as a proposed custody for two of the child's siblings and had denied the request for custody due to an inappropriate person living in the grandmother's house; and the aunt also had been investigated but had failed to attend a course to deal with the child's health issues and had failed to document that the housing authority had given its consent to allow the child to live with the aunt in her apartment, as requested by the child services agency. In re Fortson, 2006 Ohio App. LEXIS 1362, 2006 Ohio 1501, (2006).

Trial court did not abuse its discretion in overruling a motion for a continuance of a termination of a mother's parental rights hearing filed by the mother's attorney because there was no evidence that the mother was unavoidably absent from the hearing. In re Laigle Children, 2006 Ohio App. LEXIS 756, 2006 Ohio 829, (2006).

Trial court acted within its discretion to deny the continuance as the mother failed to establish that her absence at the hearing was unavoidable. Merely claiming to be tired, weak, or nervous, without further evidence, did not justify continuing a trial scheduled months in advance. In re Kangas, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

There was no abuse of discretion in a trial court's refusal to grant continuances in a parental rights termination proceeding, as the father had "adopted" the child and had not opposed the trial court's proceeding in the matter despite an issue having been raised as to the true identity of the child's biological father, and accordingly, he could not show prejudice or raise the issue for argument on appeal. Denial of a continuance based on an alleged conflict of interest by his attorney was also proper, as the fact that the attorney also represented the mother's sister, from whom the father had stolen a vehicle and who did not like the father, did not create a conflict and there was no prejudice where the sister did not testify at the parental rights termination hearing. In re S.R., 2006 Ohio App. LEXIS 2108, 2006 Ohio 2273, (2006).

Trial court's refusal to stay the proceedings despite the absence of the grandparents was proper where their presence or absence would not have affected the trial court's termination of a father's parental rights to his child; the grandparents' inclusion in the proceedings would have been inconsequential. In re Goff, 2003 Ohio App. LEXIS 5442, 2003 Ohio 6087, (2003).

Where the guardian ad litem appointed for a parent who fled to China with a child was also an attorney, the court did not err by terminating parental rights without granting a continuance so that new counsel could be appointed for the parent to replace counsel who withdrew due to lack of communication with the parent: In re Zhang, 135 Ohio App. 3d 350, 734 N.E.2d 379 (1999).

Death of child

Court of common pleas, juvenile division, erred when it determined that the court lacked jurisdiction to adjudicate the issue of abuse when the child was deceased; the technicality of death did not rob children of statutory protection as the statutory protections afforded siblings extended to afterborn children. In re Darling, 2003 Ohio App. LEXIS 6640, 2003 Ohio 7184, (2003).

Dependency determination

Trial court improperly awarded permanent custody (RC § 2151.414 and RC § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In re Nibert, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

Disability of child

Trial court's determination that it was in the best interest of a child to grant permanent custody to a family services department was not against the manifest weight of the evidence as the evidence showed that the child's mother was unable to handle the child's special medical conditions, that the child's foster family wished to adopt the child, and that the child was doing well with her foster family. In re Mastache, 2006 Ohio App. LEXIS 6853, 2006 Ohio 6937, (2006).

While it was clear that a mother loved her son, it was in the son's best interest that the family services agency be granted permanent custody. The son had been somewhat abandoned by his mother during visitation after the birth of his sister, the son suffered from several developmental problems requiring a great deal of care and therapy, the son was bonded with his foster parents, and the mother had never demonstrated an ability to adequately care for the son. In re C.E., 2006 Ohio App. LEXIS 4747, 2006 Ohio 4827, (2006).

Trial court's decision to terminate a mother's parental rights and to place the child in the permanent custody of a county agency was supported by the weight and sufficiency of the evidence and suited the child's best interest pursuant to RC § 2151.414(D), as the child was severely physically disabled, he was in a foster home that provided extensive therapy and medical care and was willing to have him as long as necessary, and the mother's contact with the child was sporadic and was a struggle for her. Placement in a planned permanent living arrangement under RC § 2151.353(A)(J) was properly denied, as there was no evidence that the child could not reside in a family-like setting. In re Wilson, 2005 Ohio App. LEXIS 5594, 2005 Ohio 6203, (2005).

Clear and convincing evidence, under RC § 2151.414(D), showed it was in the best interest of a child with special medical needs to grant her permanent custody to an agency because (1) she interacted well with her foster parents, with whom she was bonded, (2) they provided for her special needs, and (3) she had improved both mentally and physically since being in the agency's temporary custody. In re Barnes, 2005 Ohio App. LEXIS 6190, 2005 Ohio 6862, (2005).

Clear and convincing evidence supported a trial court's findings that a child who had special medical needs could not be returned to her minor mother within a reasonable time and should not be placed with either parent, under RC § 2151.414(B), because the minor mother was unable to address her own psychological needs, let alone the needs of a child with serious medical problems. In re Barnes, 2005 Ohio App. LEXIS 6190, 2005 Ohio 6862, (2005).

There was clear and convincing evidence to support a trial court's determination that a child, who suffered from Down's Syndrome and who had multiple medical problems which required specialized knowledge from a caretaker, should be placed in a planned permanent living arrangement, as he was unable to function in a family-like setting, it would be very difficult to find an adoptive placement, the foster family where he presently was placed was working out well but they had not decided about adoption due to the father's deployment in the military, and it was in the child's best interest, pursuant to RC § 2151.414(D), to order such an arrangement. Miller v. Green County Children's Servs. Bd., 162 Ohio App. 3d 416, 833 N.E.2d 805, 2005 Ohio 4035, (2005).

Where a child who suffered from severe behavioral disorders that his parents could not control had been in a child service board's (CSB) temporary custody for almost three years at the time of the hearing on its motion for permanent custody, the trial court's finding that it was in the child's best interest to be in the CSB's permanent custody was not against the manifest weight of evidence; the remote possibility that a relative might have been found with whom the child could be placed did not cause this factor to outweigh the other factors that the trial court considered. In re C.W., 2004 Ohio App. LEXIS 1778, 2004 Ohio 2040, (2004).

Termination of a parent's rights is proper where a child has ongoing special needs and the parent has failed to demonstrate a commitment to rearing the child or to learning the skills necessary to meet the special needs. In re Wise, 96 Ohio App. 3d 619, 645 N.E.2d 812 (1994).

Discovery

Full discovery is necessary to meet the "best interests of the child" standard in matters involving children. The restrictive nature of JuvR 24 does not obviate the necessity or right of liberal discovery in permanent custody cases. RC § 5153.17 does not preclude discovery in such a case. Parties have a right to access and copy original children services agency documents, rather than a computer disc containing the documents. In re Jeter, 118 Ohio Misc. 2d 101, 769 N.E.2d 911, 2001 Ohio 4362, (2001).

Due process

Multiple failures by both appointed counsel, and the trial court, led to a complete denial of the mother's right to counsel and related due process rights during her permanent custody hearing. The mother had a right to be present or participate at the hearing and the trial court had a duty to read the mother's rights to her on the record, and to obtain a knowing waiver of those rights. At the time of the hearing, counsel had not spoken to the mother in eight months, counsel failed to attend review hearings, failed to participate in discovery, failed to challenge hearsay evidence, and failed to cross-examine effectively the State's witnesses. In re Roque, 2006 Ohio App. LEXIS 6961, 2006 Ohio 7007, (2006).

Under the circumstances, the trial court violated the mother's due process rights where it refused to allow witnesses proffered by the mother to testify at the permanent custody hearing on the basis that they had not filed a motion for custody. In re Beatty, 167 Ohio App. 3d 730, 856 N.E.2d 1042, 2006 Ohio 3698, (2006), appeal dismissed for want of debatable question by 113 Ohio St. 3d 1207, 2007 Ohio 860, 862 N.E.2d 839, 2007 Ohio LEXIS 507 (2007).

Courts must carefully avoid circumventing the fundamentally important adjudicatory stage when terminating parental rights because omitting the adjudicatory hearing from the process is a substantial deprivation of a parent's due process rights and renders the process fundamentally unfair. The adjudicatory stage requires stringent application of the Ohio Rules of Evidence and forbids any consideration of the child's best interests. In re Nibert, 2005 Ohio App. LEXIS 2641, 2005 Ohio 2797, (2005).

Evidence generally

Any error committed by admitting the psychologist's report constituted harmless error because the evidence supported the trial court's decision to award the agency permanent custody even without the report since the trial court cited both RC § 2151.414(E)(1) and (E)(2) in determining that the children could not or should not be placed with either parent and the psychological report was relevant to the (E)(2) factor. Thus, even without the report, the record still supported an RC § 2151.414(E)(1) finding. In re Link, 2006 Ohio App. LEXIS 476, 2006 Ohio 529, (2006).

In permanent custody hearing, there was no error in admission of the testimony of one of the children's teachers that the child had claimed that the mother had hit her with a clothes hanger because, although it was hearsay, the testimony was admissible under Ohio R. Evid. 803(3) as a statement of the declarant's then existing physical condition. The child's explanation to her teacher and the school nurse was consistent with, and supported, the conclusion they reached after observing the marks on her body. In re Malaya H., 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Admittance of a referral report from a children's services agency was proper because the witness, in laying the business records foundation under Ohio R. Evid. 803(6), testified as to the procedure of creating the report, that the report was kept in the normal course of the agency's business, and that it was the agency's regular practice to make such a report; moreover, as the report was primarily cumulative of other evidence, appellant mother was not prejudiced by its admission. In re Joiner, 2004 Ohio App. LEXIS 1017, 2004 Ohio 1158, (2004), appeal denied by 102 Ohio St. 3d 1425, 2004 Ohio 2003, 807 N.E.2d 368, 2004 Ohio LEXIS 998 (2004).

Trial court's consideration of evidence regarding the husband was well within its discretion under RC § 2151.414(D)(1). The husband was a factor in the children's lives, due to the fact that he was married to the mother. In re Morgan, 2004 Ohio App. LEXIS 3653, 2004 Ohio 4018, (2004).

The court-ordered psychological examination of the parent was inadmissible hearsay. The evidence, including the parent's refusal to cooperate with the case plan, supported termination of parental rights: *In re Mack*, 148 Ohio App. 3d 626, 774 N.E.2d 1243, 2002 Ohio 4161, (2002).

Juvenile Rule 34(I) specifically states that the rules of evidence apply at a hearing on a motion for permanent custody. The report of the psychological evaluation of the parents constituted inadmissible hearsay: *In re Washington*, 143 Ohio App. 3d 576, 758 N.E.2d 724 (2001).

For purposes of RC § 2151.41.4, how a parent mistreats another child is relevant to the custody determination: *In re Hiatt*, 86 Ohio App. 3d 716, 621 N.E.2d 1222 (1993).

Court may admit evidence of a parent's abuse of his children from a former marriage, as well as of the child in question: *Babcock*, 1990 Ohio App. LEXIS 850 (1990).

Evidence relating to the natural mother's parenting history and her inability to comply with prior reunification plans is relevant to a juvenile court's determination of whether to commit a child to the permanent custody of a welfare agency pursuant to RC §§ 2151.35.3 and 2151.41.4: *In re Brown*, 60 Ohio App. 3d 136, 573 N.E.2d 1217 (1989).

Hearsay is not admissible in adversarial juvenile court proceedings at which a parent, charged with neglecting his or her children, may lose custody of the children: *In re Vickers Children*, 14 Ohio App. 3d 201, 14 Ohio B. 228, 470 N.E.2d 438 (1983).

Evidence insufficient

Because there was no evidence that the grandfather could not provide legally secure permanent placement, the termination of the mother's parental rights was an abuse of discretion. The agency failed to present clear and convincing evidence that termination of the mother's parental rights was in the child's best interest as it failed to show that no suitable relative was available for placement, pursuant to RC § 2151.414(D). *In re Schaefer*, 2005 Ohio App. LEXIS 1193, 2005 Ohio 1258, (2005), appeal dismissed in part by 105 Ohio St. 3d 1556, 2005 Ohio 2481, 828 N.E.2d 113, 2005 Ohio LEXIS 1086 (2005), reversed by 111 Ohio St. 3d 498, 2006 Ohio 5513, 857 N.E.2d 532, 2006 Ohio LEXIS 3065 (2006).

Trial court's finding that a mother was unsuitable under RC § 2151.414(E)(14) was unfounded. While the mother had been unable to find suitable housing as required by her case plan, her efforts in maintaining employment, keeping in touch with her children, and seeking out housing despite the obstacles she faced showed a determined willingness to reunify her family. *In re Cassandra*, 2006 Ohio App. LEXIS 2600, 2006 Ohio 2767, (2006).

Trial court's judgment entry did not show that it considered the statutory factors required for a valid order granting permanent custody, under RC § 2151.414(E). Also, the trial court did not engage in the best interest of the child analysis or consider the factors codified in RC § 2151.414(D) because nothing in the judgment entry indicated that it engaged in a wide-range best interest analysis as it pertained to the children's placement with the mother. *In re Allbery*, 2005 Ohio App. LEXIS 5866, 2005 Ohio 6529, (2005).

Juvenile court erred in terminating the parental rights of the mother and in granting permanent custody of the minor child to the county children's services board, as the conflicting and problematic opinions of the multiple witnesses at the permanent custody hearing, plus the evidence showing that the mother had only a limited opportunity to show that she had the ability to care for the minor child, meant that the required clear and convincing evidence did not support the termination of the mother's parental rights. *In re K. S.*, 2004 Ohio App. LEXIS 2370, 2004 Ohio 2660, (2004).

Where a trial court's findings were contradicted by the record and a county children's services agency did not show that a mother failed to substantially remedy the condition that caused the children to be removed from the home, the trial court erred in terminating the mother's parental rights under RC § 2151.414(E)(1)-(16). *In re Rashaun B.*, 2004 Ohio App. LEXIS 6812, 2004 Ohio 7349, (2004).

There was sufficient evidence presented to support the trial court's decision to not grant the agency's motion for permanent custody because even though the children had been in the

temporary custody of the agency for more than 12 of a consecutive 22-month period, the evidence showed that the mother had made enough progress with her case plan to justify the trial court's decision that reunification could be a realistic possibility. Although the mother suffered from a psychological disorder that may have made it difficult for her to properly function as a parent, and may have missed some visitations, the evidence demonstrated that the children retained a positive relationship with her and the mother had made strides toward becoming a better parent, had completed most of her case plan, and had taken steps to remedy the conditions that caused the children to be removed. *In re Cutright*, 2004 Ohio App. LEXIS 1360, 2004 Ohio 1524, (2004).

Trial court properly examined the factors in RC § 2151.414(E), and determined it was in the children's best interests to deny the county child services department's motion for permanent custody where the court essentially decided that the evidence failed to show that the children could not be afforded a legally secure permanent placement without awarding the department permanent custody; the court found that the father had made progress and deserved a chance to show that he could provide the children with a legally secure permanent placement, and although the department complained that the father had already had sufficient time to demonstrate that he could provide the children with such a placement, the trial court found that placement with the father was not hopeless. *In re Cunningham*, 2004 Ohio App. LEXIS 720, 2004 Ohio 787, (2004).

Placement of a boy in the permanent custody of a child services agency was not established by clear and convincing evidence to be in the boy's best interest where the evidence failed to show abandonment of the boy by his mother, but did show that the boy wanted to live with his mother, that sexual abuse charges against the mother had been dismissed and her record expunged, and that the mother had complied with counseling requirements in the boy's case plan as soon as financial assistance was provided to her for such counseling; thus, the trial court's order of permanent custody was reversed. *In re Bounds*, 2003 Ohio App. LEXIS 4276, 2003 Ohio 4733, (2003).

The termination of a mother's parental rights pursuant to RC § 2151.414(E) was reversed because it was error for the trial court to predicate its decision on the mother's past failures without affording her the time to attempt to complete the case plan. *In re Johns*, 2003 Ohio App. LEXIS 3278, 2003 Ohio 3621, (2003).

Termination of parental rights under RC § 2151.414(E)(1) and (4) was an abuse of discretion because no clear and convincing evidence supported termination based on those factors; the mother had worked to comply with her case plan, was in a living situation with her parents, who expressed a desire to help, and she had no criminal record or other substantiated reports of problems in caring for her child. *In re Jordan*, 2003 Ohio App. LEXIS 5424, 2003 Ohio 6071, (2003).

Termination of mother's parental rights reversed where mother had substantially remedied the problems that had caused the children to be removed: *In re Sara H.*, 1994 Ohio App. LEXIS 5649 (6th Dist. 1994).

Evidence sufficient

Although trial court's finding that the children of a mother and a father had been in the custody of the family services agency for 12 or more months in a consecutive 22-month period provided a sufficient basis for the court to affirm the trial court's judgment granting the agency's motion for permanent custody, the trial court's further finding that the children could not be placed with either parent within a reasonable period of time was supported by evidence showing that the mother had struggled with severe alcohol addiction for years prior to the agency's involvement and had led to instability in her housing, drunken driving convictions, and domestic violence in the presence of her children, and that the father had a criminal history of violence and substance abuse and lacked commitment to any ongoing treatment program as set forth in the case plan. *In re Marple*, 2007 Ohio App. LEXIS 1696, 2007 Ohio 1879, (2007).

There was clear and convincing evidence to demonstrate that a mother's child could not be placed with the mother within a reasonable period of time or should not be placed with her, pursuant to RC § 2151.414(B)(1)(a) as the mother failed contin-

uously and repeatedly to remedy the conditions of her drug abuse, homelessness, and unemployment; failed to utilize the medical psychiatric, psychological, and other social and rehabilitative services and material resources made available to her by the children services agency; failed to follow through on treatment for her mental health and chemical abuse; and attended only seven full visits with her child out of the 14 to 16 visits scheduled. In re D.P., 2007 Ohio App. LEXIS 1550, 2007 Ohio 1703, (2007).

There was no error in granting permanent custody of the child to the agency because the child could not be placed with either parent within a reasonable time because both demonstrated a lack of commitment by failing to regularly support, visit, or communicate with the child when able to do so. The mother had lost custody of her other children and the father was in prison and thus, unable to care for the child for at least 16 years. In re T.W., 2007 Ohio App. LEXIS 1320, 2007 Ohio 1441, (2007).

In rendering its judgment in a permanent custody matter, the trial court must either specifically address each of the required considerations set forth in RC § 2151.414(D) in its judgment entry, or otherwise provide some affirmative indication in the record that the court has considered the specific factors listed in § 2151.414(D). In re D.H., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1605, 2007 Ohio 1762, (Apr. 16, 2007).

There was no error in permitting the testimony of the social worker regarding the removal of the child in the permanent custody proceeding because RC § 2151.35(B)(2)(b) permitted the trial court to admit any evidence that was material and relevant. Even if hearsay had been barred, under either exception to hearsay, Ohio R. Evid. 803(6) (business records) or Ohio R. Evid. 803(8) (public records), the social worker's testimony concerning statements made during the course of the agency's investigation were admissible since the contents of her file, including the statement by the cousin, had been compiled as part of the social worker's activities. In re Z.T., 2007 Ohio App. LEXIS 759, 2007 Ohio 827, (2007).

There was competent, credible evidence to support the trial court's conclusion that the child could not or should not be placed with either parent within a reasonable period of time for the permanent custody determination because the mother had not completed her case plan by addressing her substance abuse and parenting issues. Also, the mother had not regularly supported, communicated with, or visited with the child and, even without the visitation component, the evidence showed without contradiction that the mother was not employed, nor had she provided any financial support for the child. In re Z.T., 2007 Ohio App. LEXIS 759, 2007 Ohio 827, (2007).

There was clear and convincing evidence to support termination of parental rights pursuant to RC § 2151.414(E)(1) where the mother and father were both mildly mentally retarded, the father was a convicted sex offender who was not supposed to be around minors and yet he was around the child, and the mother did not understand the importance of keeping the father away from the child. Due to the father's probation conditions regarding being kept away from children, and the refusal of the mother and father to live apart, the child could not be reunited with them. In re L.M., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1462, 2007 Ohio 1596, (Apr. 5, 2007).

Weight of the evidence supported a juvenile court's termination of a mother's parental rights over her three minor children pursuant to RC § 2151.414(B)(1)(d) and (D), as the children were in the temporary custody of a social service agency for the requisite period of time and termination of the mother's rights was in their best interests. They were exposed to continuing acts of domestic violence between the parents despite years of trying to stop the cycle and the mother's repeated promises to separate herself from the father, only to return to him, and the children felt a lot of fear from living at home. In re L.S., — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1455, 2007 Ohio 1583, (Apr. 4, 2007).

Trial court's award of permanent custody of six of a mother's children to a children services agency and of the seventh child to her father was supported by competent, credible evidence as the children had been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. Moreover, the trial court properly found that the children could not be placed with the mother within a reasonable time because the testimony

showed that the mother's retardation prevented her from having adequate parenting skills; that, despite the efforts of the agency and other professionals, the mother had shown no improvement since the children were first removed from the home; and that the mother did not have the ability to improve in the future. In re Buck, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1358, 2007 Ohio 1491, (Mar. 22, 2007).

Record clearly supported a trial court's decision awarding permanent custody of a father's children to a family services agency. Pursuant to the factors set forth in RC § 2151.414(E), the trial court found that the father had failed to remedy the conditions of substance abuse and lack of stability that led to removal of the children and that he did not appear willing to provide an adequate permanent home for the children. In re Joseph C.P., 2007 Ohio App. LEXIS 1397, 2007 Ohio 1528, (2007).

Juvenile court's finding that two sons could not be placed with either of their parents within a reasonable time or should not be placed with either parent was supported by clear and convincing evidence where: (1) despite the reasonable case planning and diligent efforts to assist the father by a child services agency (CSA), the father failed to substantially remedy the conditions that initially caused the sons to be placed outside the home, (2) the father failed to engage in the offered substance abuse treatment, continued using cocaine, declined to seek stable housing or employment, failed to meet with his caseworker on a monthly basis, and was, within months after allowing the CSA to take temporary custody of his sons, incarcerated for committing a criminal offense, and (3) the fact that the father completed an illiteracy course and participated in a drug abuse program while incarcerated was insufficient evidence to establish that the father substantially remedied the circumstances that initially caused his children to be placed in the temporary custody of the CSA. In re Jason S., 2006 Ohio App. LEXIS 643, 2006 Ohio 726, (2006).

Evidence in a permanent custody case showed, under RC § 2151.414(D)(4), that the child's need for a secure permanent placement could only be met by granting permanent custody to an agency because, under RC § 2151.414(B)(1)(a), the child could not or should not be placed with a parent and no relative came forward to be considered for the child's custody, so it was in the child's best interest to grant the child's permanent custody to an agency. In re P.B., 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

Trial court did not err in finding that a mother's child could not be placed with the mother within a reasonable period of time. The evidence showed that the mother had made little progress on her case plan as the mother missed numerous parenting classes, continued to use drugs, was evicted from her home, and was incarcerated on a parole violation. In re Mastache, 2006 Ohio App. LEXIS 6853, 2006 Ohio 6937, (2006).

Parental rights were terminated in accordance with Ohio's statutory system, pursuant to RC § 2151.414, and due process requirements because the parents' history resulted in the involuntary termination of their parental rights to six other children. Their history included extensively documented incidents of domestic violence, some occurring in front of their children, and child endangerment charges for leaving the children unsupervised and the father had an extensive criminal history. In re Melchizedek M., 2006 Ohio App. LEXIS 2961, 2006 Ohio 3062, (2006).

Trial court's award of permanent custody of a child to a child services agency (CSA) was proper as the child could not be placed with the mother within a reasonable time since: (1) the mother was unable to self-care and care for others, (2) the mother lacked a support system, other than the father, who was a registered sex offender, (3) the mother failed to retain or utilize parenting materials, (4) the mother lacked stable and safe housing for the child, had lost her HUD housing, had had her telephone service terminated, and lived in a residence with no designated area for the child, and (5) the guardian ad litem strongly recommended that permanent custody be granted to the CSA. In re King, 2006 Ohio App. LEXIS 704, 2006 Ohio 781, (2006).

Trial court did not err in finding the child to be dependent, pursuant to RC § 2151.04(D), because the trial court's decision was based upon present evidence that was sufficient to carry the burden of proof. The trial court found that it had taken perma-

nent custody of three children of whom the mother and her violent boyfriend were the parents; despite the permanent removal of her children, the mother had not distanced herself enough from the boyfriend to ensure her own safety; the mother violated court orders, designed for her own protection, to continue her relationship with her boyfriend; the mother failed to complete any previous case plan in any significant way; and the mother had made almost no progress emotionally, psychologically, or intellectually. In re Bourne, 2006 Ohio App. LEXIS 340, 2006 Ohio 396, (2006).

Termination of the mother's parental rights was warranted because the mother failed to remedy the conditions that caused the children to be removed; the mother's substance abuse and housing problems had not been addressed, she was unable to demonstrate parenting skills or a commitment to the children, and she had unresolved mental health issues. Specifically, she did not complete drug treatment and continued to use drugs, she did not have stable housing, she was not in treatment or taking medication for her mental illness, and she failed to maintain regular contact with the children through visitation. In re D.G., 2006 Ohio App. LEXIS 5588, 2006 Ohio 5575, (2006).

Trial court's decision to grant permanent custody to the agency, pursuant to RC § 2151.414, was supported by competent, credible evidence because the children, who suffered from ongoing emotional and behavioral issues, had a greater and more significant bond to their foster home than to either biological parent. The father had been twice incarcerated during the case and, at the time of the best interests hearing, he had not established paternity of the two children. In re Peterson, 2006 Ohio App. LEXIS 1370, 2006 Ohio 1500, (2006).

Clear and convincing evidence supported a trial court's finding under RC § 2151.414(E)(1) that a mother's four children could not be placed with the mother within a reasonable time because the evidence showed that, while the mother did complete certain aspects of her case plan, she continuously and repeatedly was unable to implement what she learned through counseling and parenting classes. The mother never dealt with the mental health issues that caused her to become involved in situations that endangered the children. In re Devon J., 2006 Ohio App. LEXIS 4050, 2006 Ohio 4130, (2006).

Trial court properly determined that the child could not be, or should not be, placed with the father within a reasonable time because it found that the father never attempted, started, or completed the requirements set out by the case plan; he had only had 11 visits with the child before voluntarily terminating his visits; and the father failed to maintain contact with the agency and refused to make his home available for a home study. In re Oaks, 2006 Ohio App. LEXIS 4787, 2006 Ohio 4857, (2006).

There was sufficient evidence to support the trial court's conclusions that the children could not be placed with the parents within a reasonable time, pursuant to RC § 2151.414(E), because there was ample evidence that the parents failed to remedy the unsatisfactory conditions in their home. The parents also failed to show a commitment to the children by fulfilling the goals of the case plan or regularly attending visitations with the children. In re Shrider, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Trial court's finding that a father's child could not be placed with the father within a reasonable time was supported by clear and convincing evidence. The evidence showed that, despite the agency's referrals, the father had not completed drug treatment, had not received domestic violence counseling, was not employed, and was not prepared to provide a home for the child. In re M. L., 2006 Ohio App. LEXIS 5893, 2006 Ohio 5931, (2006).

Judgment granting permanent custody of a father's three children to agency was not against the manifest weight of the evidence. The father had been to prison three times, he had demonstrated a lack of commitment to the children by failing to regularly support or communicate with them, and he had conceded that his housing situation was not suitable for the children. In re Salsberry, 2006 Ohio App. LEXIS 3191, 2006 Ohio 3273, (2006).

Applying the test laid out in RC § 2151.414(B)(1), the trial court properly found that the child could not, or should not, be placed with either parent within a reasonable time because, although the agency provided reasonable case planning and diligent efforts to assist the mother, the mother failed continu-

ously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home. The mother did not show a commitment toward the child by fulfilling the goals of the case plan in that she admitted to using drugs and tested positive for drugs in every one of the 16 drug tests performed, she had a history of domestic violence, and she failed to obtain and maintain suitable, adequate, and appropriate housing for her son. In re English, 2006 Ohio App. LEXIS 2952, 2006 Ohio 3067, (2006).

Permanent custody of a mother's two children was properly awarded to a children's services agency under RC § 2151.414. Evidence of the mother's drug use under a time of stress, the lack of understanding regarding the son's need for medical treatments, the previous loss of custody of the mother's other five children, the mother's repeated incarcerations, and her lack of judgment in leaving her children in the care of inappropriate caretakers supported the trial court's findings under § 2151.414(E)(1), (2), (4), (11), (13), and (14). In re Charles B., 2006 Ohio App. LEXIS 4712, 2006 Ohio 4801, (2006).

Even if clear and convincing evidence did not support the trial court's RC § 2151.414(E)(2) finding that the mother had chronic and severe mental and emotional illness and suffered from substance abuse, ample other evidence supported the trial court's finding that the children could not be placed with either parent within a reasonable time. The trial court found that RC § 2151.414(E)(1) supported a finding that the children could not be placed with either parent within a reasonable time and the mother did not challenge that finding. In re Link, 2006 Ohio App. LEXIS 476, 2006 Ohio 529, (2006).

Trial court's finding that the children could not or should not be returned to the mother within a reasonable time, pursuant to RC § 2151.414(B)(1)(a), was not against the manifest weight of the evidence because the mother failed to remedy the conditions that led to the children's removal. The mother's actions demonstrated a lack of commitment to the children because she had been unwilling to provide an adequate permanent home for the children. In re Pettiford, 2006 Ohio App. LEXIS 3572, 2006 Ohio 3647, (2006).

Grant of permanent custody, under RC § 2151.414, of a mother's children to a family services agency was proper. The trial court's finding that the children could not be placed with the mother within a reasonable time was supported by evidence that the mother did not react to problematic sexual behavior that the children demonstrated and that she did not follow through with discipline. In re Thornton Children, 2006 Ohio App. LEXIS 2400, 2006 Ohio 2519, (2006).

Clear and convincing evidence supported a trial court's decision to place a father's two children in the permanent custody of a county job and family services agency under RC § 2151.414(D), (E)(4), (10), (16); the father had no contact with them or the agency for nearly a year while they were in the agency's temporary custody, left the area while they were on visitation status with the mother, saw them after his return only in a therapeutic context where no bonding was apparent, and did not find steady work or a stable home. In re Francisco, 2006 Ohio App. LEXIS 5839, 2006 Ohio 5888, (2006).

Record contained clear and convincing evidence to support the trial court's decision granting permanent custody of a mother's two children to a family services agency. The evidence showed that the children could not or should not be placed with the mother within a reasonable period of time, in that the evidence showed that the mother failed to attend counseling for a six-month period, that she minimized her own responsibility for the children's emotional problems, and that, while the mother had worked to complete the majority of her case plan, she had not addressed the core concerns of abuse and neglect that were involved in the case. In re Daulton, 2006 Ohio App. LEXIS 5324, 2006 Ohio 5352, (2006).

Sufficient evidence supported a trial court's finding, by clear and convincing evidence, that children could not be placed with their mother within a reasonable time, and that the children should not be placed with their mother, under RC § 2151.414(B)(1)(a), because the children had severe emotional problems requiring extensive therapy, and the mother's own sexual victimization precluded her from being able to handle the

children's issue. In re Graham, 167 Ohio App. 3d 284, 854 N.E.2d 1126, 2006 Ohio 3170, (2006).

Evidence showed that a mother had failed to alleviate the conditions which led to the placement of her child with a children services agency, in that the evidence revealed that the mother failed to consistently visit the child, that she had numerous criminal convictions, and that the child would be at risk with the mother. The trial court did not err in determining that the child could not be placed with either parent within a reasonable time. In re Parks, 2006 Ohio App. LEXIS 5835, 2006 Ohio, 5890, (2006).

Trial court did not err in finding that the children should not be returned to their mother because there was clear and convincing evidence that, despite reasonable case planning and diligent efforts by the agency, the mother failed to remedy the problems that caused the twins to be placed outside her home, pursuant to RC § 2151.414(E)(1). The mother suffered from chronic mental illness that prevented her from exercising appropriate judgments about the welfare of her children, she frequently missed visitation, and she failed to pay any financial support for the children for months after support was ordered, when she had a full-time job. In re E.H., 2006 Ohio App. LEXIS 348, 2006 Ohio 416, (2006).

Trial court did not err in concluding, under RC § 2151.414(E)(1) that a mother's son could not be placed with the mother within a reasonable time. Despite attending training programs, housekeeping and safety issues remained, the mother continued to be at a loss with respect to child care whenever non-routine issues arose, the mother had never lived on her own, and the mother was unaware of the son's severe developmental delays until she was told. In re C.E., 2006 Ohio App. LEXIS 4747, 2006 Ohio 4827, (2006).

Trial court did not err in awarding a children services agency permanent custody of a mother's son even though awarding legal custody to the son's foster mother was a possibility. The son had been in the custody of others since days after his birth, he had bonded with his foster mother, the foster mother had expressed an interest in adopting the son, and the son needed a secure and permanent placement. In re Norman F., 2006 Ohio App. LEXIS 6720, 2006 Ohio 6810, (2006).

Permanent custody of a father's children was properly granted to a family services agency upon a finding that the children could not be placed with the father within a reasonable period of time. The father failed to enroll in treatment programs required by his case plan, failed to submit to weekly urine screenings, failed to obtain employment, and admitted to using marijuana daily. In re Davidson-Rush, 2006 Ohio App. LEXIS 4781, 2006 Ohio 4873, (2006).

In permanent custody proceedings, a trial court's determination placing a mother's youngest child in the permanent custody of a county children's services agency under RC § 2151.414(B)(1)(d) was not against the manifest weight or sufficiency of the evidence; the child had been in the agency's custody for more than 12 of the past 22 months, the mother had visited inconsistently, she had failed to complete case plan objectives or to minimize the risks that led to their removal, she had a criminal history, and all three children were in a placement with the same foster parents, who wished to adopt them. In re Parks, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

In a proceeding to terminate a father's parental rights, a trial court did not err in finding that his two children could not be placed with either parent within a reasonable period of time under RC § 2151.414(E) and that granting a motion filed by a county department of job and family services for permanent custody under RC § 2151.353(A)(4) was in the children's best interests under RC § 2151.414(D). Although the father had made significant progress and had substantially complied with his most recent case plan, his compliance with the plan did not entitle him to custody, and the trial court could not ignore his long history of drug involvement and failed rehabilitation, his repeated incarcerations, or his initial failures to actively exercise visitation or to engage in his case plans. In re Gower, 2006 Ohio App. LEXIS 5666, 2006 Ohio 5676, (2006).

Permanent custody of a father's son was properly awarded to a family services agency. The father had refused to undergo a psychological evaluation even though he knew why he needed to be evaluated, and thus, he could not complain that the agency had

never provided him with tailored services. In re C.E., 2006 Ohio App. LEXIS 4747, 2006 Ohio 4827, (2006).

Trial court's decision to deny the agency's motion for permanent custody as to the oldest daughter was against the manifest weight of the evidence and was not supported by clear and convincing evidence because, at nine years of age she may have been able to feed and bathe herself, there was no evidence that she would be able to protect herself from the known felons that the mother had residing in her residence, or that the mother intended to stop residing with known felons. In re Jones, 2006 Ohio App. LEXIS 3255, 2006 Ohio 3363, (2006).

Trial court's determination to grant permanent custody of a mother's 10 children to a county social service agency was supported by clear and convincing evidence, pursuant to RC §§ 2151.353(A)(3) and 2151.414(B)(1)(d) and (D), as the mother was convicted of a sexual offense involving two of her children, the children's aunt who had requested custody was not a suitable placement because her home was too small, she barely knew the children, and it was in their best interests to be placed in the agency's custody. In re Hilyard, 2006 Ohio App. LEXIS 1809, 2006 Ohio 1976, (2006).

Trial court's decision not to return legal custody to the boyfriend was reasonable because, since he was not the child's father, the procedural protections of RC § 2151.414, regarding termination of parental rights, did not apply to him. It was against the best interest and welfare of the child to be placed with the boyfriend because he had repeatedly placed the child at risk, had recently lost legal custody of one of his own children, and had two others removed from his care and adjudicated neglected and dependent. In re Kenny B., 2006 Ohio App. LEXIS 893, 2006 Ohio 968, (2006).

There was sufficient evidence for termination of the father's parental rights, under RC § 2151.414(E)(1), as the father failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home in that he missed over half of the visitations, he did not know how to change his daughter's diaper, and had limited interaction with her during visitations. However, the condition of the home and the father's hygiene were the biggest problem and were clearly not temporary problems. In re H.M.S., 2006 Ohio App. LEXIS 614, 2006 Ohio 701, (2006).

Trial court did not abuse its discretion in granting custody of a father's child to a children's services agency because the evidence revealed that the father had been convicted of three counts of gross sexual imposition, which is one of the offenses listed in RC § 2151.414(E)(7)(d) as relevant to a consideration of whether a grant of permanent custody to an agency is in a child's best interest. In re Alexander, 2006 Ohio App. LEXIS 7005, 2006 Ohio 7083, (2006).

Trial court's findings that the children could not be placed with the mother within a reasonable time and that the grant of permanent custody was in the children's best interest were supported by the record as the evidence showed that the children suffered from developmental delays, including bed wetting, severe temper tantrums, and aggression. While the mother had made progress toward the completion of her case plan services, the evidence showed that she had made little progress with dealing with the children's mental health issues, that she had missed visitations, and that she failed to take any responsibility for the children's removal from their home. In re Turner, 2006 Ohio App. LEXIS 6767, 2006 Ohio 6793, (2006).

Evidence supported the granting of permanent custody of the children to the agency under because neither parent had completed their case plan. Among other things, the mother had not addressed her alcoholism and was dating a known sex offender and the father failed to find appropriate housing and failed to complete his domestic violence treatment. Also, the trial court did not err in finding that the agency made reasonable efforts to reunite the children with the mother because the social worker testified regarding the steps taken to assist the mother in making progress on the case. In re Sherman, 2006 Ohio App. LEXIS 6436, 2006 Ohio 6485, (2006).

Record contained sufficient competent and credible evidence from which the trial court could determine that a mother's three children could not be placed with the mother within a reasonable time, in that the evidence showed that the mother had not

engaged in recommended mental health counseling, that she was not taking necessary medication, that she had not seen her psychiatrist for two months, that she had not maintained consistent employment, that she was living in a one-bedroom apartment with her boyfriend, that she had a history of abusing marijuana but had not completed treatment sessions, and that she had demonstrated a lack of commitment towards the children by failing to regularly support visit with them. In re Coon, 2006 Ohio App. LEXIS 5621, 2006 Ohio 5629, (2006).

Trial court's termination of a mother's parental rights pursuant to RC § 2151.414(B)(1)(a) and (E)(1), (2), (4), and (14) was supported by clear and convincing evidence that it was in the children's best interests and that they could not and should not be placed with either parent within a reasonable time, as the mother's attempts to remedy her shortcomings, including a relapse of her alcohol abuse, was "too little, too late," the children had progressed developmentally since being removed from the mother's home, and they had bonded with their caregivers; further, there was no suitable relative for placement. In re Jordan R., 2006 Ohio App. LEXIS 5468, 2006 Ohio 5470, (2006).

Permanent custody of father's son was properly granted to agency under RC § 2151.414 since the evidence showed that permanent custody of the father's daughter had been granted to the agency shortly before the son's birth, and the case manager continued to emphasize ongoing concerns with the refusal of the father and the son's mother to see anything wrong with their behaviors. The record and the transcripts from the daughter's case supported the trial court's determinations under RC §§ 2151.04(D) and 2151.414(D) and the corresponding grant of permanent custody of the son to the agency. In re Lowther, 2006 Ohio App. LEXIS 4731, 2006 Ohio 4837, (2006).

Evidence that a mother had not enrolled in a counseling program for her substance abuse problem, that she was still using illegal substances as late as the month before her parental rights were terminated, and that the mother had told the social worker that she neither intended to seek counseling for her drug usage nor intended to attend parenting classes indicated unwillingness on the part of the mother to comply with the court-ordered case plan and to make the lifestyle changes necessary for her to raise her child. RC § 2151.414(E)(1) and (2) applied. Moreover, evidence that the mother had not visited with the child once since the agency assumed custody of the child, that she did not once ask about the child's medical condition and did not provide any support for the child, and that the mother failed to keep her address and phone number current with the agency, making her unavailable for much of the year constituted a failure to demonstrate a commitment to the child under § 2151.414(E)(4). In re Distafano, 2006 Ohio App. LEXIS 4347, 2006 Ohio 4430, (2006).

Trial court's findings, pursuant to RC §§ 2151.353(A)(4) and 2151.414(E)(4) and (11) that a mother's one-month-old son should not be placed with the mother within a reasonable time and that permanent custody was in the son's best interest were supported by clear and convincing evidence. The fact that the mother's parental rights to the son's brother had been terminated four years earlier was sufficient under RC § 2151.414(D)(5) and (E)(11) to support the trial court's decision. The trial court examined the mother's circumstances as they existed at the time of the proceedings and found that the mother was unable to understand how to feed the son the proper amount of food at proper intervals, that the mother attended only one-half of the visits provided after the son was removed from her care, and that the mother had failed to remedy unsanitary housing conditions that existed at the time of the removal of the son's older brother. In re Deasean J., 2006 Ohio App. LEXIS 4218, 2006 Ohio 4294, (2006).

Trial court's grant of permanent custody of a child to a county agency was not against the manifest weight of the evidence pursuant to RC § 2151.414, as she had been adjudicated as dependent, the parents were addicted to substances of abuse and were each incarcerated for a long period of time with no indication that they would be eligible for early release, they had not satisfied their case plans for purposes of reunification, and it was in the child's best interest to be placed in the agency's custody rather than with her grandparents, as she needed stability and they would not have met her needs on a number of issues. In re Morris, 2006 Ohio App. LEXIS 3122, 2006 Ohio 3231, (2006).

Permanent custody of a father's children was properly granted to a children services agency under RC § 2151.414(B)(1)(a) because the evidence established that the children had been in the agency's custody for 12 months out of the previous 22 months. The grant was in the children's best interests because the children did not interact well when together, the father was not permitted to have contact with them, and the children were afraid of the father. In re Brown, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 2713, 2006 Ohio 2865, (May 26, 2006).

Permanent custody of a mother's daughter was properly granted to family services agency under RC § 2151.414 because the evidence showed that the mother was unwilling to provide for daughter's needs. She was a convicted sex offender; lived with her boyfriend, who was subject to certain outstanding arrest warrants and who possibly used drugs in the home; had missed 15 out of 44 scheduled visits with her daughter; and had eventually discontinued all contact with the agency and her daughter. In re Darnell, 2006 Ohio App. LEXIS 2659, 2006 Ohio 2839, (2006).

Permanent custody of a mother's children was properly awarded to a children services agency under RC § 2151.414 because the mother failed to make progress in dealing with her housing and employment issues, and the evidence showed that the award was in the best interests of the children, especially since they had been in the agency's custody for more than 12 months of a consecutive 22-month period. In re Foreman, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 2316, 2006 Ohio 2426, (May 17, 2006).

Award of permanent custody of a father's children to a children services agency pursuant to RC § 2151.414(E)(4) was supported by clear and convincing evidence. The evidence showed that the father lived in a small, cluttered apartment with lawnmowers in the kitchen, that he used his stove to heat his residence because his gas had been shut off for numerous years, and that the father did not have sufficient income to provide for the children. In re Bradley, 2006 Ohio App. LEXIS 2276, 2006 Ohio 2367, (2006).

Trial court's termination of a mother's parental rights over two children and its grant of permanent custody to a county social service agency was supported by clear and convincing evidence, as reasonable efforts were made by the agency in affording the mother drug and mental health treatment programs for several years in her case plan, her chemical dependency rendered her unable to provide a home for the children, and her repeated incarcerations prevented her from providing care to them, pursuant to RC § 2151.414(E)(1), (2), and (13); further, the custody award was in their best interests based on the statutory factors under § 2151.414(D), as they were in need of permanent placement in order to facilitate adoption. In re Jasmine H., 2006 Ohio App. LEXIS 2068, 2006 Ohio 2234, (2006).

In granting a motion filed by a county children's services agency for permanent custody of one of a mother's three children, the trial court did not err in determining that the child could not be placed with either parent within a reasonable time under RC § 2151.414(E). The record contained clear and convincing evidence that the mother had failed substantially and continuously to alleviate the conditions that led to the placement of her children with the agency and that she showed an inability or unwillingness to correct those problems. In re Parks, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

Trial court's determination that a mother had not remedied the conditions that caused the removal of her children, such that permanent custody to a county agency was properly granted under RC § 2151.414(E)(1), was supported by the evidence that the person who had physically abused the children was allowed to remain at the mother's residence even after she had a court order that prohibited the children from having contact with him. In re Franklin, 2006 Ohio App. LEXIS 4737, 2006 Ohio 4841, (2006).

There was ample evidence before a trial court from which it could conclude that a child's mother failed to substantially remedy the condition that caused the agency to remove the child from the home and that the mother demonstrated a lack of commitment toward the child or an unwillingness to provide an adequate, permanent home for the child, in that the mother failed to make any progress on her case plan until the motion for permanent custody was filed, some 16 months after the child was removed from her home, attending only half of the scheduled visits with the child until the motion was filed. She was involved in an

abusive relationship, had lived in seven or eight different locations during the proceedings, and had made little effort to obtain employment. In re A. K., 2006 Ohio App. LEXIS 4245, 2006 Ohio 4307, (2006).

Competent, credible evidence supported a trial court's finding that a child could not or should not be placed with her father, under RC § (E)(1) and (16) because he had a history of sexual offenses and low cognitive ability, but (1) attended only seven of 22 available counseling appointments, (2) did not retain or use "hands-on" parenting information provided to him by a parenting educator, (3) had not complied with adult sex offender treatment, and (4) was described as having significant difficulties internalizing basic coping skills and had been blatantly oppositional to treatment. In re King, 2006 Ohio App. LEXIS 707, 2006 Ohio 780, (2006).

Considering that the child had been in foster care for 22 months of her 31-month lifetime as of the dispositional hearing for permanent custody, the trial court did not abuse its discretion in finding that the child's need for a legally secure placement could not be accomplished without granting permanent custody to the agency. Although the record indicated that two potentially suitable relatives expressed some interest in adopting the child, no relative expressed any such interest until the child had been in the temporary custody of the agency for 16 months and no party had filed a motion requesting legal custody of the child at any point during the 22 months that she had been in the temporary custody of the agency as of the commencement of the dispositional hearing, as required by the Rules of Juvenile Procedure. In re H.M., 2006 Ohio App. LEXIS 726, 2006 Ohio 819, (2006).

Trial court's decision to terminate the mother and father's parental rights and to grant permanent custody of the children to the agency was supported by clear and convincing because the father was incarcerated much of the time the agency was involved with the family and did not follow through with any case plan services and, although the mother completed services, she was not able to implement the concepts taught in parenting class. The mother insisted that she planned to remain with the father, despite a history of domestic violence, regardless of what the agency thought, she allowed the father to violate the civil protection order issued against him, and had unsupervised contact with her children contrary to court orders. In re Malaya H., 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Termination of a mother's parental rights was justified, under RC § 2151.414(E)(4), because her attendance at only 13 of 43 visits with her children, held both at the child protection agency's offices and at her home, showed her lack of commitment to the children. In re Walker, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

Record supported, by clear and convincing evidence, the trial court's findings, under RC § 2151.414(E), that the children could not be placed with the mother within a reasonable time because, despite the agency's assistance, the mother was unable to provide a safe environment for the 11-month-old twins. The mother was unwilling to provide an adequate permanent home for the children and was unwilling to protect the children from physical abuse or neglect because, once the abuse had occurred, the mother did not seek prompt medical attention even though the children were in obvious discomfort and, despite the father's violent temper, the mother allowed him to remain alone with the children after she signed a safety plan agreeing not to do so. In re Mark B., 2005 Ohio App. LEXIS 1209, 2005 Ohio 1220, (2005).

Termination of a mother's parental rights to her five children was in the children's best interest because (1) the two youngest children had never lived with her; (2) the three oldest children were sexually abused by the mother and her husband when they lived with the mother; (3) the children's guardian ad litem recommended that termination was in their best interest; and (4) the children required a legally secure, permanent, placement which could not be obtained without granting their permanent custody to an agency as their maternal grandmother's home was not an appropriate placement as the home had a history of violence, the three oldest children were sexually abused while living there, and the grandmother denied the abuse had occurred, despite the children's parents' guilty pleas. In re C. D. Children, 2005 Ohio App. LEXIS 152, 2005 Ohio 158, (2005).

When a father was convicted of causing physical harm to one of

his children, and, upon his return from prison, causing physical harm to his other child, and the mother was convicted of child endangerment for allowing the father to have access to the second child, a trial court properly found that the children could not and should not be placed with the parents within a reasonable time, under RC § 2151.414(B)(1)(a). In re T.W., 2005 Ohio App. LEXIS 5964, 2005 Ohio 6633, (2005).

Trial court did not err in determining that permanent placement with a children services department was in the best interest of a father's son under § 2151.414(D), in that the father continued to smoke around the child despite the dangerous effects of smoke on the son's respiratory conditions, the father failed to appear for many of his son's pediatrician appointments, he attended only half of the sessions held to address the son's developmental issues, and he failed to maintain employment. The trial court's further finding that the son could not be placed with the father within a reasonable time was supported by sufficient evidence because the findings showed that the father failed to use the many services provided so that he could adequately parent the son and show the necessary commitment to meet the son's special needs. In re C.F., 2005 Ohio App. LEXIS 5911, 2005 Ohio 6559, (2005).

Clear and convincing evidence supported the trial court's determination to adopt the magistrate's finding that a mother's rights to her four minor children should be terminated in favor of a grant of permanent custody to a county agency, as the children were in the custody of the agency for 12 or more of the prior 22 months, which was sufficient to satisfy the requirements of RC § 2151.414(B)(1). Additionally, the mother did not fulfill the requirements of her case plan and she was not fit to raise the children, pursuant to RC § 2151.414(E)(1), (16), as she did not take prescription medication to combat her depression, she continued a relationship with a man whom she had been domestically abused by despite an order that she stay away from him, she did not take the necessary parenting course or attend necessary counseling for domestic violence, and she did not maintain employment and was not financially responsible. In re McKinney, 2005 Ohio App. LEXIS 5590, 2005 Ohio 6199, (2005).

There was no error in granting permanent custody of the mother's child to the agency because the agency diligently pursued the goal of reunification by making health services available and by monitoring the mother's use of those services and her progress; the agency proved by clear and convincing evidence that the child could not be placed with his mother within a reasonable time because the mother had borderline personality disorder and had made no progress in her treatment; and granting permanent custody to the agency was in the child's best interests, under RC § 2151.414(D), because the evidence showed that the child's relationship with his mother was destructive and that the mother's boyfriend was verbally, emotionally, and physically abusive of the child. In re Van Atta, 2005 Ohio App. LEXIS 3828, 2005 Ohio 4182, (2005).

Clear and convincing evidence supported a trial court's determination that a mother's parental rights to three of her children should be terminated, pursuant to RC § 2151.414, where § 2151.414(B)(1)(a) and (d) were found applicable, and the weight of the evidence supported findings with respect to § 2151.414(E)(1), (4), and (13). The trial court's determination that § 2151.414(E)(2) provided support was error, as it was not shown that the mother's mental disorders were so severe as to render her incapable of providing an adequate and stable home for the children. In re Amber M.L., 2005 Ohio App. LEXIS 3804, 2005 Ohio 4172, (2005).

Trial court's decision granting permanent custody of parents' two children to a children services board was not against the manifest weight of the evidence because the trial court found that it was in the children's best interest to grant permanent custody to the board and that, pursuant to RC § 2151.414(E)(1), the parents had failed continuously and repeatedly to substantially remedy the conditions causing the removal of the children, in that the father had not engaged the services required by the case plan and, while the mother had engaged in some services, she had failed to terminate her contact with the father but, instead, became pregnant with the father's child during the pendency of the case. In re Rhyann B., 2005 Ohio App. LEXIS 3555, 2005 Ohio 3867, (2005).

Trial court's findings that three children could not be placed with their mother within a reasonable amount of time and that it was in their best interest to grant a children services board (CSB) permanent custody were not against the manifest weight of the evidence where: (1) the children had been in the temporary custody of the CSB for over two years, (2) the mother did not have contact with the children for 11 months, (3) she tested positive for cocaine four times after she resumed contact with the children, (4) the children got along well with each other and were flourishing in their foster home, and (5) the children desired to be with their mother, but only if she had control over her substance abuse problem, which the mother had been unable to do. In re Culp, 2005 Ohio App. LEXIS 3469, 2005 Ohio 3764, (2005).

Clear and convincing evidence supported a trial court's termination of a father's parental rights over his child, pursuant to RC § 2151.414(E)(4), (11), and (16), where he demonstrated a lack of commitment toward the child when he was released from a treatment facility and failed to contact her, his rights to one of the child's siblings had been previously terminated, and he had repeated problems with chemical dependency, had a criminal history, and had obligations to other children, all which would require a lot of attention over a long period of time. In re Danielle E., 2005 Ohio App. LEXIS 2236, 2005 Ohio 2349, (2005).

Juvenile court's termination of a mother's parental rights was proper under RC § 2151.414(B)(1)(a) where: (1) the mother emotionally and intellectually failed to realize her responsibility and to accept responsibility for the children's abuse and neglect, (2) the mother did not show appropriate emotional affect and blamed the children for the removal, (3) the mother substantially failed to show appropriate parenting skills as required under the Case Plan, (4) the terms of her criminal probation did not allow her to have contact with the children during her probation, and (5) the mother suffered from a significant emotional deficit and chronic illness. In re Nelson, 2005 Ohio App. LEXIS 5926, 2005 Ohio 6600, (2005).

Trial court found clear and convincing evidence to support its determination that permanent custody should be granted to a county social services agency, pursuant to RC § 2151.414(D), where the grant of custody was in the children's best interests, they had spent a great deal of time in the agency's custody, the parents had special needs and limitations which prohibited them from adequately parenting their children, and the children could not be placed with either parent within a reasonable time. In re McHugh Children, 2005 Ohio App. LEXIS 2235, 2005 Ohio 2345, (2005).

Trial court found that children's best interests would be served by terminating their mother's parental rights and granting permanent custody to a social services agency, which had temporary custody for more than 12 months out of a consecutive 22-month period, pursuant to RC § 2151.414(B)(1)(d), as the mother failed to complete important elements of her case plan, including keeping the abusive father away from the children and keeping her home drug-free, the children had bonded with their foster families and expressed desires to live with them, and consideration was given to the factors of § 2151.414(D). In re Faulk, 2005 Ohio App. LEXIS 1315, 2005 Ohio 1352, (2005).

Where a child had been in a county agency's custody for 12 or more months of a consecutive 22-month period ending after March 18, 1999, and the trial court also found that the child had established a good relationship with her foster family, that a legally secure placement could not be achieved without a grant of permanent custody, that the parents' problems eclipsed those of the child, that the parents showed a lack of commitment toward the child, and that termination of parental rights was in the child's best interest, the court's findings were based on the evidence and the factors of RC § 2151.414(D) and (E). In re M.W., 2005 Ohio App. LEXIS 1273, 2005 Ohio 1302, (2005), criticized by In re A.S., 163 Ohio App. 3d 647, 2005 Ohio 5309, 839 N.E.2d 972, 2005 Ohio App. LEXIS 4830 (Ohio Ct. App., Summit County 2005), criticized by In re A.B., 2005 Ohio 4936, 2005 Ohio App. LEXIS 4466 (Ohio Ct. App., Summit County Sept. 21, 2005).

Parental rights were terminated because the father resorted to domestic violence in front of the children and did not cooperate with child services agency employees and the mother, who cooperated with child services agency employees, failed to protect

the children from their father. In re Delfino L. M., 2005 Ohio App. LEXIS 287, 2005 Ohio 320, (2005).

Termination of a father's parental rights was proper under RC § 2151.414(B)(1)(a) as he had eight months to comply with a case plan and a magistrate's directives, yet he enrolled in domestic violence classes only one month before the annual review, did not attend substance abuse treatment, and took a drug screen only on the day of the annual review. In re M.B., 2005 Ohio App. LEXIS 987, 2005 Ohio 986, (2005).

Juvenile court properly terminated a mother's parental rights. The fact that the findings were not aligned with specific RC § 2151.414(E) conditions was not reversible error. In re Donell F., 2005 Ohio App. LEXIS 3806, 2005 Ohio 4175, (2005).

Record supported the trial court's findings that the child should not be placed with either parent because the parents had failed, for over six months, to remedy the conditions that had caused the child to be placed outside the home, had failed to provide basic necessities for her, had failed to visit or communicate with her, and had shown an unwillingness to provide an adequate permanent home for her, pursuant to RC § 2151.414(E)(1) and (4). In re D.W., 2005 Ohio App. LEXIS 1793, 2005 Ohio 1867, (2005).

Trial court's determination that parents' rights in their minor son should be terminated, pursuant to RC § 2151.414(E), was supported by the evidence that the parents continuously and repeatedly failed to substantially remedy the conditions that caused their son to be placed outside of the home, that the parents showed a lack of commitment toward the child, and that the father abandoned him by failing to see him for more than a year and a half, pursuant to RC § 2151.011(C); only one of the factors of RC § 2151.414(E) was necessary for the determination that the child could not and should not be placed with his parents. In re B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Finding under RC § 2151.414(E)(3), that the mother committed abuse as described in RC § 2151.03, was supported by clear and convincing evidence because, after one of her 11-month-old twins had been abused by violent shaking, the mother did not seek medical help for the children until the agency intervened and because the child had suffered previous physical abuse. In re Mark B., 2005 Ohio App. LEXIS 1209, 2005 Ohio 1220, (2005).

Permanent custody was in the best interest of the child because there was clear and convincing evidence that the child could not be placed with the mother within a reasonable time, pursuant to RC § 2151.414(E). The mother repeatedly withheld medical treatment from the child, placed the child at substantial risk of harm due to drug abuse, had her parental rights involuntarily terminated with respect to three other children, and the mother failed to fully exercise her visitation rights with her son. In re Burton, 2004 Ohio App. LEXIS 3652, 2004 Ohio 4021, (2004), appeal denied by 103 Ohio St. 3d 1495, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2584 (2004).

Due to the mother's long history of abusing alcohol and crack cocaine, her inability to maintain a sustained period of sobriety, the continued and changing custody placements the children had experienced, the mother's inability to provide a stable home and to remain employed, and the considerable benefits the children received while in foster care, termination of the mother's parental rights was proper and was in the best interest of both of her children. In re J.O., 2004 Ohio App. LEXIS 1851, 2004 Ohio 2121, (2004).

Juvenile court properly granted permanent custody to a mother's three children to the county department of job and family services, where sufficient evidence was presented demonstrating that the mother failed to comply with the case plan and showed no prospect of ever doing so, the alleged father or fathers had no contact with the department while the children were in the department's custody, and the foster care family expressed an interest in adopting all the children, and could provide them with both the medical and mental health care they needed and provide them with a stable living environment. In re Ragland Children, 2004 Ohio App. LEXIS 1640, 2004 Ohio 1872, (2004).

Clear and convincing evidence supported a trial court's grant of permanent custody to a county children service agency and the termination of the mother's parental rights, where under RC § 2151.414(B)(1)(a), the mother was deemed an unsuitable

parent for failing to take medication and for failing to attend anger management classes, the child met the requirements of § 2151.414(B)(1)(d), and it was found to be in the child's best interest to have his parents' rights terminated under § 2151.414(D); the child had bonded with his foster parents and they attended to his physical disabilities, they provided him with a stable living situation. In re M.L.J., 2004 Ohio App. LEXIS 3953, 2004 Ohio 4358, (2004).

Juvenile court did not err in entering a judgment that terminated the mother's parental rights in her minor son, as the trial court followed the proper procedure in doing so by scheduling a hearing and providing notice to interested parties, and since the evidence produced at that hearing showed that the termination was in the best interests of the child and that the minor son had been in the temporary custody of the county family welfare agency for more than 12 months of a consecutive 22-month period, the termination of the mother's parental rights on the minor son was proper. In re Krems, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

There was sufficient evidence to find clearly and convincingly that the father demonstrated a lack of commitment toward the child by failing to regularly visit and communicate with her, pursuant to RC § 2151.414(E)(4), and that termination of his parental rights was appropriate; during the more than one year the child was in the children's services bureau's custody, the father did not once visit her. In re Tashayla S., — Ohio App. 3d —, — N.E. 2d —, 2004 Ohio App. LEXIS 817, 2004 Ohio 896, (Feb. 27, 2004).

Evidence that appellant mother failed to visit with her children, failed to protect them from physical abuse at the hands of her husband, and lacked commitment to them, supported the trial court's finding under RC § 2151.414(E) that the children could not or should not be returned to their parents within a reasonable time. In re K.P., 2004 Ohio App. LEXIS 1494, 2004 Ohio 1674, (2004), appeal denied by 102 Ohio St. 3d 1473, 2004 Ohio 2830, 809 N.E.2d 1159, 2004 Ohio LEXIS 1419 (2004).

Evidence and testimony elicited amply supported, clearly and with credibility, the finding of the trial court that it was in the children's best interest to grant permanent custody of the children to the agency. The parents were unable to demonstrate parenting skills and did not complete their case plans in that they were not able to provide a safe and habitable living environment for their children, who were subjected to sexual and physical abuse and threats relating to the abuse. In re Foucht, 2004 Ohio App. LEXIS 415, 2004 Ohio 456, (2004).

Trial court properly terminated a father's parental rights where the trial court found, pursuant to RC § 2151.414(B)(1) and (B)(2), that the father did not complete his case plan for reunification, had an ongoing substance abuse problem and tested positive for cocaine while child was in his care, and was convicted of unlawful sexual conduct with a minor; therefore, the termination of the father's parental rights was in the best interests of the minor child. In re R.K., 2004 Ohio App. LEXIS 395, 2004 Ohio 439, (2004).

Termination of parental rights was proper where the parent did not comply with the case plan and was in denial as to the child's serious mental health issues. In re J.S., 157 Ohio App. 3d 127, 809 N.E.2d 684, 2004 Ohio 2328, (2004).

Trial court's finding that a mother's minor child should not be placed with the mother was not against the manifest weight of the evidence, where it found that the minor child had been in the temporary custody of the county department of job and family services for 12 of the past consecutive 22 months and that the minor child could not be placed with the mother in a reasonable time, as either of these findings, if supported by the evidence, were sufficient to base a grant of permanent custody pursuant to RC § 2151.414(B)(1). In re Adams, 2004 Ohio App. LEXIS 1570, 2004 Ohio 1770, (2004).

Trial court properly terminated a mother's parental rights over her three minor children, pursuant to RC § 2151.414(B)(2), where it was in the children's best interest, and where there was sufficient evidence to support the determination that the mother was unable to consistently provide a stable environment for her children, and that she was unable to remedy the conditions that caused the removal of her children. In re V.F., 2004 Ohio App. LEXIS 4083, 2004 Ohio 4494, (2004).

Competent, credible evidence existed to support the finding that the child's best interest was served by awarding permanent custody to the agency and that a legally secure permanent placement could not be achieved without a permanent grant of custody to the agency. The child had a poor relationship with her mother, she did not wish to return to her mother, she had bonded with her foster mother, she had been in and out of the agency's custody, she needed long-term special care as she had significant psychological problems, and the mother wanted to return the child to an abusive household. In re Nibert, 2004 Ohio App. LEXIS 379, 2004 Ohio 429, (2004).

Evidence that the mother only paid child support sporadically, and failed to complete any intensive outpatient and alcohol program, her individual counseling, or obtain stable housing and employment supported termination of her parental rights. In re Antonio C., 2004 Ohio App. LEXIS 67, 2004 Ohio 82, (2004).

There was clear, convincing evidence supporting termination of parental rights based on the parents' inability to provide an adequate living environment; while the agency was not required to reunite the child and her parents, efforts to reunite were made. In re Jackson, 2004 Ohio App. LEXIS 497, 2004 Ohio 542, (2004).

Trial court did not err in concluding that permanent custody of a minor child was in the child's best interests and that there were statutory factors pursuant to RC § 2151.414(D)(1)-(5) that supported that determination, as many conditions of each parent's case plan were not met, nor were conditions in the amended plans, from which there was no objection pursuant to RC § 2151.412(E)(2)(b), complied with. There was evidence that neither parent had established regular employment or adequate housing, they had not complied with requirements of anger management classes, individual counseling, mental health concerns, or psychological evaluations, the father had an extensive criminal record, the child was in custody most of her life, and she was happy in her foster care family, who had indicated that they might wish to pursue adoption. In re P. C., 2004 Ohio App. LEXIS 1058, 2004 Ohio 1230, (2004).

Finding that the child could not and should not be placed with either parent within a reasonable time was supported by the evidence and was not against the manifest weight of the evidence because the father failed to complete most of his case plan services and he admitted that his living situation was not appropriate for his daughter, and, while the mother had substantially completed her case plan services, she had failed to alleviate the conditions which led to the placement of the child with the agency, that being her continued relationship with a man, an alleged sex offender, with whom the agency had instructed her to have no contact. In re Deserio, 2004 Ohio App. LEXIS 698, 2004 Ohio 751, (2004).

Trial court properly terminated a mother's parental rights where the evidence showed, pursuant to RC § 2151.414(B)(1), that it was in the child's best interests because after the mother initially showed progress in completing the court ordered program for reunification with her child, the mother relapsed into drug abuse, and, upon visiting the mother's home, a caseworker found all the new furniture the county had purchased for the mother was gone, the apartment was full of roaches, there was a big hole in the wall, there were maggots in the food in the refrigerator, and the child was only in a diaper even though there were new clothes in her closet. In re Reese, 2004 Ohio App. LEXIS 779, 2004 Ohio 854, (2004).

Termination of a mother's parental rights in her minor child was supported by clear and convincing evidence pursuant to RC § 2151.414(B)(1)(d), where the child was in the custody of the children services agency for at least 12 months of a 22-month consecutive period, the mother had not successfully completed any significant components of her case plan and had failed to comply with the drug and alcohol components of her plan, the child had bonded well and found stability with the foster mother, and termination was found to be in the child's best interests; although the mother sought another opportunity to show reunification with the child was appropriate due to her attempts to progress through her case plan, the court noted that she had two years, based on continuances, to address the elements of her case plan and had not succeeded during that time. In re E.S., 2004 Ohio App. LEXIS 2257, 2004 Ohio 2572, (2004).

Trial court did not err in terminating the parental rights of the

mother in her minor son, as clear and convincing evidence existed that one or more of the conditions enumerated in RC § 2151.414(E)(1)-(16) existed with respect to the mother; accordingly, the evidence showed that the minor son could not be placed with her within a reasonable period of time or that the minor son should not be placed with her. In re Krems, 2004 Ohio App. LEXIS 2250, 2004 Ohio 2446, (2004).

Evidence of the parents' incarceration, criminal past, and drug abuse, as well as evidence of the child's having lived with the maternal aunt's family, clearly and convincingly supported a trial court's finding that a grant of permanent custody to the county children's services to facilitate the child's adoption by the aunt was in the child's best interest. In re Samuel M., 2004 Ohio App. LEXIS 1465, 2004 Ohio 1637, (2004).

Juvenile court did not err in entering a judgment that terminated the mother's parental rights in her minor son, as the trial court followed the proper procedure in doing so by scheduling a hearing and providing notice to interested parties, and since the evidence produced at that hearing showed that the termination was in the best interests of the child and that the minor son had been in the temporary custody of the county family welfare agency for more than 12 months of a consecutive 22-month period, the termination of the mother's parental rights on the minor son was proper. In re Krems, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

Trial court's order awarding permanent custody of a father's three children to the county department of children and family services was upheld where: (1) the familial bond between him and his children was questionable; (2) he was unable to provide a secure and stable home for them; (3) he failed to remedy the problems that initially caused the children to be removed; (4) he abandoned the children; (5) he was unwilling to provide the basic necessities or prevent the abuse; and (6) he instilled a likelihood that a recurrence of abuse would threaten the children's safety. In re D.B., 2004 Ohio App. LEXIS 893, 2004 Ohio 996, (2004).

Trial court properly terminated the parental rights of the mother and the father in the two daughters, as clear and convincing evidence showed that the decision to grant permanent custody to the county family welfare agency was not in error, that the two daughters could not be placed with the mother or father within a reasonable time, and that permanent commitment to the county family welfare agency was in the best interest of the two daughters. In re Gomer, 2004 Ohio App. LEXIS 1536, 2004 Ohio 1723, (2004), appeal denied by 102 Ohio St. 3d 1473, 2004 Ohio 2830, 809 N.E.2d 1159, 2004 Ohio LEXIS 1418 (2004).

Trial court did not err in terminating the parental rights of the mother in her minor son, as clear and convincing evidence existed that one or more of the conditions enumerated in RC § 2151.414(E)(1)-(16) existed with respect to the mother; accordingly, the evidence showed that the minor son could not be placed with her within a reasonable time period of time or that the minor son should not be placed with her. In re Krems, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

Where a magistrate considered the RC § 2151.414(D) factors and discussed the mother's inability to provide her children with a stable environment due to her failure to complete any aspect of case plans, drug use, inability to secure a residence and employment, and refusal to remedy the situation that led to the children's removal, the record supported the trial court's judgment that the termination of parental rights and granting of permanent custody to a children services agency was in the best interests of the children. In re Joiner, 2004 Ohio App. LEXIS 1017, 2004 Ohio 1158, (2004), appeal denied by 102 Ohio St. 3d 1425, 2004 Ohio 2003, 807 N.E.2d 368, 2004 Ohio LEXIS 998 (2004).

Decision to terminate parental rights was supported by the manifest weight of the evidence because the record lacked any indication that the mother had sufficiently complied with her case plan, or that she had taken steps to learn how to care for her son's medical needs, up to and including the possibility of a liver transplant. In re L.F., 2004 Ohio App. LEXIS 4076, 2004 Ohio 4484, (2004).

In the termination of parental rights case, the evidence established that the children could not be placed with either parent pursuant to RC § 2151.414(E), as the father voluntarily surrendered the father's parental rights, the mother had made no progress toward treatment of the mother's drug abuse and mental

health issues, and the older child had been in the custody of the Summit County Children Services Board for 12 of the previous 22 months. In re J.G., 2004 Ohio App. LEXIS 2237, 2004 Ohio 2513, (2004).

Where the Department of Job and Family Services took custody of the child after he was born, and retained the same throughout the proceedings, the biological father abandoned the child, and the mother failed in her efforts to maintain stability, stay off of drugs, stay out of jail, exercise visitation, work towards reunification, and maintain employment, the trial court properly granted permanent custody to the Department; further, said order was in the child's best interest, as he, despite his age, had a strong bond with his foster family and his sister who was also in the same foster home. In re King, 2004 Ohio App. LEXIS 341, 2004 Ohio 386, (2004), appeal denied by 101 Ohio St. 3d 1491, 2004 Ohio 1293, 805 N.E.2d 541, 2004 Ohio LEXIS 638 (2004).

Mother failed continuously and repeatedly to substantially remedy the conditions causing her children to be placed outside of their home, thus, supporting the trial court's grant of permanent custody to children services by clear and convincing evidence. The mother, among other things, failed to visit the children on occasions, expressed hostility towards and was uncooperative with children services and others providing assistance to her children, overdosed on illegal drugs while the children were at home, and failed to provide food or other basic necessities. In re Archer, 2004 Ohio App. LEXIS 2551, 2004 Ohio 2916, (2004).

Trial court did not err in determining that permanent custody of the mother's minor child should be granted to the county child welfare agency, as clear and convincing evidence showed that the mother had demonstrated a lack of commitment toward the minor child by failing to regularly support, visit, or communicate with the minor child, especially she had not had physical custody of the minor child for a decade while he lived with a succession of relatives. In re Leitwein, 2004 Ohio App. LEXIS 1131, 2004 Ohio 1296, (2004).

Evidence which showed that three children who were adopted by a husband and wife suffered from emotional and behavioral problems due to the environment they experienced while in their adoptive parents' home and that the children's adoptive father participated in family counseling and anger management classes but failed to benefit from those services, was sufficient to sustain the trial court's judgment awarding permanent custody of the children to the Cuyahoga County Department Children and Family Services. In re D.B., 2004 Ohio App. LEXIS 618, 2004 Ohio 625, (2004).

Trial court did not err when it found by clear and convincing evidence that the factors listed RC § 2151.414(E)(1) and (4) existed to support a finding that the child could not be placed with either parent within a reasonable time or should not be placed with either parent. The mother missed one third of her visits with the child, was cohabiting with a registered sex offender, and, although the agency provided the mother with substantial help and guidance to complete the requirements of the case plan, she was unable to maintain a stable, healthy home environment for the child. In re Malone, 2004 Ohio App. LEXIS 494, 2004 Ohio 533, (2004).

Appeals court affirmed grant of permanent custody to children services as not against the manifest weight of the evidence; the father did not take advantage of low-cost reunification and parenting counseling sessions after he was released from jail. In re Crager, 2003 Ohio App. LEXIS 4968, 2003 Ohio 5548, (2003).

Where a mother had already failed her case plan before her incarceration on drug charges, failed to address her addiction and behavioral problems in a timely manner, and placed her desire for drugs ahead of the well-being of her child, the termination of her parental rights to her child was supported by clear and convincing evidence. In re Hatfield, 2003 Ohio App. LEXIS 6668, 2003 Ohio 7339, (2003).

Although the two termination of parental rights proceedings against the mother and the related best interest of the children determination did not involve factors such as her being convicted of certain offenses, her withholding medical treatment from a child, her placing a child at a substantial risk of harm, her abandoning a child, or the involuntary termination of her parental rights, there was evidence to support other factors that showed termination of her parental rights was in the best interest of her

children, and since only one factor had to be shown, the trial court did not err in concluding that termination of her parental rights was in the best interest of her children. In *re C.H.*, 2003 Ohio App. LEXIS 6190, 2003 Ohio 6854, (2003).

Combination of a mother's chronic mental illness, which left her unable to provide an adequate, permanent home for her child, and the child's special needs supported a trial court's decision to grant permanent custody of the child to an agency; notwithstanding diligent efforts by the agency and the mother to remedy the problems of mental illness and alcohol abuse, the problems remained insurmountable, and it was in the child's best interest not to return to her mother in light of the child's posttraumatic stress disorder and anxiety disorder. *Campbell v. Richland County Children Servs. Bd.*, 2003 Ohio App. LEXIS 4040, 2003 Ohio 4535, (2003).

Termination of a mother's parental rights and award of custody to appellee department of job and family services was affirmed where, *inter alia*, the child was placed after not being picked up at day care, where a psychologist expressed significant concerns about the mother's ability to provide a safe and nurturing environment for the child, and cited the mother's multiple health problems, low level of intelligence, and potential for personality disturbance as factors which prevented her from providing adequate parental care, where the mother had lost two prior children in permanent custody cases in another county, where the mother had a history of interacting with men who had lost their own children to permanent custody, and/or had criminal histories, and where the mother had moved four times within the last year and one-half, and relied on family members for transportation. In *re Huston*, 2003 Ohio App. LEXIS 6569, 2003 Ohio 7280, (2003).

Termination of the mother's parental rights was supported by the evidence as the mother continually chose to engage in relationships that exposed her children to violence and risk for abuse and the children, including allowing a convicted child molester to live with her children, the children did not wish to be reunited with their mother, and the children needed a legally secure placement due to their special needs. In *re West*, 2003 Ohio App. LEXIS 5650, 2003 Ohio 6299, (2003).

Finding that the children could not be placed with the mother within a reasonable time was not against the manifest weight of the evidence as the mother was unable to remedy the conditions that caused the children to be removed from the home in the first place; although the mother received a substantial amount of intervention, she had difficulty with supervision of the children, budgeting, maintaining housing, depression, and addressing medical issues with the children. In *re Swisher*, 2003 Ohio App. LEXIS 3366, 2003 Ohio 3747, (2003).

Where the trial court found that the children had been in the temporary custody of the children services board for more than 12 of the past 22 months, and where the evidence showed, *inter alia*, that the mother had been inconsistent in visiting the children and in complying with requirements of drug screening and counseling, both prongs of the permanent custody test were satisfied and the trial court did not err in placing the children in the permanent custody of the children services board. In *re B. B.*, 2003 Ohio App. LEXIS 2971, 2003 Ohio 3314, (2003).

Under RC § 2151.414(B)(1), a parent's rights may not be terminated without evidence of one of the listed predicate findings in RC § 2151.414(E); evidence supported the determination that the parents of dependent children failed to remedy a climate of violence, justifying the termination of parental rights. In *re Isaac M.*, 2003 Ohio App. LEXIS 5569, 2003 Ohio 6197, (2003).

Where a trial court's orders to attend a minor child's therapy sessions on a monthly basis were reasonable and the mother had no valid excuse for ignoring the orders, the trial court properly terminated the mother's parental rights for failing to comply with a case plan. In *re Hawkins Children*, 2003 Ohio App. LEXIS 4419, 2003 Ohio 4899, (2003).

Termination of the mother's parental rights pursuant to RC § 2151.414(B) was supported by the manifest weight of the evidence that she failed to comply with the case plan requirements that she obtain suitable housing and permanent employment, attend counseling, and provide for the daughters' basic needs. In *re A.F.*, 2003 Ohio App. LEXIS 4501, 2003 Ohio 4981, (2003).

Parent's parental rights were properly terminated after she used her three children to steal shoes and then abandoned them when police arrived because she failed to comply with her substance abuse plan, her visits were sporadic and disruptive, none of the children's relatives were suitable to care for them, and the children had flourished in foster care. In *re Sarah S.*, 2003 Ohio App. LEXIS 4267, 2003 Ohio 4730, (2003).

Order terminating parental rights was not against the manifest weight of the evidence that the mother failed to rectify problems that caused the removal of her two other children, including mental health and anger management issues, domestic violence, and her lack of parenting skills, and that she refused to accept a case plan from a caseworker for her third child. In *re Foster*, 2003 Ohio App. LEXIS 4561, 2003 Ohio 5053, (2003).

Evidence that the mother failed to obtain sufficient housing or mitigate her substance abuse problem and that she lacked parenting skills or an identifiable source of income supported a finding that the children could not be placed with the mother. In *re Lowry/Owens Children*, 2003 Ohio App. LEXIS 2821, 2003 Ohio 3166, (2003).

Termination of the parental rights of the parents pursuant to RC § 2151.414 was proper, as the parents did not remedy the conditions that caused the child's removal as was required under RC § 2151.414(E)(1), namely unsanitary conditions in the home and lack of parenting skills; the parents had poor attendance at the parenting skills class, their visits with the child did not improve, and they failed to provide a safe living environment, as a sexual predator lived in their home. In *re Thomas*, 2003 Ohio App. LEXIS 5230, 2003 Ohio 5885, (2003).

In determining at a hearing held pursuant to RC § 2151.414(A) or § 2151.353(A)(4) whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence; in an action for the termination of parental custody, because a mother failed to successfully complete a reunification program, primarily because she continued to use drugs and failed to regularly visit her children, the termination was affirmed. In *re L.A.*, 2003 Ohio App. LEXIS 4312, 2003 Ohio 4790, (2003).

Termination of a mother's parental right was proper where the child was with child services for 12 or more months; the record showed the mother had abandoned the child and the mother's parental rights to a son been previously been terminated. In *re Cornell*, 2003 Ohio App. LEXIS 4504, 2003 Ohio 5007, (2003).

The mother's homelessness and unstable relationships showed that awarding permanent custody to the agency was in the best interest of the children. In *re Joshua B.*, 2003 Ohio App. LEXIS 2797, 2003 Ohio 3096, (2003).

Evidence that, *inter alia*, the children were removed from the mother's custody after both drug-addicted parents were arrested for domestic violence, the children were doing well with a foster family, the father was incarcerated for three years and did not see the children for four years after, the mother also was in jail and failed to abide by a case plan or attend all scheduled visits with the children, and the mother missed court hearings and owed fines, supported a grant of permanent custody to a children services board. In *re Hibbard*, 2003 Ohio App. LEXIS 6110, 2003 Ohio 6784, (2003).

Permanent custody to a social service agency and a termination of parental rights was proper where the trial court found, as required by RC § 2151.414(D), that such placement was in the children's interests; they had been adjudicated as dependent, the home was filthy, they were happy in foster care, and their parents did not follow through on parenting plans. In *re Julia G.*, 2003 Ohio App. LEXIS 5570, 2003 Ohio 6196, (2003).

Finding that it was in the child's best interest to be permanently placed in the custody of child services was proper where the mother was not emotionally or financially able to care for the child. In *re Cornett*, 2003 Ohio App. LEXIS 4397, 2003 Ohio 4871, (2003).

Trial court did not err in granting permanent custody of the parents' two youngest children to the county department of children and job services, pursuant to RC § 2151.414(B)(1), (D), where two psychologists testified that both children resided in horrific and unsanitary living conditions, had been sexually victimized by their older siblings, were subject to abuse and neglect

from their father, had each developed adjustment and post-traumatic stress disorders, and experienced impaired emotional, social, and academic functioning after visits with their parents; thus, a lack of an in camera interview of the two children did not amount to a reversible due process error. In re Beresh Children, 2003 Ohio App. LEXIS 4420, 2003 Ohio 4898, (2003).

Award of permanent custody of a mother's two boys to the county was proper, as they had bonded with their foster family and wanted to remain there, and were afraid of their mother, who neglected them and failed to recognize their special needs, and of their older brother, who they alleged sexually abused them. In re M.H., 2003 Ohio App. LEXIS 6445, 2003 Ohio 7053, (2003).

Evidence supported the termination of the mother's parental rights since: (1) she only sporadically visited with her child and failed to visit her at all for four months; (2) she refused to complete court-ordered services; (3) the child was "somewhat" bonded to the mother, but "very bonded" to her foster family; (4) the mother was incapable of meeting her own needs, lacked stable housing and lacked stable employment; (5) the child had spent more than 12 of a consecutive 22-month period in a children's services board's custody and could not be placed with her parent within a reasonable time. In re Ebenschweiger, 2003 Ohio App. LEXIS 5325, 2003 Ohio 5990, (2003).

Juvenile court did not fail to consider every factor under RC § 2151.414(D) because, not only did the court find the child was unable to state her own preference on the question of permanent custody, but it also found that the guardian ad litem had given his opinion that permanent custody was in the child's best interest. In re Salsgiver, 2003 Ohio App. LEXIS 5708, 2003 Ohio 6420, (2003).

Trial court's determination, based upon the recommendations of a magistrate, to grant permanent custody to a social services agency was supported by sufficient findings of fact and conclusions of law pursuant to RC § 2151.414(B)(1), where it was found that the father had not remedied the conditions that led to his minor children's removal, his housing was inadequate and unsafe for the children, he struggled with drugs, and he failed to attend many of the agency's scheduled meetings; the court also assessed the factors of RC § 2151.414(D) and found that it was in the children's best interests to terminate the father's parental rights. In re Kincer, 2003 Ohio App. LEXIS 5689, 2003 Ohio 6356, (2003).

Trial court did not err in awarding permanent custody to Department of Children and Family Services where the child was in the Department's temporary custody for 12 of the past consecutive 22 months, the Department could not place the child with either parent due to neglect and abuse, the guardian ad litem recommended permanent custody of the Department, and the child bonded with the foster mother more than the mother. In re Wilcoxon, 2003 Ohio App. LEXIS 5368, 2003 Ohio 6046, (2003).

Permanent custody with the agency was in the best interest of the children because the mother remained unable to protect either child from abuse where she continued to live with the stepfather who had committed the abuse and refused to believe that the daughter had been abused. In re Zorns, 2003 Ohio App. LEXIS 5020, 2003 Ohio 5664, (2003), appeal denied by 100 Ohio St. 3d 1547, 2003 Ohio 6879, 800 N.E.2d 752, 2003 Ohio LEXIS 3528 (2003).

Placing children in the permanent custody of a children services agency was proper where (1) the children had little or no bond with their father and their interactions with him were permeated with threatened or actual physical violence, anger, negativity, and resentment; (2) the guardian ad litem recommended that the agency be given permanent custody; (3) they had been in the agency's custody over 12 months of a consecutive 22-month period; (4) adoptive placements with the children's relatives would greatly benefit them. In re Damron, 2003 Ohio App. LEXIS 5171, 2003 Ohio 5810, (2003).

Trial court properly granted a children's services motion for permanent custody where the mother's parental rights to five other children had been terminated and the father's parental rights to two other children had been terminated. In re Kristiana B., 2003 Ohio App. LEXIS 4768, 2003 Ohio 5268, (2003).

Termination of parental rights was appropriate where the parent failed to complete her case plan and had not particularly

bonded with the child. In re Campbell, 138 Ohio App. 3d 786, 742 N.E.2d 663 (2000).

Termination of parental rights was appropriate where the father had continually abused the mother and there was no credible evidence that she would discontinue the relationship. In re Glenn, 139 Ohio App. 3d 105, 742 N.E.2d 1210 (2000).

Repeated evictions, subsisting in a two-bedroom apartment without gas or appliances, the inability to meet a \$250 rent payment on a \$1600 monthly income, rejection of budget counseling, and total lack of cooperation with caseworkers and service providers supported a finding under RC 2151.41.4(E) that parents were unwilling to provide necessities for their children or prevent them from suffering neglect. In re Scott O., 1999 Ohio App. LEXIS 4301 (6th Dist. 1999).

Clear and convincing evidence supported the decision of the trial court to permanently terminate a mother's parental rights over her son and grant permanent custody to DHS where almost six years had passed since the original dependency complaint was filed and the child had been in foster care for three years, especially where the mother had a history of mental illness with an uncertain prognosis. In re Brock, 1998 Ohio App. LEXIS 3965 (1998).

The court's determination that the children could not be returned to their mother's custody as required by RC § 2151.41.4(E) was amply supported by clear and convincing evidence where the record showed that the mother had not contacted her children for at least five months and that for a period of approximately six months, she had failed to visit her children and had not been actively working toward reunification with them. Prater v. Prater (In re Ross), 1998 Ohio App. LEXIS 4496 (1998).

Termination of parents' rights was clearly proper where the children and their home were continually maintained in a filthy condition for a long period of time and the children lacked suitable supervision. In re Meyer, 98 Ohio App. 3d 189, 648 N.E.2d 52 (1994).

It was not error for the court to terminate the parents' rights considering their continuing problems with drug addiction, periodic incarceration and sporadic attempts to cooperate in the reunification plan. In re Weaver, 79 Ohio App. 3d 59, 606 N.E.2d 1011 (1992).

The court did not err by terminating the mother's parental rights where, after the children's father was convicted of sexually molesting them and imprisoned, she took up residence with another convicted child molester. In re Kutzli, 71 Ohio App. 3d 843, 595 N.E.2d 1026 (1991).

Failure to remedy conditions

Father's assertion that the trial court was required to find that the parents failed to remedy the conditions causing the daughter's removal for a period of six months or more was meritless. RC § 2151.414(E)(1) does not require the trial court to expressly find that the parents have failed to remedy the conditions for a period of six months or more. In re Gallion, 2006 Ohio App. LEXIS 3095, 2006 Ohio 3204, (2006).

Family counseling

Child services agency diligently assisted a mother for purposes of RC § 2151.414(E)(1) where: (1) the agency did not hinder family counseling, but family counseling was not begun because the children were not ready for family counseling, (2) family counseling might have been inappropriate because of the mother's slow progress as she failed to show an appropriate affect and emotional response to the children's abuse, (3) the mother failed to take down a picture of her boyfriend, who sexually abused the children, until after he was convicted, and (4) the mother continued to live with the boyfriend until he was convicted. In re Nelson, 2005 Ohio App. LEXIS 5926, 2005 Ohio 6600, (2005).

Foster care

Trial court properly considered the child's relationship with her foster parents prior to granting permanent custody of the child to the agency. Although neither foster parent testified at the dispositional hearing, the trial court noted that the guardian ad litem reported that the child was healthy and happy and had been safe

and well cared for in foster care. In *re H.M.*, 2006 Ohio App. LEXIS 726, 2006 Ohio 819, (2006).

In a case where a child suffered from several mental disorders and was placed in foster care, the trial court considered the statutory factors in RC § 2151.414(D)(1) and (2), and that those factors favor keeping the child in a planned permanent living arrangement pursuant to RC § 2151.353(A)(5)(a) in his current foster home rather than awarding permanent custody to the county child services agency because the child's counselor testified about the disadvantages associated with removing the child from his current foster home, including a loss of security, stability, and trust. In *re Priser*, 2004 Ohio App. LEXIS 1160, 2004 Ohio 1315, (2004).

Testimony provided competent, credible evidence to support the trial court's conclusion that granting permanent custody to the agency was in the child's best interest. Although the foster mother expressed concerns about adopting the child due to her age, she informed the agency that she wanted the child to remain in her care until an adoptive home could be found for him, she was willing to assist in the transition of the child from her home into a new home, and she testified that he was adoptable as he was a very open and friendly child in spite of his health problems. In *re Robinson*, 2004 Ohio App. LEXIS 1583, 2004 Ohio 1776, (2004).

Trial court's finding that the best interests of the minor child would be served by granting permanent custody to the county department of job and family services was not against the manifest weight of the evidence where the child: (1) had no current developmental, behavioral or medical problems; (2) resided in the same foster home with a sibling, and her foster family was willing to adopt her; and (3) was more bonded with her foster mother than with her biological mother. In *re Adams*, 2004 Ohio App. LEXIS 1570, 2004 Ohio 1770, (2004).

The court did not abuse its discretion by continuing long-term foster care, rather than grant the agency's motion for permanent custody: In *re Tanker*, 142 Ohio App. 3d 159, 754 N.E.2d 813 (2001).

Where, upon hearing a motion requesting permanent custody of a child, a court decides to deny the motion, the court may proceed in accordance with RC § 2151.41.5 and make any disposition listed in that statute, including placement of a child in long-term foster care: In *re McDaniel*, 1993 Ohio App. LEXIS 806 (4th Dist. 1993).

The foster parents were not entitled to be made parties to the proceedings to accept the mother's permanent voluntary surrender of rights: In *re Franklin*, 88 Ohio App. 3d 277, 623 N.E.2d 720 (1993).

Guardian ad litem

In a parental rights termination proceeding pursuant to RC § 2151.414, there was no error in the trial court's appointment of an agency volunteer as the children's guardian ad litem, as there was no statutory requirement that a guardian also be a licensed attorney pursuant to Ohio R. Juv. P. 32. In *re D.R.*, 2006 Ohio App. LEXIS 3471, 2006 Ohio 3513, (2006).

Mother failed to demonstrate that the trial court erred for failing to sua sponte appoint a guardian ad litem, under RC § 2151.281(C) and Ohio R. Juv. P. 4 (B)(3), or that her trial counsel was ineffective for failing to request such an appointment because there was nothing in the record to suggest that the mother appeared incompetent at the time she voluntarily relinquished her parental rights. There was nothing in the record to indicate the extent to which, if at all, the mother's mental health issues impeded her ability to understand and participate in the proceedings and the record actually demonstrated that she took affirmative steps to attempt to assist in her case. In *re D.C.H.*, 2005 Ohio App. LEXIS 3873, 2005 Ohio 4257, (2005).

Any error associated with the guardian ad litem's questioning was not plain as the mother did not establish that the guardian ad litem's questioning of witnesses seriously affected the basic fairness, integrity, or public reputation of the judicial process. In *re Curry*, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

No conflict of interest existed for the guardian ad litem in the permanent custody hearing because, while his prior representation of the mother's husband's ex-wife did deal with a domestic violence incident involving the husband, the facts of that incident were before the court, and the position taken in his prior

representation of the ex-wife was not inconsistent with his current position regarding the husband. Additionally, any confidential information gained through the guardian ad litem's representation of the ex-wife was covered under the attorney/client privilege. In *re Morgan*, 2004 Ohio App. LEXIS 3653, 2004 Ohio 4018, (2004).

Juvenile court was not required to determine whether the recommendation of the guardian ad litem, that the county family welfare agency be granted permanent custody of the minor son, had changed after evidence was presented at the hearing on the county family welfare agency's motion for permanent custody, as RC § 2151.414(C) only required that the guardian ad litem submit a written report to the juvenile court prior to or at the time of the permanent custody hearing, and the guardian ad litem did so. In *re Krems*, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

In considering permanent custody of a county child services board (CSB) was in a child's best interest, the trial court did not have the authority to give less weight to the testimony of the child's guardian ad litem than that of the CSB caseworker; RC § 2151.414(D)(2) explicitly requires a trial court to consider a guardian ad litem's report. In *re C. M.*, 2003 Ohio App. LEXIS 4553, 2003 Ohio 5040, (2003).

Guardian ad litem's report

While the weight to be given to a guardian ad litem report is always within the prerogative of the trial court, when the trial court renders a decision which goes against the specific recommendation of the guardian ad litem, the trial court must at least address the reasons for doing so. In *re D.H.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1605, 2007 Ohio 1762, (Apr. 16, 2007).

There was no error in the permanent custody proceeding because the mother invited any error regarding admission of the guardian ad litem's report. The mother chose not to call the guardian ad litem to the stand or otherwise make inquiry on the record, even though the guardian ad litem was present at the trial. In *re Morales/Mendez Children*, 2006 Ohio App. LEXIS 6349, 2006 Ohio 6403, (2006).

Trial court's consideration of hearsay evidence contained in a guardian's report for purposes of making a permanent custody determination in a parental rights termination proceeding was error pursuant to Ohio R. Juv. P. 34 and RC § 2151.414(C); however, such error was deemed harmless where the consideration given to that evidence was minimal and there was an abundance of admissible evidence that supported the trial court's determination that permanent custody should be granted to a county social service agency. In *re Hilyard*, 2006 Ohio App. LEXIS 1808, 2006 Ohio 1977, (2006).

Where a father failed to argue in the trial court that a guardian ad litem for his child did not file a written report in compliance with RC § 2151.414(C), that error was waived for purposes of review on appeal. In *re M.W.*, 2005 Ohio App. LEXIS 1273, 2005 Ohio 1302, (2005), criticized by In *re A.S.*, 163 Ohio App. 3d 647, 2005 Ohio 5309, 839 N.E.2d 972, 2005 Ohio App. LEXIS 4830 (Ohio Ct. App., Summit County 2005), criticized by In *re A.B.*, 2005 Ohio 4936, 2005 Ohio App. LEXIS 4466 (Ohio Ct. App., Summit County Sept. 21, 2005).

Father's claim that he was prejudiced because the guardian ad litem filed his report on the day of the permanent custody hearing instead of five days prior to the hearing was without merit because, under RC § 2151.414(C), the guardian ad litem may file a report on the day of the hearing. Moreover, the guardian ad litem took the stand and was available for cross-examination. In *re Woods*, 2005 Ohio App. LEXIS 3284, 2005 Ohio 3561, (2005).

Although a report of a guardian ad litem in a children's services agency's permanent custody proceeding should have been filed either before or at the time of the hearing, and not afterward, pursuant to RC § 2151.414(C), the mother waived any objection to the later submission of the report by stipulating to the late filing at the hearing. Such assignment of error as to the late filing was therefore waived because no error was asserted in the trial court. In *re Lane*, 2004 Ohio App. LEXIS 2486, 2004 Ohio 2798, (2004).

Pursuant to RC § 2151.414(C), a guardian ad litem may submit a written report prior to a hearing held by the trial court, but it shall not be submitted under oath. In *re Johns*, 2003 Ohio App. LEXIS 3278, 2003 Ohio 3621, (2003).

RC § 2151.414(C) only requires that a guardian ad litem's report be submitted to the trial court, not that it be filed with the court clerk; thus, where such a report was made a part of the trial exhibits in a proceeding to terminate the parental rights of a mother over her minor child, RC § 2151.414(C) was satisfied. In re R.K., 2003 Ohio App. LEXIS 5675, 2003 Ohio 6333, (2003).

In a permanent custody hearing seeking termination of a mother's parental rights, there was no showing of prejudice where the guardian ad litem's report was submitted and "passed around" at the hearing, but it was not filed until immediately following the hearing, as it did not violate the purpose of RC § 2151.414(C), since the mother was given a full opportunity to submit evidence or arguments regarding the guardian ad litem's recommendation that permanent custody be awarded to the department of children services; in addition, the failure to meet the time periods set forth in RC § 2151.414(A)(2) did not violate the statute or provide a basis for attacking the validity of the judgment awarding permanent custody to the department, where there was no demonstration of affirmative prejudice resulting from the delay. In re James, 2003 Ohio App. LEXIS 4657, 2003 Ohio 5208, (2003).

In a permanent custody proceeding in which the guardian ad litem's report will be a factor in the trial court's decision, parties to the proceeding have the right to cross-examine the guardian ad litem concerning the contents of the report and the basis for a custody recommendation: In re Hoffman, 97 Ohio St. 3d 92, 776 N.E.2d 485, 2002 Ohio 5368, (2002).

Parent's assertion of having been prejudiced as a result of guardian ad litem's failure to submit her report in a timely manner had no merit where such error was not brought to the court's attention at a time when it could have been avoided or corrected by the court: In re Piatt, 1999 Ohio App. LEXIS 3085 (3rd Dist. 1999).

The specific provisions of RC § 2151.41.4 permitting the guardian ad litem's report to be submitted on the day of the permanent custody hearing prevail over RC § 2317.39. The report of the guardian ad litem may be submitted to the court at the time of the hearing regardless of the notice provided the parties: In re Watts, 1995 Ohio App. LEXIS 4438 (9th Dist. 1995).

Habeas corpus

Habeas corpus relief was not available to overturn an award of permanent custody to the agency where a parent had notice of the hearing and was provided with counsel, but failed to appear. Further, an award of custody to the parent would have been contrary to the child's best interest: Ross v. Saros, 99 Ohio St. 3d 412, 792 N.E.2d 1126, 2003 Ohio 4128, (2003).

A parent was not entitled to habeas corpus in a child custody case where it was contrary to the best interests of the children and she had the adequate remedy of contesting the award of permanent custody to the state: Holloway v. Clermont County Dep't of Human Servs., 80 Ohio St. 3d 128, 684 N.E.2d 1217, 1997 Ohio 131, (1997).

Hearings

Trial court did not abuse its discretion by attempting to protect the 17-year-old child from what it believed would cause her to suffer additional trauma. The trial court stated that it was not allowing the child to be present because the testimony in the first hearing was traumatic for her and the trial court did not wish for her to witness additional testimony and suffer additional trauma. Also, the agency's motion for permanent custody of that child was denied. Since she did not appeal and the mother showed no personal prejudice, the mother had no standing to raise the issue on the child's behalf. In re Sherman, 2006 Ohio App. LEXIS 6436, 2006 Ohio 6485, (2006).

Trial court erred when it failed to afford the mother the opportunity to cross-examine the guardian ad litem on her report, which was untimely pursuant to RC § 2151.414(C). A complete reversal was not required however because the due process violation was singular and could be cured by remanding the matter for an evidentiary hearing on the guardian ad litem's report. In re Kangas, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

There was no error in failing to commence the permanent custody hearing (RC § 2151.414) anew after counsel was ap-

pointed for the children, pursuant to Ohio R. Juv. P. 4 and RC § 2151.352, because the conflict between the guardian ad litem's recommendation and the children's wishes only became apparent after the hearing had commenced. The error was waived since the mother failed to object, pursuant to Ohio R. Juv. P. 40(3)(a)(i); the attorney declined the opportunity to call other witnesses who had testified at the earlier hearing, with full knowledge of what those witnesses had said, because the attorney was provided a transcript of that earlier hearing; and after the attorney was appointed to represent the children, the mother could no longer claim standing to object that the children's rights in the subsequent proceedings were violated. In re R.E., 2006 Ohio App. LEXIS 1145, 2006 Ohio 1256, (2006).

Trial court did not commit plain error in permitting the children's services agency to pose the questions to the father on cross-examination in the permanent custody proceeding, regarding the inadequacy of the child's crib, his lack of baby supplies, and his ability to keep the child safe, because the father never questioned if the agency had a good faith basis for the questions. Since the father was present at the adjudicatory hearing, was represented by counsel, and did not contest the allegations or appeal the judgment, the allegations in the complaint were deemed true. In re H.M.S., 2006 Ohio App. LEXIS 614, 2006 Ohio 701, (2006).

Trial court erred in terminating a mother's parental rights to her children, because the trial court improperly failed to hold a best interests hearing prior to the termination as required by RC § 2151.414(D). In re Robinson/Brooks, 2004 Ohio App. LEXIS 333, 2004 Ohio 376, (2004).

Where a mother's counsel might have known of local custom concerning the designation of courtroom 60 in a notice of hearing, there was no evidence to support an inference that he informed her of this custom; therefore, when the court notice directed the mother to a non-existent courtroom the notice of a permanent custody hearing was inadequate and the order divesting the mother of custody was therefore reversed. In re Babbs, 2004 Ohio App. LEXIS 542, 2004 Ohio 583, (2004).

In considering a motion filed by a public children services agency requesting permanent custody of a child, the trial court is required to hold a hearing regarding the motion, pursuant to RC § 2151.414(A)(1), to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency; the order to grant permanent custody of a minor child to the child services department was affirmed because the evidence supported the finding that a legally secure permanent placement could not be achieved without terminating the parents' custody. In re Riley, 2003 Ohio App. LEXIS 3657, 2003 Ohio 4108, (2003).

The requirement of separate adjudicatory and dispositional hearings is not met where an adjudication order is filed prior to the dispositional hearing: In re Knotts, 109 Ohio App. 3d 267, 671 N.E.2d 1357 (1996).

Under the circumstances, the inmate-parent's rights were not violated by denial of her motion to attend the custody termination hearing: In re Sprague, 113 Ohio App. 3d 274, 680 N.E.2d 1041 (1996).

Where the hearsay evidence concerned only the issue of abuse and the court found in the parents' favor on that issue, its admission into evidence was not prejudicial. The prohibition concerning the introduction of "dispositional" evidence into adjudicatory proceedings is not so much the nature of the evidence as for what purpose it is admitted: In re S., 102 Ohio App. 3d 338, 657 N.E.2d 307 (1995).

Pursuant to OConst art IV, § 5(B), JuvR 2(1) prevails over RC § 2151.35, making a hearing under RC § 2151.41.4 an adjudicatory hearing. A bifurcated hearing is not required under RC § 2151.41.4. Hearsay is ordinarily inadmissible in an adjudicatory proceeding, but the exception provided in RC § 2151.35(F) is applicable to RC § 2151.41.4: In re Brofford, 83 Ohio App. 3d 869, 615 N.E.2d 1120 (1992).

Upon a motion under RC § 2151.41.3 to convert temporary custody to permanent custody, the court need hold only one hearing, which will be adjudicatory in its procedural nature to determine if it is in the child's best interest to do so: In re Hopkins, 78 Ohio App. 3d 92, 603 N.E.2d 1138 (1992).

At a hearing held pursuant to RC § 2151.41.4 to determine

whether a children services agency should be granted permanent custody of a child, the trial court commits reversible error where it limits the evidence to factual matters occurring before the filing of the motion for permanent custody and refuses to consider evidence, proffered by a parent, relating to adequacy of parental care and based on facts occurring after the filing of the motion: *In re Foust*, 57 Ohio App. 3d 149, 567 N.E.2d 1042 (1989).

A hearing under RC § 2151.41.4 procedurally is determined to be an adjudicatory hearing at least up to the point where the best interests of the child are to be considered. Traditionally, the best interests of the child have been deemed an inappropriate subject for the adjudicatory hearing and appropriate for the dispositional phase. Thus, in the main, a bifurcated hearing is required: *In re Lucas*, 29 Ohio App. 3d 165, 29 Ohio B. 194, 504 N.E.2d 472 (1985).

A juvenile court does not err in failing to bifurcate a hearing on a motion for permanent custody into adjudicatory and dispositional stages where no dispositional option is available, i.e., either the motion is granted, in which case the mother's parental rights are terminated, or else the motion is denied: *In re Jones*, 29 Ohio App. 3d 176, 29 Ohio B. 206, 504 N.E.2d 719 (1985).

In conducting the adjudicatory phase of the hearing under RC § 2151.41.4, the best interests of the child should not enter into the determination of whether the child is receiving adequate parental care. The focus, at this stage, is on the parents and on what they are providing in terms of food, shelter and care, as well as what they are capable of providing in the future: *In re Vickers Children*, 14 Ohio App. 3d 201, 14 Ohio B. 228, 470 N.E.2d 438 (1983).

Hearings for permanent custody under RC § 2151.41.4 must conform to the Rules of Juvenile Procedure. Hence, pursuant to JuvR 29 and 34, the proceedings should be bifurcated into separate adjudicatory and dispositional stages: *In re Vickers Children*, 14 Ohio App. 3d 201, 14 Ohio B. 228, 470 N.E.2d 438 (1983).

Incarcerated parent

There was sufficient evidence that granting permanent custody to the children's services agency, under RC § 2151.414(D), was in the children's best interest because the father was serving 15 years to life in prison for murder and his first parole date would not occur until his daughter was 19 years old and his son was 17 years old. Additionally, the children were two and five years of age at the time that their father was sentenced to prison; the father had been incarcerated for the past 11 years of the lives of his children; and his sole means of contact had been through the telephone and letters. *In re Lenix*, 2006 Ohio App. LEXIS 1189, 2006 Ohio 1294, (2006).

Evidence showed that it was in the best interest of a father's children, under RC § 2151.414(D), to terminate the father's parental rights. The father, the children's primary caregiver, had been in a community-based correctional facility for domestic violence and had been later placed in a state institution because of his convictions for drug use, he had declined treatment, and he had failed to maintain housing for himself and his two children. *In re Douglas*, 2006 Ohio App. LEXIS 4348, 2006 Ohio 4431, (2006).

Evidence showed that a grant of permanent custody to a children services agency was in the child's best interest. The mother's visits with the child failed to progress beyond weekly monitored visits, the child had developed a loving relationship with the foster family, the foster parents expressed an interest in adopting the child, the child had spent almost her entire life outside of the mother's custody, and the child was in need of a legally secure placement, which neither the mother nor the father could offer. *In re A. K.*, 2006 Ohio App. LEXIS 4245, 2006 Ohio 4307, (2006).

Trial court's finding that the children could not or should not be placed with the father within a reasonable time for the grant of permanent custody to the children's services agency, pursuant to RC § 2151.414, was supported by sufficient evidence because the father was serving 15 years to life in prison for murder. His parole date, May of 2007, was more than 18 months after the filing of the motion for permanent custody, and more than 18 months after the hearing, pursuant to RC § 2151.414(E)(12), and that finding was sufficient to meet the first prong of a permanent custody

determination under RC § 2151.414(B)(1). *In re Lenix*, 2006 Ohio App. LEXIS 1189, 2006 Ohio 1294, (2006).

Fact that the juvenile court erred in finding that a father would be incarcerated for four more years and would not be available to care for his sons for at least 18 months after the filing of a motion for permanent custody or the dispositional hearing was harmless error as the juvenile court's finding that the sons could not be placed with their father within a reasonable time or should not be placed with their father was supported by clear and convincing evidence. *In re Jason S.*, 2006 Ohio App. LEXIS 643, 2006 Ohio 726, (2006).

Trial court's finding, pursuant to RC § 2151.414(B)(1)(a), that a mother could not be prepared to parent her son in a reasonable period of time was proper since the mother was incarcerated at the time of the hearing, and it was unknown when she would be released from jail. Moreover, since the son's maternal grandmother had mostly raised the mother's older children, the trial court reasonably could have had doubts about the mother's preparedness to parent a small child who had special needs or whether the mother could be prepared to parent a small child with special needs within a reasonable period of time. *In re V.H.*, 2006 Ohio App. LEXIS 488, 2006 Ohio 532, (2006).

In a termination of parental rights proceeding under RC § 2151.414, the finding that the child could not be placed with mother within a reasonable period of time was supported by evidence that the mother was in a federal prison due to drug related charges, that she had a long history of substance abuse, that other children had been taken from her before, that she failed to complete her case plan, and that she had not visited the child for almost two years. *In re Wilks*, 2006 Ohio App. LEXIS 5396, 2006 Ohio 5404, (2006).

Clear and convincing evidence supported a trial court's termination of a father's parental rights over his minor children pursuant to RC § 2151.414(B)(1), (D), and (E) where his repeated incarcerations prevented him from providing care for his children, he failed to complete court-ordered services, had no contact with them for nine months prior to the termination proceeding, and he had abused or neglected the children. He clearly did not demonstrate a "clear commitment" to his children, as his whereabouts after his most recent release from incarceration were unknown and he failed to attend classes after he was accused of molesting his daughter in order to attempt to lessen the likelihood of any potential reoccurrences of that behavior, such that his actions constituted abandonment pursuant to RC § 2151.01(C). *In re Kuashean P.*, 2006 Ohio App. LEXIS 3553, 2006 Ohio 3606, (2006).

Evidence that a child's father had been incarcerated since three months after the child was born, that the father had completed only one objective of the case plan, that he had gone more than ninety days without providing for the support of the child, that the father had an extensive criminal history, that the father had three other children in whose lives he had not participated because of prior incarcerations, and that the child's foster parents had expressed an interest in adopting the child supported the trial court's finding that the child could not be placed with a biological parent within a reasonable time and that awarding permanent custody to a family services agency was in the child's best interests. *In re Weatherspoon*, 2006 Ohio App. LEXIS 6348, 2006 Ohio 6402, (2006).

Trial court's grant of permanent custody of a father's minor daughter to a county family service agency, with an adoptive placement, was supported by clear and convincing evidence, as the trial court found two of the four criteria set forth in RC § 2151.414(B)(1)(a) through (d) to be applicable, and found that such custody was in the child's best interest, based on the fact that her parents were both incarcerated, she was almost 10 years old and indicated that she did not wish to live with her parents, she had bonded with the foster family, and there was a finding that the child could not be placed with either parent within a reasonable time. *In re Noda*, 2005 Ohio App. LEXIS 2093, 2005 Ohio 2213, (2005).

Trial court did not err in granting permanent custody to a county children services board on the ground that the father was not afforded enough time to comply with a case plan because the father's own actions, including his frequent incarcerations, caused specifically structured case plan services to be unavailable to him.

In re Woods, 2005 Ohio App. LEXIS 3284, 2005 Ohio 3561, (2005).

Guardian ad litem's report, filed as part of the record, was sufficient to establish that the father would still be incarcerated 18 months from the filing of the agency's motion for permanent custody of his children as it established the mandatory sentence under Ohio's truth-in-sentencing law; thus, the termination of the father's parental rights was supported by sufficient evidence. In re Tate, 2004 Ohio App. LEXIS 6803, 2004 Ohio 7316, (2004).

There was no abuse of discretion in determining that the child could not be reunited with the father within a reasonable period of time, pursuant to RC § 2151.414(E), because the father had been incarcerated since before the child was born and the child would be two and one-half years old before the father was released. In re Burton, 2004 Ohio App. LEXIS 3652, 2004 Ohio 4021, (2004), appeal denied by 103 Ohio St. 3d 1495, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2584 (2004).

Trial court's termination of the father's parental rights was supported by clear and convincing evidence; the Clinton County Children Services Board, who had custody of the child for more than 12 of 22 consecutive months, was not required to implement a case plan with the father, because the father intentionally avoided contact with the Board and the child during the proceeding, the Board made reasonable efforts to locate the father, the father had not seen or supported the child in five years, and the father was to be incarcerated for more than a year. In re K.S., 2004 Ohio App. LEXIS 1960, 2004 Ohio 2208, (2004).

Trial court properly used the length of the father's incarceration as a relevant factor in the determination of the best interests of the children in terminating a father's parental rights; also, the trial court could have terminated the father's parental rights because of the length of time the children were in the temporary custody of the agency but the court was required to terminate the father's parental rights for failure to follow the case plan and for showing a lack of commitment to the children. In re Myers, 2004 Ohio App. LEXIS 493, 2004 Ohio 539, (2004).

Trial court properly found that the child services board was not required to attempt to reunite a minor child with her mother and father because of the court's finding, pursuant to RC § 2151.414(E)(11), that parental rights for a sibling had previously been terminated due to the inability of the parents to have a stable home for the child; specifically, the mother, who was incarcerated, had parental rights terminated for five different children on two prior occasions and the father for two children on one occasion. In re Richardson, 2004 Ohio App. LEXIS 1876, 2004 Ohio 2170, (2004).

Where a magistrate considered a father's incarceration and the child's allegation of sexual abuse, the magistrate clearly set out the "other factors" under RC § 2151.414(E)(16) that could substitute for one of the § 2151.414(E)(1)-(15) findings; as a result, the trial court did not abuse its discretion in terminating the father's parental rights. In re Kaylee T., 2004 Ohio App. LEXIS 1978, 2004 Ohio 2227, (2004).

Trial court was within its discretion in finding under RC §§ 2151.011(C) and 2151.414(B)(1)(b) that the child was abandoned due to the lack of visitation during the father's period of incarceration; the father conceded in his brief that he did not have contact with the child for more than 90 days. In re Wright, 2004 Ohio App. LEXIS 960, 2004 Ohio 1094, (2004).

Trial court properly granted permanent custody of two children to children's services agency as the mother was serving almost 15 years in prison with little chance for clemency, the father was deceased, and none of the mother's relatives was willing to assume permanent custody. In re McDonald, 2003 Ohio App. LEXIS 4325, 2003 Ohio 4808, (2003).

When a trial court found that a mother whose parental rights it terminated was habitually incarcerated, it was authorized, under RC § 2151.414(E)(13), to find that the mother's children could not be returned to her. In re Vance, 2003 Ohio App. LEXIS 6328, 2003 Ohio 6991, (2003).

RC § 2151.414(E)(12) provides two alternative dates from which the 18-month period of incarceration can run: the date of the filing of the motion for permanent custody "or" the date of the dispositional hearing. In re V.S., 2003 Ohio App. LEXIS 5002, 2003 Ohio 5612, (2003).

Evidence that a parent is repeatedly incarcerated may be used

to establish that a child cannot or should not be placed with a parent within a reasonable time. Because RC § 2151.41.4 places no time limit on evidence of past convictions, it was not error for the court to admit it: In re Woodall, 2001 Ohio App. LEXIS 2600 (9th Dist. 2001).

Incarcerated parent's due process rights were not violated when parent was represented by counsel at the permanent custody hearing, a full record of the proceedings was made, and parent could present any testimony by means of deposition: In re Frasher, 1997 Ohio App. LEXIS 3746 (9th Dist. 1997).

The right of an incarcerated parent to attend a permanent custody hearing is within the sound discretion of the court: State ex rel. Vanderlaan v. Pollex, 96 Ohio App. 3d 235, 644 N.E.2d 1073 (1994).

The court did not err by terminating the mother's parental rights where she was repeatedly incarcerated and repeatedly violated the reunification plan: In re Grant, 81 Ohio App. 3d 59, 610 N.E.2d 460 (1991).

Where the sole parent's term of imprisonment is a lengthy one, such imprisonment may be a significant factor in determining whether the parent has acted so as to leave the child without adequate parental care. Should such imprisonment satisfy the standard of clear and convincing evidence that the child is without adequate parental care, the continuing imprisonment of the parent may likewise be considered in determining whether such deprivation will continue. Under such circumstances, the imprisoned parent's rights may be properly terminated: In re Hederson, 30 Ohio App. 3d 187, 30 Ohio B. 329, 507 N.E.2d 418 (1986).

Ineffective assistance of counsel

In a permanent custody proceeding, under RC § 2151.414(E), a mother did not show she received ineffective assistance of counsel when her counsel did not object to the denial of a motion for a continuance made at trial on behalf of the father of one of her children because the motion was properly denied, as the father did not tell his counsel he was incarcerated, so his counsel could not give the court or the parties earlier notice of the continuance motion or seek to have him brought to court, and his counsel protected his rights. In re E.S.B., 2006 Ohio App. LEXIS 4950, 2006 Ohio 5002, (2006).

In a permanent custody proceeding, under RC § 2151.414(E), a mother did not show she received ineffective assistance of counsel when her counsel did not raise a failure to serve notice of the proceeding on the father of one of her children at his last known address because he previously appeared and received actual notice of the permanent custody trial date, as well as of the permanent custody motion, and said he agreed with granting the motion, so the mother could not raise any alleged service errors which did not prejudice him, and no such errors prejudiced her. In re E.S.B., 2006 Ohio App. LEXIS 4950, 2006 Ohio 5002, (2006).

Mother failed to demonstrate that she received ineffective assistance of counsel in her permanent custody hearing because, rather than prejudice her interest, the failure to appoint independent counsel for the child was favorable to the mother's interests in as much as the child's counsel would have had to advocate strongly for the termination of the mother's parental rights. In re Kangas, 2006 Ohio App. LEXIS 3380, 2006 Ohio 3433, (2006).

Mother did not receive ineffective assistance of counsel in a permanent custody proceeding due to her counsel failing to seek the appointment of independent counsel for her children because the magistrate hearing the matter adequately considered the issue, and, given the children's conflicting statements about whether or not they wanted to live with their mother, the appointment of such counsel was unnecessary. In re Graham, 167 Ohio App. 3d 284, 854 N.E.2d 1126, 2006 Ohio 3170, (2006).

Mother failed to establish that her counsel's performance during the permanent custody proceedings was deficient in any form and she failed to show prejudice resulting from any alleged deficiency. The fact that her counsel sought to have a different attorney appointed did not demonstrate deficient performance, and the mother failed to demonstrate that she was prejudiced in any manner by having a second counsel appointed. In re Shrider, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Father did not receive ineffective assistance of counsel during the permanent custody proceedings because the father waived his

right to counsel since he did not apply for counsel prior to the hearing and he failed to assert any prejudice deriving from his lack of counsel at the shelter care hearing. Also, counsel's withdrawal of the motion seeking payment for anger management counseling appeared to be a tactical decision within the realm of reasonable professional judgment and fails to establish ineffective assistance of counsel. In *re E. T.*, 2006 Ohio App. LEXIS 2308, 2006 Ohio 2413, (2006).

Mother failed to demonstrate that she received ineffective assistance of counsel because constitutional challenges to RC § 2151.414(B)(1)(d) had been consistently rejected, counsel's decision not to cross-examine the guardian ad litem was within the realm of reasonable trial strategy, and the mother was not prejudiced by the presence of the caseworker throughout the trial court proceedings. In *re E.W.*, 2006 Ohio App. LEXIS 2431, 2006 Ohio 2609, (2006).

In proceedings on an agency's motion seeking permanent custody of a mother's child, the mother did not show her counsel provided ineffective assistance by stipulating to the admission of records, as this was an acceptable strategic choice, and the mother was not prejudiced because she testified and could have rebutted any inaccuracies in the records, but, instead, her testimony confirmed damaging material in the records. In *re M.C.*, 2006 Ohio App. LEXIS 944, 2006 Ohio 1041, (2006).

While it was arguable that the parents' trial counsel erred in failing to object to the agency caseworker's testimony regarding the parents' drug use during the permanent custody hearing, such alleged error was harmless because both parents admitted, under oath, that they abused illegal drugs and were convicted for such drug use. Further, certified copies of the judgment entries of the parents' convictions were admitted into evidence. In *re H.M.*, 2006 Ohio App. LEXIS 726, 2006 Ohio 819, (2006).

Trial counsel did not provide deficient representation at the mother's permanent custody hearing because the choices were strategic. Trial counsel was faced with difficult choices because the evidence against the mother, even from members of her own family, was very negative. Also, by stipulating to the guardian abuse its discretion litem's report, trial counsel was able to get the positive findings into record, without eliciting details about the negative findings. In *re E.H.*, 2006 Ohio App. LEXIS 348, 2006 Ohio 416, (2006).

Child failed to establish that he was provided ineffective assistance of counsel in the permanent custody proceeding because he failed to show that, but for the lack of objection by his counsel to the alleged hearsay statements, the outcome of the trial would have been different. Given the presumption that a decision not to request an in camera interview was tactical and that the trial court's finding that the child wanted to live with the mother notwithstanding the lack of an in camera interview, the failure of trial counsel to request such an interview did not constitute ineffective assistance of counsel. In *re D.M.*, 2005 Ohio App. LEXIS 6067, 2005 Ohio 6740, (2005).

In a termination of parental rights proceeding, when a mother's counsel did not comply with a local rule requiring the giving of advance written notice of all potential witnesses, this was not ineffective assistance of counsel because it did not affect the trial, as opposing counsel merely asked that counsel's oral list of witnesses be placed on the record, which it was. In *re Walker*, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

In a termination of parental rights proceeding, it was not shown that a mother's counsel provided ineffective assistance by not calling all possible witnesses because this could have been sound trial strategy. In *re Walker*, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

Mother was not denied the effective assistance of counsel in a termination of parental rights proceeding as to her three children where: (1) the fact that the mother completed most of the services outlined in her case plan was admitted at trial, (2) a witness was presented who testified to the mother's "normal" visitations with the children, (3) the mother's caseworker and the children's counselor testified as to the type of commitment required to complete the case plan, (4) the mother's caseworker's testimony as to the rationale for the mother's absence was an admission of a party-opponent, and (5) there was no evidence that the trial judge considered the mother's closing argument as evidence. In *re Donell F.*, 2005 Ohio App. LEXIS 3806, 2005 Ohio 4175, (2005).

Father was not deprived of his right to the effective assistance of counsel in a permanent custody hearing because, even if his counsel was deficient in failing to seek an opportunity for the father, who was incarcerated, to participate in the hearing, the father did not make an effort to visit with his son during the periods of non-incarceration, failed to make attempts at reunification, and failed to cooperate in the required counseling programs, and thus, he failed to show that the outcome of the proceedings would have been different but for his counsel's deficient performance. In *re Roberts*, 2005 Ohio App. LEXIS 2655, 2005 Ohio 2842, (2005).

Because the trial court made a finding pursuant to RC § 2151.414(B)(1)(d) (that the children had been in the temporary custody of the agency for 12 of the previous consecutive 22 months), the agency was not required to present evidence regarding whether the children could have been returned within a reasonable amount of time. Thus, the mother was not prejudiced by counsel's failure to present evidence of her compliance with the case plan objectives in the permanent custody proceeding. In *re Langford*, 2005 Ohio App. LEXIS 2196, 2005 Ohio 2304, (2005).

Where a mother clearly waived her presence at an RC § 2151.414(D)(2) in camera hearing to determine her children's wishes and did not explain her failure to appear at a parental rights termination hearing, the mother failed to show how her trial counsel was ineffective or how her due process rights under the United States and Ohio Constitutions were violated. In *re Ridenour*, 2005 Ohio App. LEXIS 321, 2005 Ohio 349, (2005).

Trial counsel did not render ineffective assistance of counsel by failing to object to the guardian ad litem's questioning of witnesses. The mother failed to overcome the strong presumption that trial counsel acted within the realm of reasonable trial strategy and that counsel was competent, and failed to show how counsel's failure to object to the guardian ad litem's questioning of witnesses prejudiced her or affected the outcome of the trial court's decision to award the agency permanent custody. In *re Curry*, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

In a proceeding to terminate a mother's parental rights, her counsel's decision not to present witnesses fell within the realm of trial strategy, and as she failed to show how this decision affected the outcome of the proceedings, she did not demonstrate ineffective assistance of counsel. In *re Hatfield*, 2003 Ohio App. LEXIS 6668, 2003 Ohio 7339, (2003).

Where a magistrate's decision terminating the mother's parental rights and granting custody to the family services agency complied with Ohio statute, there was no deficiency in counsel's failure to seek findings and conclusions from the trial court. In *re Teasley*, 2003 Ohio App. LEXIS 4580, 2003 Ohio 5079, (2003).

The test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody: In *re Heston*, 129 Ohio App. 3d 825, 719 N.E.2d 93 (1998).

The court did not commit prejudicial error by failing to appoint separate counsel where there was not evidence of a conflict of interest. The parents' counsel did not provide ineffective assistance. The court did not base its finding of dependency on the parents' poverty where it noted that they could have taken measures to improve living conditions. Long-term foster care is only an option where requested by an agency: In *re Brodbeck*, 97 Ohio App. 3d 652, 647 N.E.2d 240 (1994).

The court improperly accepted the parents' admissions that their children were neglected and dependent, and the parents were prejudiced by the children's denial of proper counsel: In *re Smith*, 77 Ohio App. 3d 1, 601 N.E.2d 45 (1991).

The two-part test for ineffective assistance of counsel used in criminal cases, announced in *Strickland v. Washington* (1984), 466 US 668, 687, is equally applicable in actions by the state to force the permanent, involuntary termination of parental rights: *Jones v. Lucas Cty. Children Services Bd.*, 46 Ohio App. 3d 85, 546 N.E.2d 471 (1988).

Infants, newborn children

Trial court's decision to award a newborn child's permanent custody to a county social service agency was supported by the evidence, pursuant to RC § 2151.414(E), where the child was initially adjudicated as dependent, pursuant to RC

§ 2151.353(A)(4), and it was determined that the child could not be placed with either of the child's parents within a reasonable time and that permanent custody in the agency was in the child's best interest, pursuant to RC § 2151.414(D), (E). The mother was a heavy smoker, she had no job and no independent living arrangement, she lived with several adults, including the father of the child, who was the subject of sexual child abuse charges, she did not have custody of her other children, and she used drugs and alcohol. In re West, 2005 Ohio App. LEXIS 2780, 2005 Ohio 2977, (2005).

Interference with marriage

Public policy against interference with a marriage was violated where the children services agency told a parent that her children would not be returned if she had any contact with her spouse and strongly encouraged her to divorce him. However, the interference did not automatically require reversal of the termination of parental rights: In re Spangler, 162 Ohio App. 3d 83, 832 N.E.2d 805, 2005 Ohio 3441, (2005).

Jurisdiction

Trial court had jurisdiction, pursuant to RC § 2151.353(E)(1) and RC § 2151.417(A), to modify or amend its prior disposition, including terminating the mother's parental rights, because, when the trial court returned the children to the mother, it specifically ordered that the agency maintain protective supervision. As such, the trial court had jurisdiction to proceed in the same case, under the same case number, when the agency asserted that the children needed to be removed from the mother's home based upon matters observed while the children remained under the agency's protective supervision. In re Peterson, 2006 Ohio App. LEXIS 1367, 2006 Ohio 1499, (2006).

Lack of a RC § 3109.27 affidavit or pleading did not deprive the juvenile court of jurisdiction to grant permanent custody to the welfare department: In re Palmer, 12 Ohio St. 3d 194, 12 Ohio B. 259, 465 N.E.2d 1312 (1984).

Magistrate's decision

Father's due process rights were not violated by a magistrate's refusal to take additional testimony at an annual review before terminating the father's parental rights as the father's counsel acquiesced in the magistrate's proposal to hear summaries from those involved in the case, additional testimony could not erase the father's failure to complete a case plan for reunification with his child, and the father declined the magistrate's invitation to make a statement. In re M.B., 2005 Ohio App. LEXIS 987, 2005 Ohio 986, (2005).

Motion for permanent custody

Children services board did not have to wait 22 months before filing a motion for permanent custody of a minor child pursuant to RC § 2151.414(B)(1)(d). Where the father was on notice of the termination proceeding and the fact that he was named as an alleged father for over a year before the motion for permanent custody was filed, his claim that the motion was filed less than one year after his paternity was established lacked merit, as he had sufficient time to reasonably prepare for the custody matter. In re P. C., 2004 Ohio App. LEXIS 1088, 2004 Ohio 1230, (2004).

Motion to intervene

The order divesting the parents of rights was supported by clear and convincing evidence. Further, the grandparents did not have a right to intervene: In re Schmidt, 25 Ohio St. 3d 331, 25 Ohio B. 386, 496 N.E.2d 952 (1986).

Notice

Father was provided with appropriate notice of the permanent custody hearing, pursuant to RC § 2151.414(A)(1) and Ohio R. Juv. P. 20, because the record showed, and the father conceded, that he was personally served at the initial shelter care hearing with a summons and a copy of the permanent custody complaint. The complaint set forth the dates of the pretrial, trial, and subsequent review dates, the father was present at the pretrial hearing, and the trial court's entry noted the father's presence and reiterated the date of the permanent custody hearing on the entry. In re Zurfley/Chatman/Black Children, 2006 Ohio App. LEXIS 602, 2006 Ohio 683, (2006).

Father's assertion that he never received notice of a children's services agency's motion for alternate disposition and that, as a result, he was unable to inform his family members who had expressed interest in taking custody of his child so that they could appear and express their intentions, was rejected. Given the lack of interest by the father and his family members, who had not filed a motion for custody during the five-month interval between receiving notice of the judgment and the agency's filing of its motion for permanent custody, even if the father had received notice of the hearing on the motion, it was likely that the outcome would have been the same. In re Alexander, 2006 Ohio App. LEXIS 7005, 2006 Ohio 7083, (2006).

Where the mother asserted on appeal in the permanent custody case that she received insufficient notice, the claim failed; notice of the permanent custody hearing was given in compliance with RC § 2151.414(A)(1), as the mother received personal service of the motion for permanent custody and notice of the initial permanent custody hearing in accordance with RC § 2151.29, Ohio R. Juv. P. 16(A), and Ohio R. Juv. P. 12(A), (B), and the mother's counsel gave the mother notice of the final permanent custody hearing. In re Keith Lee P., 2004 Ohio App. LEXIS 1719, 2004 Ohio 1976, (2004).

RC § 2151.414(A)(1) provides that a court shall schedule a hearing and give notice of the filing of the motion and RC § 2151.353(B) contains a similar notice requirement; a father, whose child was adjudicated as neglected and abused, was provided proper notice of the proceeding by which the father's parental rights were terminated. In re I.M., 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

Where the trial court record indicated that a mother was personally served approximately six months after the filing of a motion by a social services agency to modify its temporary custody to permanent custody, which was seven months prior to the hearing thereon, the mandates of RC §§ 2151.414(A)(1) and 2151.29 were met; in a motion seeking permanent custody of a minor, RC § 2151.414(A)(1) requires that a parent receive notice of a hearing thereon, and pursuant to RC § 2151.29, service of the necessary papers shall be made by leaving a copy at the parent's usual place of residence. In re R.K., 2003 Ohio App. LEXIS 5675, 2003 Ohio 6333, (2003).

Where a lack of notice denied the mother her right to defend her parental rights in a full adjudication and deprived her of due process, a permanent custody award of her child to family services was vacated and temporary custody to the agency was reinstated. In re D.H., 2003 Ohio App. LEXIS 5784, 2003 Ohio 6478, (2003).

The social services agency used reasonable diligence in trying to identify the natural father of the child before resorting to service by publication on anyone who might claim that status: In re Mullenax, 108 Ohio App. 3d 271, 670 N.E.2d 551 (1996).

Service by publication was sufficient where mother had a history of sporadic conduct and was unable to obtain stable housing or provide the county children services board with an address to send notices: In re Cowling, 72 Ohio App. 3d 499, 595 N.E.2d 470 (1991).

Parent's drug or alcohol abuse

Finding that the termination of a mother's parental rights, pursuant to RC § 2151.414, was in the best interests of her two children was supported by the evidence in the record. Since the children services agency could not return the children to their mother due to her failure to address her drug problem, the agency had custody of the children for a substantial period of their lives, making the children's need to procure a secure placement a priority. In re OJ, 2006 Ohio App. LEXIS 225, 2006 Ohio 286, (2006).

Trial court did not lose its way in concluding that permanent custody was in the children's best interest because the mother was alcohol and drug dependent, she continued to be involved in violent relationships, and she was unable to adequately parent the children; the older child had taken on the parental role since the mother acted more like a child. In re T. E., 2006 Ohio App. LEXIS 204, 2006 Ohio 254, (2006).

Although the parents' relationship with their daughter may have been loving and appropriate, it was in the child's best interest that the agency be granted permanent custody. While the parents completed portions of their case plan for reunification with the

child, neither had demonstrated an ability to refrain from illegal drug use throughout the time the child had been in the temporary custody of the agency. In re H.M., 2006 Ohio App. LEXIS 726, 2006 Ohio 819, (2006).

Since a mother's children had been in the custody of a children services agency for 12 or more months of a consecutive 22-month period, RC § 2151.414(B)(1)(d) was met as to both children. Further, the record supported a finding that the conditions of § 2151.414(B)(1)(a) were met, in that the children could not be returned to the mother in a reasonable period of time as evidenced by the fact that she failed to complete many of the drug screens that were required under her case plan. In re OJ, 2006 Ohio App. LEXIS 225, 2006 Ohio 286, (2006).

Common pleas court's decision finding that a magistrate's award of permanent custody of a mother's three children to the children services board was supported by clear and convincing evidence under RC § 2151.414 because the evidence showed that the mother's drug abuse had endangered lives of her children and that the mother had failed to respond to services provided due to the drug abuse. Further, the issue of whether the children should be placed with the maternal grandfather was rendered moot by the grandfather's communication to the common pleas court that it was inappropriate for him to take custody in light of his wife's health condition. In re Harris, 2005 Ohio App. LEXIS 3398, 2005 Ohio 3700, (2005).

Termination of a mother's parental rights was justified, under RC § 2151.414(E)(2), because she had a severe drug and alcohol abuse problem, which caused her to be incarcerated on numerous occasions and adversely affected her children, as one of them cut himself to keep her from going to bars, and she did not complete any of the treatment programs that were offered to her. In re Walker, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

Where a child could not be placed with either parent within a reasonable time as the mother was struggling with a drug addiction, the father had a drug problem that was not being treated, and the mother failed to complete her case plan, the court properly placed the child into the planned permanent living arrangement pursuant to RC §§ 2151.353 and 2151.414(D). In re Wheeler, 2005 Ohio App. LEXIS 3330, 2005 Ohio 3613, (2005).

Because, in the permanent custody hearing, the caseworker testified as to the mother's positive drug tests, but did so without the lab reports of the drug screens being admitted into evidence, the caseworker's testimony in that respect was inadmissible hearsay. However, there was no plain error in admitting the evidence because the caseworker's testimony about the positive drug screens was not a significant factor in the trial court's decision to grant permanent custody of the mother's children to the children's services agency and the outcome would not have been different if the court had excluded the testimony. In re T.V., 2005 Ohio App. LEXIS 3884, 2005 Ohio 4280, (2005).

Where a father had not visited regularly, had not completed his case plan, and had not established a stable lifestyle free from substance abuse that would be a suitable environment to place the child, his parental rights were properly terminated. In re Flemings, 2004 Ohio App. LEXIS 6781, 2004 Ohio 7256, (2004).

Ample evidence existed for a trial court to conclude that permanent custody of a child with a county child services board was in the best interests of the child where there was ample evidence that both parents had substance abuse problems that prevented them from caring for the child without supervision and, despite having nearly two years to work on their case plans, neither parent had adequately addressed their substance abuse problems. The mother seemed to try to achieve sobriety but had been unable to do so even after losing three other children and having almost two years to correct her problem; the father had not taken even the first step toward achieving sobriety because he refused to admit that he even used drugs despite three urine samples that tested positive for cocaine. In re T.O., 2004 Ohio App. LEXIS 1423, 2004 Ohio 1605, (2004).

In light of evidence that a father had a problem with cocaine, gave implausible reasons for his positive drug tests, did not complete any of the three main case plan goals, and attended only 19 of 30 visitation sessions for the whole time allotted, the trial court did not abuse its discretion in finding that child's best interests would be served by granting permanent custody to

appellee In re Strychalski, 2004 Ohio App. LEXIS 1364, 2004 Ohio 1542, (2004).

Trial court did not violate RC § 2151.3514(B) by ordering a mother to submit to one to two drug tests per week, as it was imperative to determine that she was no longer using crack cocaine in order to determine her child's best interest. In re Davis, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

Appeals court affirmed a termination of parental rights to one child adjudicated as abused under RC § 2151.031 and one adjudicated as dependent under RC § 2151.04 where substantial evidence, including the mother's abuse, alcohol use, and encouragement of theft, supported the trial court's best interest findings under RC § 2151.414(D). In re Large, 2003 Ohio App. LEXIS 4772, 2003 Ohio 5275, (2003).

Where a mother repeatedly chose drugs and alcohol over a child and a maternal aunt did not ask for custody and could not provide permanence and stability, the mother's parental rights were properly terminated under RC § 2151.414(D)(4). In re Bigham, 2003 Ohio App. LEXIS 3466, 2003 Ohio 3859, (2003).

Where children services department sought permanent custody of a child, pursuant to RC § 2151.414(B)(1)(d), permanent custody was found to be in the best interest of the child, after considering the factors set forth in RC § 2151.414(D), where the mother satisfied that portion of her case plan that required her to complete a psychological evaluation, parenting classes, and a drug and alcohol assessment, but failed to comply with provisions requiring her to (1) obtain and maintain full-time employment and provide documentation of same, (2) provide documentation she had permanent, stable housing in a secure environment for the child, (3) complete drug/urine screens provided by the department, and (4) attend scheduled visitations; the juvenile court, as the trier of fact, weighed the testimony and credibility of witnesses, and the findings of the trial court were presumed correct since, as the trier of fact, the trial court, was in the best position to weigh the evidence and evaluate the testimony. In re James, 2003 Ohio App. LEXIS 4657, 2003 Ohio 5208, (2003).

There was no error in the juvenile court's decision granting permanent custody of the mother's children to the state; evidence in the record raised serious doubts about her ability to remain sober and her commitment to such a goal, and there was ample evidence supporting the juvenile court's best interest finding. In re Woods, 2003 Ohio App. LEXIS 4617, 2003 Ohio 5108, (2003).

A court may grant a motion for permanent custody pursuant to RC § 2151.414(B) if the court determines from clear and convincing evidence that permanent custody is in the best interest of the child pursuant to the factors set forth in RC § 2151.414(D) and whether one of the factors in RC § 2151.414(B)(1)(a) through (d) applies; in an action for the termination of parental custody, because a mother failed to successfully complete a reunification program primarily because she continued to use drugs and failed to regularly visit her children, the termination was affirmed. In re L.A., 2003 Ohio App. LEXIS 4312, 2003 Ohio 4790, (2003).

Evidence that the mother failed to remain drug-free or provide a stable home, depended so severely on drugs as to prevent her from providing an adequate permanent home within a year of the hearing, lacked commitment to the children, and wanted to continue her relationship with her abusive husband supported the trial court's determination that children could not be placed with their mother within a reasonable time. In re Anderson, 2003 Ohio App. LEXIS 5478, 2003 Ohio 6154, (2003).

The parent's neglect of her children and numerous failures to end a crack addiction supported termination of parental rights: In re Shanequa H., 109 Ohio App. 3d 142, 671 N.E.2d 1113 (1996).

Expert testimony is not required to show a chemical dependency under RC § 2151.414(E)(2): In re McClintock, 1991 Ohio App. LEXIS 5144 (1991).

Parent's mental illness, disability etc.

When determining the best interest of a child under RC § 2151.414 at a permanent custody hearing, a trial court may not base its decision solely on the limited cognitive abilities of the parents: In re D.A., 113 Ohio St. 3d 88, 862 N.E.2d 829, 2007 Ohio 1105, (2007).

Appellate court's review of a decision by a juvenile court to grant a county agency permanent custody of two of a mother's children was supported by clear and convincing evidence that due to her mental retardation, she was unable to properly care for them, especially the younger one who had multiple medical problems. The permanent custody award was in the children's best interests under RC § 2151.414(D) because their needs for a legally secure placement were high, and they could not or should not be returned to the mother within a reasonable time. In re N.C., 2006 Ohio App. LEXIS 3858, 2006 Ohio 3900, (2006).

Permanent custody with the agency was in the best interests of the children, pursuant to RC § 2151.414(D), because the mother suffered from a chronic mental illness that prevented her from exercising appropriate judgments about the welfare of her children. She had a pattern of unstable living situations, and had lived in seven different places, including a homeless shelter; her employment was not that secure; and she was not capable of providing the emotional and physical stability and consistency the children needed. In re E.H., 2006 Ohio App. LEXIS 348, 2006 Ohio 416, (2006).

Trial court did not err in terminating the mother's parental rights and placing the child in the permanent custody of agency, pursuant to RC § 2151.414(E)(2). Given the severity of the mother's mental illness, her long history of failing to comply with the prescribed plan of treatment necessary to manage her illness, and the concern of her psychiatrist and others that she could again stop taking her medication, there was ample evidence before the trial court from which it could have concluded that the mother suffered from a mental illness that was so severe that it made her unable to care for the child at the current time or any time in the near future. In re E. H., 2006 Ohio App. LEXIS 4648, 2006 Ohio 4724, (2006).

Record clearly supported the trial court's determination that the best interests of the child and the inability of the mother to cope with his needs, and that of her own, warranted the grant of permanent custody to the agency, under RC § 2151.414. The mother had serious mental health problems, was unstable, and remained unstable in spite of medication and counseling services. In re Dulaney, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 507, 2006 Ohio 555, (2006).

Common pleas court properly determined that a mother's sons could not be placed with her within a reasonable amount of time in light of the mother's eight-year history and repeating cycle of problems; her lack of commitment to the sons through her choice of abusive violent relationships and her unwillingness to attend to her own mental health issues; and her noncompliance with medications, resulting in frequent hospitalizations. While the mother had shown recent improvement, the record showed a documented and lengthy history of cycles in which short-term progress was followed by a downward spiral of chaos, poor parenting judgments, mental health hospitalizations, and an inability to adequately care for the sons. In re D.B., 2006 Ohio App. LEXIS 410, 2006 Ohio 479, (2006).

Trial court did not err by terminating the father's parental rights because it considered the best interest of the children and its decision was supported by clear and convincing evidence. Specifically, it found, pursuant to RC § 2151.414(E)(1), (2) and (4), that the father had failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the home, that he suffered from chronic mental illness, and that he demonstrated a lack of commitment toward the children by failing to regularly support, visit or communicate with them when able to do so. In re Whitney W., 2006 Ohio App. LEXIS 1114, 2006 Ohio 1236, (2006).

Grant of permanent custody of a mother's children to a family services agency under RC § 2151.414 was in the children's best interests. The agency made a good faith effort to reunite the children with their mother, but the mother had considerable difficulty complying with the case plan, in that the evidence showed that the mother was unable to parent her young children without close supervision, the mother was mentally disabled, and she suffered from poor judgment. In re K.R., 2006 Ohio App. LEXIS 5751, 2006 Ohio 5801, (2006).

Permanent custody of a mother's children was properly granted to a children services agency under RC § 2151.414 because the evidence showed that the mother, while using a multitude of

social services for many years, continued to be unable to handle the stresses of parenthood because of her deficient intellectual functioning and her inability to control her temper, making her unpredictable and unstable. Moreover, the guardian ad litem testified that permanently terminating the mother's parental rights and granting permanent custody to the agency was in the children's best interests. In re Rushing, 2006 Ohio App. LEXIS 5521, 2006 Ohio 5541, (2006).

Trial court's grant of permanent custody of a father's minor daughter to a county social service agency was proper pursuant to RC § 2151.414(B)(1) and (E), as the daughter had been removed from the mother's custody due to the mother's erratic mental health issues, the mother had not remedied her health issues, and the father enabled her and did not understand the danger to the daughter. The parents did not remedy the conditions that had caused the child's removal and the custody award was in the child's best interest. In re Kyler-Lowther, 2006 Ohio App. LEXIS 4740, 2006 Ohio 4835, (2006).

Psychologist's report was inadmissible in a proceeding to terminate parental rights where it did not comply with EvidR 703. Where a parent's mental health is made an issue, the parent is entitled to expert assistance upon request: In re Sherman, 162 Ohio App. 3d 73, 832 N.E.2d 797, 2005 Ohio 3444, (2005), vacated by, substituted opinion at 2005 Ohio 5888, 2005 Ohio App. LEXIS 5312 (Ohio Ct. App., Hancock County Nov. 7, 2005).

Termination of the mother's parental rights was not against the manifest weight of the evidence as the trial court found RC § 2151.414(E)(2) and (11) were proven and therefore, the child could not and should not be returned to the mother's care and it was in the child's best interest to grant the motion for permanent custody; no one disputed that the mother, due to her physical and mental condition (mild retardation, depression, and anxiety), would most likely be unable to gain necessary parenting skills within a reasonable amount time, or that the mother had already had her parental rights terminated as to the child's sibling. In re Sadie R., 2005 Ohio App. LEXIS 292, 2005 Ohio 325, (2005).

Finding that the permanent custody of a child in a child services agency was in the best interest of the child was supported by clear and convincing evidence where some factors were inconsistent with the finding, but the following relevant factors were consistent with the finding: (1) the child's relationship with his mother and his foster parents, (2) the custodial history of the child's half-siblings, (3) the children's need for permanent placement, and (4) the mother's history of noncompliance with her medications, her hospitalizations, and the likelihood that she would not remain compliant with her medications. In re Smith, 2005 Ohio App. LEXIS 145, 2005 Ohio 149, (2005).

Where the father suffered from chronic emotional illness and mental retardation so severe that it made him unable to provide an adequate permanent home for the child at the present time or within one year and there was clear and convincing evidence that he had been convicted of numerous crimes, the trial court was required to enter a finding that the child could not be placed with the father. In re Spangler, 2005 Ohio App. LEXIS 3210, 2005 Ohio 3450, (2005).

Trial court properly found that a mother had failed to substantially comply with her case plan where: (1) the voluntariness of the mother's enrollment in the residential program was questionable as her enrollment was due to a court order, (2) the mother failed to address her various mental health issues via psychological counseling, to obtain housing, or to obtain stable employment, (3) her failure to contact or communicate with a child services board hindered an evaluation of her progress, and (4) the mother had a history of relapse once the children were placed in her custody. In re Phillips, 2005 Ohio App. LEXIS 3453, 2005 Ohio 3774, (2005).

Permanent custody with the agency was proper because the trial court did not err when it found under RC § 2151.414(D)(1) that the mother suffered from a schizotypal personality disorder marked by paranoia and psychosis. In re Boring-Myers, 2004 Ohio App. LEXIS 951, 2004 Ohio 1065, (2004).

Evidence supported the finding that it was in the children's best interest to award permanent custody to the agency because the mother, who was mentally retarded, could not provide the special care and attention that her children deserved. The evidence showed that the foster mother was able to appropriately address the children's developmental delays and to provide the children

with the special care and attention that they deserved, the guardian ad litem recommended that the trial court award the agency permanent custody, and the mother failed to demonstrate that she was capable of or willing to provide the children with a stable and nurturing home where they could flourish. In re Curry, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

Due process did not require the trial court to appoint a psychiatric expert to assist in the mother's defense because, although mental health was an issue, it was not a predominant issue nor the determinative issue, in the permanent custody case. The trial court awarded permanent custody to the agency based upon the mother's failure to remedy the conditions causing the children's removal and the termination of her parental rights; it did not explicitly nor solely base its decision to terminate the parental rights of the mother upon RC § 2151.414(E)(2), which referred to chronic mental illness or chronic emotional illness of the parent. In re J.D., 2004 Ohio App. LEXIS 323, 2004 Ohio 358, (2004).

There was competent, credible evidence supporting the finding that permanent custody was in the children's best interest as the father had dependent personality disorder and, at times, allowed his relationship with the mother to take priority over the children, he had cognitive difficulties, drug and alcohol issues, and he had little or no bond with the two children; and the mother displayed emotional problems as well. In re Yeager, 2004 Ohio App. LEXIS 1393, 2004 Ohio 1560, (2004).

Trial court's judgment granting permanent custody of the child was supported by the evidence where the child could not be placed with the mother within a reasonable amount of time and the mother suffered from major psychological disorders for which the mother failed to seek treatment, and the mother failed to protect the child from sexual abuse: In re Definbaugh, 2004 Ohio App. LEXIS 3022, 2004 Ohio 3367, (2004).

Trial court correctly found that a child could not and should not be returned to the custody of her parents after the parents severely physically abused the child's sibling and, due to severe and chronic mental illness, would be unable to provide the child with an adequate, permanent, home within one year, and, when given the opportunity, did not support, visit, or communicate with the child. In re Lauren P., 2004 Ohio App. LEXIS 1458, 2004 Ohio 1656, (2004).

Trial court's placement of mother's daughter in a permanent planned living arrangement and her son with his father was supported by clear and convincing evidence concerning the mother's mental health problems — including her overreacting to stimulation, emotional instability, difficulty in maintaining stress, drinking issues, and a suicide attempt — and the children's desires not to live with her. In re M. B., 2004 Ohio App. LEXIS 2373, 2004 Ohio 2666, (2004).

Court did not err in granting permanent custody of a mother's 13-year-old son to a family services agency, as clear and convincing evidence established that (1) the mother had been evicted from her apartment for allowing "crackheads" and prostitutes to use it; (2) her only income was from public assistance, and the gas in her home was turned off; (3) she was a paranoid schizophrenic who heard voices but did not take her medication or schedule follow-up appointments with her doctor in a timely manner; (4) she failed to comply with the treatment plan; (5) the son stated he did not want to live with his mother; and (6) the son had a positive, secure relationship with his foster parents and had made a positive adjustment. In re R.N., 2004 Ohio App. LEXIS 2275, 2004 Ohio 2560, (2004).

Juvenile court's findings that a mother failed to remedy conditions causing the children to be placed outside their home and suffered from chronic mental illness so severe as to make her unable to provide an adequate home were not supported by clear and convincing evidence. In re Williams, 2003 Ohio App. LEXIS 3246, 2003 Ohio 3550, (2003), affirmed by 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Agency and associated workers provided more than ample services to the parents that were designed to be understood by the parents but, despite the agency's efforts, the parents' mental disabilities and lack of initiative rendered them unable or unwilling to provide the special attention that the children needed. In re Curry, 2004 Ohio App. LEXIS 691, 2004 Ohio 750, (2004).

Where a mother's parental rights to two of her minor children

were terminated, pursuant to RC § 2151.414(B)(1), due to the trial court's finding that she had failed to remedy the conditions that had resulted in the children's removal and that her parental rights to a sibling of the children had previously been terminated pursuant to RC § 2151.414(E)(1), the fact that she had a mental illness did not require that the trial court appoint a psychiatric expert to assist in her defense; there was no due process violation of her rights under U.S. Const. amend. XIV and Ohio Const. art. I, § 16 where her mental illness was not the predominant issue in the termination decision. In re B. G., 2003 Ohio App. LEXIS 2923, 2003 Ohio 3256, (2003).

Termination of parental rights pursuant to RC § 2151.353(A)(3) based on the factors of RC § 2151.414(E)(2) was an abuse of discretion where the evidence did not support the finding that the mother suffered from a chronic mental illness or retardation so severe that she could not provide an adequate home; she had been capable of caring for herself previously, the examining psychologist recommended custody, and there was no evidence of abuse or neglect. In re Jordan, 2003 Ohio App. LEXIS 5424, 2003 Ohio 6071, (2003).

There was no error in granting permanent custody to the agency because the father was not in a position to meet the child's needs; the father had a mental capacity of an 11 or 12-year-old and had shown poor judgment regarding the child, and the child had profound emotional and behavioral problems. In re McKinley, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 2534, 2003 Ohio 2828, (May 30, 2003).

Placing the child in the permanent custody of children's services was in the child's best interest where the mother's chronic mental illness and chemical dependency made her unable to provide an adequate permanent home. In re C. P., 2003 Ohio App. LEXIS 3899, 2003 Ohio 4387, (2003).

A parent's Munchausen syndrome by proxy and other dangerous interactions with the child supported termination of parental rights: In re Dylan C., 121 Ohio App. 3d 115, 699 N.E.2d 107 (1997).

The mother's parental rights were properly terminated where her severe and chronic mental illness prevented substantial progress toward reunification: In re Makuch, 101 Ohio App. 3d 45, 654 N.E.2d 1331 (1995).

The due process clause of the United States Constitution and the due course of law provision under the Ohio Constitution requires the appointment of a psychiatrist to assist an indigent parent in permanent custody proceedings in which the parent's mental condition is at issue. A \$300 fee limitation does not necessarily violate such right: In re Egbert Children, 99 Ohio App. 3d 492, 651 N.E.2d 38 (1994).

Where the mental health of a parent is the principal issue as to whether parental rights should be terminated, due process requires that the parent's request for a court-appointed psychiatric expert to assist her be granted. Participation with counsel at a hearing waives any deficiency as to the notice provided under RC § 2151.41.4. In re Shaeffer Children, 85 Ohio App. 3d 683, 621 N.E.2d 426 (1993).

Although the child was not abandoned or orphaned, due to the nature of his mother's chronic, physical illness, the best interests of the child required granting permanent custody to Defiance County Children's Services. The court was not permitted to consider the effect of granting permanent custody upon the parent: In re Bauer, 1991 Ohio App. LEXIS 2280 (3rd Dist. 1991).

A juvenile court does not err in awarding permanent custody of two children to a children's services board where the children's mother has a personality disorder that would take years of intense psychotherapy to overcome, she has not shown substantial improvement in her tests over a two-year period, and she is not motivated to and does not establish any goals for treatment while the children are in the children's services board's temporary custody: In re Ison, 47 Ohio App. 3d 103, 547 N.E.2d 420 (1989).

Parent's murder of other parent

A court is justified in terminating the parental rights of a parent who was convicted of the aggravated murder of the child's other parent where there are suitable relatives who wish to adopt the child and the adoption is in the child's best interests: In re Awkal, 95 Ohio App. 3d 309, 642 N.E.2d 424 (1994).

Parent's subsequent petition for custody

Parent who has lost permanent custody of a child to the state may, as a legal stranger to the child, petition for custody: In re McBride, 158 Ohio App. 3d 572, 817 N.E.2d 459, 2004 Ohio 5269, (2004).

Parents ceasing to be parties

RC § 2151.414(F) can only be meant to operate prospectively, excluding the parents from future proceedings relating to the child, such as review hearings; as the provision specifically states, it does not operate to divest the parent of his right to appeal the permanent custody decision, nor does it operate to prevent the parent from challenging the validity of the judgment rendered in the proceeding to which he was a party. In re Phillips, 2003 Ohio App. LEXIS 4618, 2003 Ohio 5107, (2003).

Parental unfitness

Because RC § 2151.414(B)(1)(d) applied, in that the child had been in the agency's custody for 12 of the proceeding 22 months, the trial court was not required to find parental unfitness before it terminated her parental rights. The evidence supported the trial court's holding under RC § 2151.414(B)(1)(d) and it did not violate the mother's equal protection and due process rights through any incidental reference to whether the child could be placed with the mother. In re SW, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Trial court did not err in terminating the mother's parental rights without making an express finding of her parental unfitness because RC § 2151.414(B)(1)(d) necessarily implied some level of parental unfitness and was inherent in the trial court's finding compliance with the "12 out of 22" rule. In re S.R., 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Where a trial court terminated a father's parental rights in his minor son under RC § 2151.414(B)(1)(a), it was not required to find that the father was an unfit parent; however, such a finding was inherent in the trial court's determination that the child could not be placed with either of his parents within a reasonable time, or should not be placed with them, as all of the circumstances set forth in RC § 2151.414(E) to justify such a determination necessarily implied some level of parental unfitness. In re B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Where the court proceeded under RC § 2151.414(B)(1)(d), it was not required to make an express finding of parental unfitness or to find that the agency made reasonable reunification efforts: In re Stillman, 155 Ohio App. 3d 333, 801 N.E.2d 475, 2003 Ohio 6228, (2003).

Parent under age 18

Evidence supported the finding that the child could not be placed with the mother within a reasonable time, under RC § 2151.414(E), because the 16-year-old mother failed to complete counseling and failed to attend anger management classes. The mother continuously failed to take advantage of the opportunity to forge a bond with the child that was offered to her through scheduled weekly visitation in that she has failed to attend many visits and, when she did attend, she consistently neglected to take the initiative to interact with the child in any way approximating the interaction required between an infant and its mother; therefore, a bond could not be established within a reasonable time. In re Baby C, 2006 Ohio App. LEXIS 1915, 2006 Ohio 2067, (2006).

Trial court properly found that it was in the infant child's best interest to grant permanent custody to the agency, pursuant to RC § 2151.414(D), because the 16-year-old mother's intentions regarding housing, schooling, employment, day care, and pursuit of counseling were vacillating and unstable at best, and, at worst, nonexistent. All those who testified, including the mother, told the trial court that the child was bonded to the foster parent and was not attached to the mother and all parties agreed that the mother was not ready to be a parent to the child at that time, and there

was no evidence sufficient to support a firm belief that the child could be securely placed with the mother. In re Baby C, 2006 Ohio App. LEXIS 1915, 2006 Ohio 2067, (2006).

Clear and convincing evidence showed a child's need for a permanent, legally secure, placement could not be achieved without granting her custody to an agency because, under RC § 2151.414(E)(16), her minor mother could not provide for the child's special medical needs. In re Barnes, 2005 Ohio App. LEXIS 6190, 2005 Ohio 6862, (2005).

There was clear and convincing evidence that an award of permanent custody to the agency was in the best interest of the child. The 14-year-old mother showed a lack of initiative and motivation in learning parenting skills and in actively caring for her child during visitation, she did not appear to understand the gravity of the situation, she failed to follow through with suggestions as to parenting, housekeeping, and looking for part-time employment, she required assistance from adults in caring for her daughter and was not capable of parenting on her own, and caseworkers had worked at length with the mother and her mother to obtain suitable housing, but to no avail. In re Crystal S., 2004 Ohio App. LEXIS 182, 2004 Ohio 219, (2004).

Fourteen-year old mother's failure to satisfactorily comply with an agency's reunification plan was not mitigated by the fact that she was 14, or that the termination of parental rights proceeding (TPR) was commenced within four months after the plan was adopted by the trial court (however, it was developed about one year before TPR was commenced), or that her visitation was of limited duration, in order for her to have more time to be able to bond with her child. In re Nelson, 2004 Ohio App. LEXIS 242, 2004 Ohio 268, (2004).

Weight of the evidence failed to clearly and convincingly support a finding that the child could not be placed with the mother within a reasonable time because the 17-year-old mother demonstrated appropriate care and affection toward the child and the case plan was unreasonable as the agency demanded that the mother save half of her earnings while completing high school, attending programs with three service providers, and have full responsibility for the care of her infant. In re M.W., 2004 Ohio App. LEXIS 396, 2004 Ohio 438, (2004).

Fourteen-year old mother failed to satisfactorily comply with that part of an agency's reunification plan that required her to regularly attend school, take necessary parenting and counseling classes, and show reunification initiatives; the trial court's termination of her parental rights was affirmed. In re Nelson, 2004 Ohio App. LEXIS 242, 2004 Ohio 268, (2004).

There was sufficient, competent, and credible evidence presented to support the trial court's findings for termination of the 16-year-old mother's parental rights as she had not been able to sustain compliance with the case plan; the mother's age, immaturity, emotional constitution, unruly behavior, and dependent status prevented her from being able to provide the secure and permanent placement the child needed either presently or at any time in the foreseeable future. McFarland v. Richland County Children Servs. Bd., 2003 Ohio App. LEXIS 3365, 2003 Ohio 3746, (2003).

A parent's demonstration of lack of commitment toward her child is sufficient to support a finding that the child cannot be placed with the parent within a reasonable time. Testimony that the foster mother would adopt the child satisfies RC § 2151.414(D)(1). The time limits specified in RC §§ 2151.35.3 and 2151.41.5 are not unconstitutional as applied to a minor parent: In re McCrary, 75 Ohio App. 3d 601, 600 N.E.2d 347 (1991).

Parent whose rights have been terminated

Parent who has lost permanent custody of a child does not have standing as a nonparent to file a petition for custody of that child: In re McBride, 110 Ohio St. 3d 19 (2006).

Parties

The court did not have a duty to sua sponte join the paternal grandparents: In re Massengill, 76 Ohio App. 3d 220, 601 N.E.2d 206 (1991).

The emphasis placed on family unity by RC Chapter 2151. is limited almost exclusively to the nuclear family; and, unless a child is orphaned or abandoned, or an adult from the child's

extended family in some manner has filled the role of parent, this chapter does not require that extended family members be made parties to custody proceedings: *In re Schmidt*, 25 Ohio St. 3d 331, 25 Ohio B. 386, 496 N.E.2d 952 (1986).

Placement with relative, generally

Trial court did not err in determining that experimenting with a child's welfare by placing her in her grandmother's custody was not in her best interests as the grandmother helped the mother evade the agency so that the agency would not seek custody of her newborn, there was concern that the grandmother would allow the mother to have contact with the child, and the grandmother failed to recognize that her husband sexually abused the mother. *In re McCain*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1297, 2007 Ohio 1429, (Mar. 23, 2007).

Since a trial court concluded that a mother's child had been abandoned, it was not required to determine whether the child could be placed with the mother within a reasonable period of time. *In re Stafford*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 826, 2007 Ohio 923, (Mar. 5, 2007).

In a permanent custody proceeding, the trial court did not abuse its discretion in not considering relative placement, especially since no relative even provided the trial court with that option. *In re B.K.*, 2006 Ohio App. LEXIS 4359, 2006 Ohio 4424, (2006).

Trial court's grant of legal custody of a father's child to the child's maternal aunt was proper because the evidence showed that the child could not be placed with her father within a reasonable period of time under RC § 2151.414(E), in that the father failed to comply with the recommendations of a psychological evaluation, including attending parenting instruction and individual counseling. Further, the grant of custody to the aunt was in the child's best interests. *In re Downing*, 2006 Ohio App. LEXIS 5544, 2006 Ohio 5555, (2006).

In the termination of parental rights case, competent and credible evidence supported the finding that the grandmother was not a suitable relative to assume custody of the children under RC § 2151.414(B)(2); the grandmother continuously entered questionable relationships with men, and the grandmother was mildly retarded and had substantial memory loss, thereby limiting the grandmother's ability to use good judgment in providing care for the children. *In re Brewer*, 2004 Ohio App. LEXIS 2159, 2004 Ohio 2417, (2004).

Under RC § 2151.41.4, the court is not required to consider placement with a relative before granting permanent custody to the state where the child is not orphaned: *In re Leonard*, 1997 Ohio App. LEXIS 1698 (12th Dist. 1997).

Planned permanent living arrangement

Because the agency was awarded temporary custody of all three children and filed its permanent custody motion in December 2003, it did not request a planned permanent living arrangement (PPLA); therefore, the trial court did not have the authority to place the children in a PPLA. *In re S.R.*, 2006 Ohio App. LEXIS 4921, 2006 Ohio 4983, (2006), writ of certiorari denied by 127 S. Ct. 2882, 167 L. Ed. 2d 1158, 2007 U.S. LEXIS 6154, 75 U.S.L.W. 3636 (U.S. 2007).

Magistrate's determination, which was adopted by the juvenile court, that a child should be placed in a planned permanent living arrangement was not against the manifest weight of the evidence pursuant to findings made under RC §§ 2151.353(A)(5)(b) and 2151.414, as the mother had limitations in her ability to understand due to permanent brain damage, the child had used drugs in the past, had behavioral problems, had excessive absenteeism from school, and had run away, and the mother had engaged in physical abuse on multiple occasions. *In re K.B.*, 2006 Ohio App. LEXIS 4810 (2006).

Trial court did not err in terminating a mother's parental rights rather than placing her children in a planned permanent living arrangement pursuant to RC § 2151.353 because the mother suffered from a significant mental problem which interfered with her ability to parent the children, and while the children had a significant bond with the mother, the testimony of the children's case worker and the guardian ad litem established that the children's need for stability was critical. *In re Laigle Children*, 2006 Ohio App. LEXIS 756, 2006 Ohio 829, (2006).

In a permanent custody proceeding, the failure of the trial court to mention the alternative disposition of a planned permanent living arrangement did not mean that it did not consider that as an option, nor did it constitute error. *In re A. T.*, 2006 Ohio App. LEXIS 3883, 2006 Ohio 3919, (2006).

Because the agency filed a permanent custody motion pursuant to RC § 2151.413(D)(1) before the mother filed her planned permanent living arrangement (PPLA) motion, there the trial court did not err in denying her motion. Pursuant to RC § 2151.415(A), a party cannot file a PPLA motion when the court is required to make a permanent custody determination under RC § 2151.413(D)(1). *In re SW*, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

Trial court did not err in finding that it was in the best interest of the children to be placed in permanent custody of the agency, pursuant to RC § 2151.414, rather than to be placed in a planned permanent living arrangement, pursuant to RC § 2151.353(A)(J), and did not err in terminating the father's parental rights. Although the trial court noted that the evidence showed that the son could not be successful in a less restrictive environment and that at the present time there was no adoptive placement for him, the caseworker, guardian ad litem, and the trial court each found that permanent custody was in the best interest of both children. *In re Lenix*, 2006 Ohio App. LEXIS 1189, 2006 Ohio 1294, (2006).

Pursuant to RC § 2151.011(B)(36), in a planned permanent living arrangement, the juvenile court grants a children services agency legal custody of a child without terminating the parent's parental rights; the decision to remove a child from the home was proper because the evidence demonstrated that the father had failed to comply with the court's order and plan for reunification. *In re I.M.*, 2003 Ohio App. LEXIS 6437, 2003 Ohio 7069, (2003).

Poverty of parent

There was no substantive due process or equal protection violation under Ohio Const. art. I, § 2 in a trial court's termination of a father's parental rights over his minor son pursuant to RC § 2151.414, as the decision was not based solely on the father's poverty, but instead, was based on a host of findings, including the father's lack of commitment to the child, the inability to have provided a stable living situation, his history of domestic violence and non-support for which there were outstanding warrants against him, and the determination that the child's best interests warranted the permanent custody award to the agency. *In re Shifflet*, 2006 Ohio App. LEXIS 3521, 2006 Ohio 3576, (2006).

Privilege against self-incrimination

Father failed to establish that he was compelled to testify in the permanent custody hearing and he failed to show any prejudice resulting from his testimony because there was no compulsion and, had there been compulsion with regard to his testimony, it would not have affected the use of his testimony in the proceedings below. The father never asserted his Fifth Amendment rights, he subjected himself to cross-examination when he voluntarily testified under direct examination, and the testimony that he objected to contained no incriminating statements, as he was answering questions regarding previous criminal conduct for which he had already been prosecuted. *In re Shrider*, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

The privilege against compulsory self-incrimination is self-executing and applied in a proceeding for termination of parental rights. Where the parents were given a choice of admitting the father's abuse of the child or of permanently losing custody, they had to be afforded protection against use of the admission in a subsequent prosecution: *In re Amanda W.*, 124 Ohio App. 3d 136, 705 N.E.2d 724 (1997).

Privileged communications

Because the agency referred the mother to counseling and the referral was journalized in the case plan, her statements regarding cocaine use and other communications between herself and her counselor were not privileged, pursuant to RC § 2317.02(G)(1)(g), in the permanent custody hearing. *In re Brown*, 2006 Ohio App. LEXIS 2719, 2006 Ohio 2863, (2006).

In the absence of a specific statutory waiver or exception, the testimonial privileges established under RC § 2317.02(B)(1) (concerning communications between a physician and patient), RC § 4732.19 (concerning communications between a licensed psychologist and client), and RC § 2317.02(G) (concerning communications between a licensed counselor or licensed social worker and client) are applicable to communications made by a parent in the course of treatment ordered as part of a reunification plan in an action for dependency and neglect: *In re Wieland*, 89 Ohio St. 3d 535, 733 N.E.2d 1127, 2000 Ohio 233, (2000).

Putative father search

Record did not support the mother's argument that she was prejudiced by the agency's alleged failure to check the putative father registry prior to her parental rights being terminated. The record contained affidavits indicating that diligent searches were made to locate known and unknown putative fathers of the children, and the caseworker's testimony at the hearing supported that assertion. *In re E.W.*, 2006 Ohio App. LEXIS 2431, 2006 Ohio 2609, (2006).

Race

In a proceeding to terminate parental rights, the trial court was not obliged to consider the race of the child or her foster parents, and the black child's parents failed to show that his Caucasian foster family was not equipped to teach the child about racism and discrimination or to foster his ethnic identity. *In re Davis*, 2004 Ohio App. LEXIS 3670 (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2586 (2004).

The evidence clearly showed that termination of parental rights was justified. There was no plausible evidence that the father's race or the baby's light complexion were improperly considered: *In re Wingo*, 143 Ohio App. 3d 652, 758 N.E.2d 780, 2001 Ohio 2477, (2001).

Relief from judgment

Trial court did not abuse its discretion in denying a mother's motion for relief from judgment, pursuant to Ohio R. Civ. P. 60(B), after her parental rights were terminated under RC § 2151.414, as none of the three allegations asserted by her, even if true, would have provided a basis for a meritorious defense or claim, such that an evidentiary hearing was warranted; contentions regarding a forged signature in her case plan and an incident where she allegedly ripped stitches out of her minor child's mouth were not referenced in the trial court's parental rights determination, and allegations relating to the testimony of her conservator could have been raised in her direct appeal and were thus barred by res judicata. *In re J.J.*, 2004 Ohio App. LEXIS 3701, 2004 Ohio 4059, (2004), appeal denied by 103 Ohio St. 3d 1496, 2004 Ohio 5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2587 (2004).

Removal from home, prevention

Trial court did not err in finding that the agency was not required to make reasonable efforts to prevent removal of the child from the home, pursuant to RC § 2151.419(A)(2)(e), because the mother's parental rights to two other children had previously been terminated. The mother was given three opportunities to complete parenting classes, but never showed up or canceled them, she did not complete the previous case plan; and there remained an on-going mental health concern and except for some household improvements, there were continued concerns over the mother's parenting skills. *In re Craig*, 2006 Ohio App. LEXIS 2908, 2006 Ohio 3026, (2006), writ of certiorari denied by 127 S. Ct. 1816, 167 L. Ed. 2d 327, 2007 U.S. LEXIS 3103, 75 U.S.L.W. 3497 (U.S. 2007).

Res judicata

Res judicata did not apply to the permanent custody determination because the trial court not only retained continuing jurisdiction over the agency's motion for permanent custody, it recognized that fact at the conclusion of the first dispositional hearing. The mother's failure to comply with the case plan constituted a change in circumstances which warranted the agency's new motion for permanent custody. *In re Z.T.*, 2007 Ohio App. LEXIS 759, 2007 Ohio 827, (2007).

Res judicata does not prohibit the litigation of issues relevant to

a motion for permanent custody even though the same or similar issues may have been considered in a prior action within the purview of RC Chapter 2151.: *In re Ament*, 142 Ohio App. 3d 302, 755 N.E.2d 448 (2001).

Retroactivity

Retroactive application of the version of RC § 2151.41.4 which went into effect in March, 1999 did not violate prohibitions against retroactive laws: *In re Rodgers*, 138 Ohio App. 3d 510, 741 N.E.2d 901 (2000).

Reunification provisions

Court rejected a mother's contention that a children services agency failed to make reasonable efforts to implement the assigned case plan. The "reasonable efforts" requirement in RC § 2151.419 is not applicable to permanent custody cases involving RC §§ 2151.413 and 2151.414. *In re V.M.*, 2006 Ohio App. LEXIS 4370, 2006 Ohio 4461, (2006), affirmed by 113 Ohio St. 3d 161, 2007 Ohio 1254, 863 N.E.2d 167, 2007 Ohio LEXIS 788 (2007).

In a parental rights termination proceeding pursuant to RC § 2151.414, the trial court was not required to make a finding that the county social service agency made reasonable efforts to reunite the child with the mother pursuant to RC § 2151.419(A)(2), as two of her other minor children had been involuntarily removed from her care previously. The trial court made the requisite findings regarding both parents' lack of success in completing their case plans and the reasonable efforts made by the agency pursuant to RC § 2151.412, which was based on the parents' inability or unwillingness to provide an adequate permanent home and stable living conditions to raise the child, and the fact that they were dependents of society due to their situations, including the mother's mental illnesses and her refusal to take her medication. *In re Shifflet*, 2006 Ohio App. LEXIS 3521, 2006 Ohio 3576, (2006).

As a mother failed to disclose the identity of her minor child's father, and she had her parental rights to four other children involuntarily terminated, her three other children did not live with her, she was homeless, unemployed, had a severe drug abuse problem which she refused to seek treatment for, and she had a criminal history, the trial court's finding that the child could not be placed with his parents within a reasonable period of time and should not be placed with either parent, pursuant to RC § 2151.414(E)(1) and (4), was supported by the evidence. *In re I. J.*, 2006 Ohio App. LEXIS 6257, 2006 Ohio 6263, (2006).

It was reasonable for the trial court to conclude from the evidence that the agency did make reasonable efforts to reunify the child with his father because the father never requested that he be permitted to visit with his son prior to the time that visitation was allowed and, at a certain point, the father quit going to visitations with his son, thus demonstrating his lack of desire to visit with his son. The father also failed to start, let alone complete, any of the case plan requirements. *In re Oaks*, 2006 Ohio App. LEXIS 4787, 2006 Ohio 4857, (2006).

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Weight of the evidence supported the termination of the father's parental rights, pursuant to RC § 2151.414, because the father failed to demonstrate that the agency did not make reasonable efforts in case planning and diligent efforts toward reunification, or that the trial court erred in denying his motion to vacate the finding of reasonable efforts. The children could not be placed with the father, who admitted causing the incident which resulted in the removal of the children, in a reasonable time because he had convictions for child endangering and domestic violence, did not benefit from his parenting class, demonstrated inappropriate behavior when he was interacting with the children, and made insufficient progress in anger management. *In re E. T.*, 2006 Ohio App. LEXIS 2308, 2006 Ohio 2413, (2006).

Trial court could have rationally concluded, based on the evidence presented, that a family services agency made reasonable and diligent efforts to assist the mother in completing her case plan, in that the evidence showed that the mother failed to enroll in a sleep apnea class, which was a required condition before visitation with the child would be allowed; that she did not contact the agency to set up a time for visitation; that, while the agency agreed to pay for the mother's enrollment in a chemical dependency program, the mother never attended the program; and that, while the social worker had offered transportation to treatment locations, had offered to pay for the drug screens, had paid for the mother's psychological evaluation, and had referred her to several different treatment centers, the mother did not take advantage of any of these offers. In *re Distafano*, 2006 Ohio App. LEXIS 4347, 2006 Ohio 4430, (2006).

Mother's allegation that the children services agency failed to use reasonable case planning efforts to reunify her with her daughter did not need to be considered on appeal because, while the trial court based its permanent custody order, in part, on a finding that the mother had failed to substantially remedy the conditions that led to her daughter's removal, it also found that the mother had abandoned the daughter. Since the finding of abandonment was supported by the evidence, the mother could not establish reversible error based on a lack of reasonable case planning efforts. In *re M. R.*, 2006 Ohio App. LEXIS 2406, 2006 Ohio 2558, (2006).

Trial court's finding that a family services agency put forth a good-faith and diligent effort to rehabilitate the family situation was proper. The evidence showed that the agency had provided supportive services for each element of the case plan to assist the mother in completing the case plan, and the guardian ad litem's report discussed the agency's efforts to provide the mother an opportunity for improvement of parenting skills on an individualized basis. In *re Thornton Children*, 2006 Ohio App. LEXIS 2400, 2006 Ohio 2519, (2006).

Trial court did not err in finding that the agency put forth a good faith effort to rehabilitate the family, as required by RC § 2151.419(A)(1) and RC § 2151.414(E)(1), because trial testimony illustrated the efforts and services provided by the agency in an attempt to reunify the family. The father showed a lack of effort and commitment to the reunification process; due to his incarcerations, his failure to attend court hearings, and failure to correspond in any manner with the social worker, services were not successfully completed. In *re Peterson*, 2006 Ohio App. LEXIS 1370, 2006 Ohio 1500, (2006).

RC § 2151.419(A)'s requirement of reasonable efforts to reunify is not applicable to orders granting permanent custody upon motions filed under RC § 2151.413 because the reasonable efforts statute, RC § 2151.419(A), only applies to hearings held under certain listed statutes. For instance, hearings held under RC § 2151.353 are subject to the reasonable efforts requirement of RC § 2151.419(A), however, those hearings deal with the disposition of temporary custody or permanent custody (initially sought in the abuse, neglect, or dependency complaint) entered immediately after the adjudication of a child as abused, neglected or dependent, pursuant to RC § 2151.353. In *re Samples*, 2006 Ohio App. LEXIS 963, 2006 Ohio 1056, (2006).

Reasonable efforts requirement in RC § 2151.419, regarding reunification, was not applicable because the agency requested an award of permanent custody of the children under RC § 2151.413 and the trial court held a hearing under RC § 2151.414 to address the motions. Therefore, the trial court could award permanent custody without a finding that the agency made reasonable efforts to reunify the children with their mother. In *re J.S.*, 2006 Ohio App. LEXIS 615, 2006 Ohio 702, (2006).

While a trial court erroneously relied on a mother's failure to successfully complete a previous case plan to support its finding that, pursuant to RC § 2151.419(A)(1), the agency had made reasonable efforts toward reunification of the mother with her children since prior actions involving prior case plans are not admissible under Ohio R. Evid. 608(B), this error was harmless because the record supported the conclusion that reasonable case planning efforts would have been futile, in that the children had been out of the custody of their parents for four years, the mother suffered from chronic substance abuse and mental illness, and at the time of the hearing, the mother was incarcerated for failing to

appear at a criminal trial. In *re Chestnut*, 2006 Ohio App. LEXIS 611, 2006 Ohio 684, (2006).

Agency demonstrated a good-faith effort to reunify the children as it had expended diligent and reasonable evidence in case planning, had developed a case plan which addressed the concerns which had caused the removal of the children, and had provided supportive services to facilitate the completion of the case plan. Although the mother complied with each of the requirements in the case plan, her efforts were not sufficient to convince the trial court that she had learned enough to be able to cope with the children's needs and make good decisions about their care. In *re Reardon Children*, 2006 Ohio App. LEXIS 567, 2006 Ohio 629, (2006).

Termination of the mother's parental rights based on neglect and dependency was error because there was no dispute that the children's services agency did not attempt to reunify the child with the mother and there was no prior finding regarding the mother's unsuitability as a parent for the child prior to the filing for permanent custody. Although the mother's parental rights had been terminated with respect to three other children, that did not result in a de facto termination of her parental rights with respect to the child that was the subject of the instant proceedings. In *re Sheffey*, 167 Ohio App. 3d 141, 854 N.E.2d 508, 2006 Ohio 619, (2006).

County job and family service agency did not fail to make a good faith effort to reunify a father with his two children before a trial court placed the children in the agency's permanent custody under RC § 2151.414(D), (E)(4), (10), (16). The agency developed a case plan for the father when the children were placed in its temporary custody, but he told the agency that he did not wish to visit the children, had no contact with them or the agency for most of the next year, left town when the children's mother was given visitation placement, and failed to keep in contact with the agency after initially trying to re-engage himself with the children when he returned. In *re Francisco*, 2006 Ohio App. LEXIS 5839, 2006 Ohio 5888, (2006).

In a permanent custody hearing, if a trial court found the parents of the subject children had worked on their case plan, designed to reunify them with the children, this did not bar the trial court from granting permanent custody of the children to an agency because it could still determine that the parents had failed to remedy the conditions which caused the children to be removed from the home initially. In *re Bentley*, 2006 Ohio App. LEXIS 2991, 2006 Ohio 3133, (2006).

Even if a children services agency failed to schedule a mother for a psychiatric examination, as required by her case plan, this failure alone did not preclude the trial court from awarding the agency permanent custody of the mother's child. Moreover, the mother's compliance with her case plan was not relevant to a determination under RC § 2151.414(B)(1) since the trial court found that the child had been in the temporary custody of the agency for more than 12 months of a consecutive 22-month period. In *re S.M.*, 2006 Ohio App. LEXIS 2386, 2006 Ohio 2529, (2006).

Termination of a father's parental rights was proper as, although the case plans for a father and a mother were encompassed in a single document, the objectives, concerns, and services involving each parent were set forth separately and a child services agency clearly considered reunification with the father, as well as with the mother. In *re Jason S.*, 2006 Ohio App. LEXIS 643, 2006 Ohio 726, (2006).

Prior to terminating the father's parental rights, under RC § 2151.414, the trial court explicitly determined that the agency used reasonable efforts to reunify the family and the record supported that finding. The agency provided the parents with case planning, referrals, and transportation and, although the agency did not specifically direct the father to find a job, the father was already under a domestic relations court order to join a seek work program, which he chose not to join until faced with permanently losing his children. In *re Link*, 2006 Ohio App. LEXIS 476, 2006 Ohio 529, (2006).

Mother's contention that a county children services agency did not attempt to assist her in remedying her problems was without merit. The mother had an obligation to make an effort to attend and participate in programs recommended by the agency, and she did not fulfill this obligation, in that she refused to participate in

any drug and alcohol treatment for the first five months of the case plan. In re D.B., 2006 Ohio App. LEXIS 483, 2006 Ohio 522, (2006).

Trial court abused its discretion in finding that the agency had used reasonable efforts to reunify the father with his children prior to terminating his parental rights, under RC § 2151.414. Reasonable case planning and diligent efforts by the agency would have necessitated a case plan for the father during the time he was in the process of reunifying with the children. In re C.F., 2006 Ohio App. LEXIS 68, 2006 Ohio 88, (2006), reversed by 113 Ohio St. 3d 73, 2007 Ohio 1104, 862 N.E.2d 816, 2007 Ohio LEXIS 673 (2007).

Trial court's finding, by clear and convincing evidence, under RC § 2151.414(B)(1)(a), that children could not, within a reasonable time, or should not, be placed with their parents was not against the manifest weight of the evidence, despite the parents' initial compliance with their case plan, because (1) the parents moved out of state and adopted a transient lifestyle, (2) they had no communication, after moving, with the children, and (3) their sporadic contact, after moving, with the agency which had custody of their children did not show that they made strides in understanding their children's medical problems or their special needs. In re Bentley, 2006 Ohio App. LEXIS 2991, 2006 Ohio 3133, (2006).

Agency made reasonable efforts to reunify the mother with her children because the record contained many examples of the agency's efforts directed toward reunification including a case plan as to each child designed to help mother and father deal with the issues of domestic violence, substance abuse, anger management and a lack of parenting skills. The caseworkers and parenting educator had regular contact with the family and visitations were arranged with the children and the mother never asked for help with reading or completing written work in the educating classes. In re Malaya H., 2005 Ohio App. LEXIS 6309, 2005 Ohio 7010, (2005).

Clear and convincing evidence showed an agency made reasonable efforts to reunite a child with special medical needs with her minor mother by devising case plans addressing the needs of both the mother and the child, but that, when the minor mother was convicted of attempted gross sexual imposition, due to her own conduct, and not that of the agency, the mother was unable to complete her case plan. In re Barnes, 2005 Ohio App. LEXIS 6190, 2005 Ohio 6862, (2005).

Mother's claim on appeal that a trial court erred in terminating her parental rights over her minor child without first making a finding that the agency had used reasonable and diligent efforts to reunify the mother with her child lacked merit, as there was no such finding required under RC § 2151.419, as such did not apply to permanent custody hearings under RC § 2151.414. The trial court followed the statutory requirements of RC § 2151.414 prior to granting the permanent custody motion under RC § 2151.413, and there was no duty on the agency to prove that it exerted reasonable and diligent efforts towards reunification under RC § 2151.414. In re C.W., 2005 Ohio App. LEXIS 6093, 2005 Ohio 6739, (2005).

Trial court did not err in finding that the agency made reasonable efforts to reunite the mother and her children, pursuant to RC § 2151.419 prior to the permanent custody determination, wherein the mother's parental rights were terminated pursuant to RC § 2151.414. It was the agency that reunited the mother with her children after she had abandoned them for six years and it would have been difficult to assist the mother in finding housing because, during the last year, she had lived in four different places in different counties. In re Jesus, 2005 Ohio App. LEXIS 2152, 2005 Ohio 2266, (2005).

Trial court did not have to engage in an explicit finding of unfitness pursuant to RC § 2151.414(B)(1)(a) because its finding under § 2151.414(B)(1)(d) was supported by clear and convincing evidence, and thus, the trial court was not required to consider the § 2151.414(E) factors. As a result, the court did not need to address the mother's argument that the trial court erred in finding that the agency used reasonable efforts to return the children to the mother pursuant to § 2151.414(E)(1). In re Janson, 2005 Ohio App. LEXIS 6027, 2005 Ohio 6712, (2005).

Termination of a mother's parental rights was justified, under RC § 2151.414(E)(1), because she did not comply with her case

plan as she did not (1) get psychological and substance abuse evaluations or follow the recommendations of treating professionals, (2) provide a safe and stable home for her children, (3) allow a social worker to enter her home, (4) notify the child protection agency of her numerous address changes, or (5) regularly attend visitation with her children, either at the agency or at her home. In re Walker, 2005 Ohio App. LEXIS 5893, 2005 Ohio 6563, (2005).

Because the children's services agency sought an award of permanent custody as the initial disposition, it was not required to file a case plan aimed at reunification (under RC § 2151.412(C)), unless the basis for the award was predicated upon RC § 2151.414(E)(1), which could not be determined since the trial court did not even identify the factors prescribed in RC § 2151.414(E) as the basis for its final order. In re Allberry, 2005 Ohio App. LEXIS 5866, 2005 Ohio 6529, (2005).

Clear and convincing evidence supported the finding that it was in the child's best interest to permanently commit him to the custody of the agency. Because the child had been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period prior to the agency's permanent custody motion, RC § 2151.414(E)(1) did not serve as a basis for the agency's effort to seek permanent custody as the initial disposition and thus, the agency was not under a duty to pursue the mother's reunification with her son after it filed its motion for permanent custody as RC § 2151.419(A)(1) did not apply. In re S.S., 2005 Ohio App. LEXIS 3887, 2005 Ohio 4282, (2005).

Trial court did not err in finding that a children services board had made a reasonable effort to reunify parents' children with the parents because the record reflected reasonable case planning and diligent efforts on the part of the board to reunify the parents and their children, in that the caseworker assigned to the family attempted regular contact with both parents but was hampered by the mother's frequent changes of residence and the father's failure to visit the children regularly and remain in contact with the board. In re Rhyann B., 2005 Ohio App. LEXIS 3555, 2005 Ohio 3867, (2005).

Trial court's finding that the child was in the temporary custody of the agency for 12 of the past 22 months, was enough to satisfy the requirements of RC § 2151.414(B)(1), with respect to reunification with the mother. In re Unger Children, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

Trial court did not err in concluding that the child could not or should not be placed with the mother within a reasonable time, pursuant to RC § 2151.414(E), because the mother wanted to return the child to an abusive and dangerous household. The child's older brother was violent towards the child and possibly sexually abusive. In re Nibert, 2004 Ohio App. LEXIS 379, 2004 Ohio 429, (2004).

Permanent custody was properly granted because the trial court's finding that the department made reasonable case plans and diligent efforts to reunify the mother with her child was supported by clear and convincing evidence. The mother never completed the goals of the case plan, she failed to avail herself of the services provided or failed to complete the programs, and there was little chance that the mother would make the significant progress necessary as to her drug addiction before she was ready to parent her child. In re King, 2004 Ohio App. LEXIS 2554, 2004 Ohio 2919, (2004).

In determining whether an agency has made reasonable efforts to reunify a child with her parents, the issue is not whether the agency could have done more, but whether it has done enough to satisfy the reasonableness standard under the statute. In re Crager, 2003 Ohio App. LEXIS 4968, 2003 Ohio 5548, (2003).

The 1989 amendment to RC § 2151.41.4(A) reflects a legislative intent to eliminate the requirement of a good faith effort toward reunification prior to a grant of permanent custody: *Anderson v. Slone*, 1994 Ohio App. LEXIS 2416 (1994).

Section 3 of Am. Sub. H.B. No.695, concerning the phase-in of RC § 2151.41.2, 2151.41.3 and 2151.41.4, requires that a written comprehensive reunification plan be included in the second annual review made after the effective date of the Act (October 24, 1980), of any child who is in temporary custody upon such effective date pursuant to court order under RC Chapter 2151, or pursuant to RC § 5103.15: In re Smith, 7 Ohio App. 3d 75, 7 Ohio B. 88, 454 N.E.2d 171 (1982).

Right to counsel

There was no plain error in failing to appoint separate counsel for the parents because neither parent sought appointment of individual counsel during the course of the proceedings before the trial court, and neither parent asserted interests separate from the other. Also, at the time, they were still married and living together; there was never any suggestion by either parent that reunification with the children was possible with one parent and not the other; and in no way had there been a demonstration that the parent's interests were in conflict. In *re Shrider*, 2006 Ohio App. LEXIS 2641, 2006 Ohio 2792, (2006).

Parent's right to appointed counsel was not violated by her attorney's withdrawal in a proceeding to terminate parental rights where the parent's uncooperativeness and lack of interest in the proceedings were demonstrated by her failure to appear at scheduled hearings and by her attorney's unsuccessful attempts to contact her. In *re Hendrickson*, 162 Ohio App. 3d 602, 834 N.E.2d 401, 2005 Ohio 4183, (2005).

Where one of four children expressed a desire to live with her father, while the other three were in favor of termination of parental rights, that child was entitled to separate counsel. In *re Sherman*, 162 Ohio App. 3d 73, 832 N.E.2d 797, 2005 Ohio 3444, (2005), vacated by, substituted opinion at 2005 Ohio 5888, 2005 Ohio App. LEXIS 5312 (Ohio Ct. App., Hancock County Nov. 7, 2005).

Father was denied his right to representation at the dispositional hearing, the equivalent to a denial of counsel in violation of Ohio R. Juv. P. 4(A), when the trial court allowed the father's attorney to withdraw on the day of the dispositional hearing (regarding the termination of his parental rights), in the father's absence, without prior motion or notice to the father; and, the attorney had stated that the father had indicated his desires to him. In *re Sadie R.*, 2005 Ohio App. LEXIS 292, 2005 Ohio 325, (2005).

Although neither the court nor the guardian ad litem ever had any direct interaction with the two children in a proceeding by a children's services agency seeking permanent custody, the court properly considered their wishes pursuant to RC § 2151.414(D) by being made aware of the older child's desire to be placed with his mother, through testimony of the mother and a caseworker, and accordingly, any error on that issue was deemed harmless. The Ohio Supreme Court had previously relied on its prior decisions, RC § 2151.352, and Ohio R. Juv. P. 4(A) and 2(Y) in determining that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and is entitled to independent counsel in certain circumstances. In *re Lane*, 2004 Ohio App. LEXIS 2486, 2004 Ohio 2798, (2004).

Holding in *re Williams* may be applied retroactively. The trial court should have conducted an investigation into whether children who were the subject of a proceeding to terminate parental rights were entitled to counsel. The mother's failure to raise the issue in the trial court did not waive the children's rights. In *re Moore*, 158 Ohio App. 3d 679, 821 N.E.2d 1039, 2004 Ohio 4544, (2004).

Trial court did not abuse its discretion in granting an order allowing a mother's counsel leave to withdraw on the date of the final dispositional hearing, without prior notification to the mother, where: (1) the mother made no attempt to communicate with her counsel regarding her inability to appear; (2) failed to provide her counsel with medical documentation as to why her pregnancy might have prevented her from attending; and (3) the mother had previously been granted three prior continuances, and the trial court concluded that it did not wish to delay the proceedings any further. The case did not present complex facts, and, given the history of the case regarding the children at issue, it was not clear what counsel could have done that would have changed the outcome. In *re Garcia*, 2004 Ohio App. LEXIS 1069 (2004).

An order terminating parental rights may be reversed where the parents did not have counsel at the dispositional hearing. Permitting counsel for a parent to withdraw at the hearing based on a lack of communication with the parent did not justify the court in proceeding with the hearing. In *re Alyssa Nicole C.*, 153 Ohio App. 3d 10, 790 N.E.2d 803, 2003 Ohio 2673, (2003).

The court erred by allowing a parent's attorney to withdraw on

the morning of the dispositional hearing, without prior notice to the client. A simple assertion that a party has been "uncooperative" is insufficient to demonstrate that an attorney should be allowed to withdraw, especially on the day of the dispositional hearing. In *re M.L.R.*, 150 Ohio App. 3d 39, 779 N.E.2d 772, 2002 Ohio 5958, (2002).

The permanent custody hearing was procedurally deficient where the children's right to counsel was violated. In *re Clark*, 141 Ohio App. 3d 55, 749 N.E.2d 833, 2001 Ohio 4126, (2001).

The alleged father was properly served with notice of the proceedings. The court did not err by refusing to grant a further continuance to the father and did not violate his right to counsel. In *re Whitson*, 140 Ohio App. 3d 409, 747 N.E.2d 881, 2000 Ohio 1769, (2000).

Children who were the subject of a proceeding for termination of parental rights were entitled to appointed counsel, especially where there were indications that they wanted to remain with the parents. The appointment of an attorney as the substitute guardian was not sufficient. In *re Stacey S.*, 136 Ohio App. 3d 503, 737 N.E.2d 92, 1999 Ohio 989, (1999).

Standing

Maternal grandmother of three minor children lacked standing to challenge a trial court's grant of permanent custody to a county agency under RC § 2151.414, as she had failed to appropriately seek legal custody of the children under RC § 2151.353(A)(3). In *re Th.W.*, 2005 Ohio App. LEXIS 2681, 2005 Ohio 2852, (2005).

Father lacked standing to challenge the termination of his parental rights to a child as he was not the child's biological father, he did not have any legal relationship to the child, and he never moved for legal custody of the child. In *re J. O.*, 2005 Ohio App. LEXIS 2298, 2005 Ohio 2399, (2005).

Stipulation

Mother's parental rights were properly terminated over her eight minor children, based on facts that she consented to in a stipulation that was presented on behalf of herself and the county social services agency to the trial court, as the record indicated that the trial court clearly explained the stipulation and the import thereof to the mother, and she knowingly and voluntarily indicated her understanding and agreement with the facts, the findings, and the conclusions stated therein, including the termination of her parental rights. In *re Kuashean P.*, 2006 Ohio App. LEXIS 3553, 2006 Ohio 3606, (2006).

Trial court properly terminated parental rights where the parents stipulated to an award of permanent custody to an agency on the basis of the parents' disabilities under RC § 2151.414(E)(2) after extensive consultation with counsel and thorough questioning by the trial court. In *re Diane M.*, 2003 Ohio App. LEXIS 3134, 2003 Ohio 3450, (2003).

Temporary custody, extension

When a trial court considered, in a permanent custody proceeding, a mother's motion, under RC § 2151.415(D)(1), to extend an agency's temporary custody of her child, it was not an abuse of discretion for the trial court to deny the motion because, under RC § 2151.414(D)(4), it was not simply charged with finding a "stable, suitable, and loving" placement for the child but was obligated to consider the child's need for a legally secure permanent placement and whether that type of placement could be achieved without a grant of the child's permanent custody to an agency, and extending temporary custody would not achieve this goal as neither parent was capable of parenting the child, and no relatives came forward to develop a relationship with the child or to request consideration for custody. In *re P. B.*, 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

Time limitations

Trial court's failure to ensure that the permanent custody hearing occurred within the time period prescribed by RC § 2151.414(A)(2) was not reversible error because RC § 2151.414(A)(2) expressly states that failure to meet the 120-day deadline for a permanent custody hearing does not provide a basis for attacking the jurisdiction of the court or the validity of any order of the court. In *re Allberry*, 2005 Ohio App. LEXIS 5866, 2005 Ohio 6529, (2005).

Although a trial court failed to dispose of and journalize its

decision on a social service agency's motion for permanent custody of a minor child within 200 days, as required by RC § 2151.414(A)(2), such failure to comply with the time limitations did not alter the trial court's authority or invalidate the order that was ultimately entered thereon. In re B.L., 2005 Ohio App. LEXIS 1136, 2005 Ohio 1151, (2005), writ of certiorari denied by 546 U.S. 945, 126 S. Ct. 443, 163 L. Ed. 2d 337, 2005 U.S. LEXIS 7453, 74 U.S.L.W. 3229 (2005).

Trial court need not find that a child cannot or should not be placed with either parent within a reasonable time since such a finding is implicit in the time frame established by RC § 2151.414(B)(1)(d). In re Large, 2003 Ohio App. LEXIS 4772, 2003 Ohio 5275, (2003).

The judgment must be reversed where, due to the inordinate delay between the filing of the motion for permanent custody and the issuance of the judgment, the court lost its authority to issue an order terminating parental rights: In re Omosun Children, 106 Ohio App. 3d 813, 667 N.E.2d 431 (1995).

The seven-day period for entry of judgment set forth in RC § 2151.35(B)(3) and JuvR 34(C) is mandatory. The proper remedy for the court's failure to comply is to file a writ of procedendo in the court of appeals: In re Fleming, 76 Ohio App. 3d 30, 600 N.E.2d 1112 (1991).

The seven day period under RC § 2151.35(B)(3) and JuvR 34(C) for entry of judgment is mandatory. However, noncompliance does not deprive the court of jurisdiction: In re Galloway, 77 Ohio App. 3d 61, 601 N.E.2d 83 (1991).

Transfer from another court

A certification does not constitute a complaint in the juvenile court that such child is neglected, dependent or abused and those dispositions provided for under RC § 2151.35.3 pertaining to neglected, dependent or abused children, including an award of permanent custody to a county welfare department which has assumed the administration of child welfare, are not applicable to such a child, disposition thereof being subject to and controlled by RC § 3109.04: In re Snider, 14 Ohio App. 3d 353, 14 Ohio B. 420, 471 N.E.2d 516 (1984).

When a case concerning a child is transferred or certified from another court, the certification from the transferring court is deemed to be the complaint: In re Snider, 14 Ohio App. 3d 353, 14 Ohio B. 420, 471 N.E.2d 516 (1984).

Venue

When an agency moved for permanent custody of a child, no authority required the agency to prove venue at the permanent custody hearing by showing the child was removed from a home in the county where the trial court sat. In re M.C., 2006 Ohio App. LEXIS 944, 2006 Ohio 1041, (2006).

Visitation

There was no failure by the agency to diligently provide services by denying visitation because visitation was by court order and the trial court's judgment, granting visitation with the oldest child and denying it with the three younger children, was supported by sufficient evidence. At the time the judgment was entered, the agency had already filed for permanent custody, it had diligently provided visitation opportunities prior to the original filing for permanent custody, and the trial court received the report of the guardian ad litem reporting the wishes of the children regarding visitation prior to entering its judgment. In re Sherman, 2006 Ohio App. LEXIS 6436, 2006 Ohio 6485, (2006).

Waiver of parental rights

Father's consent to a county agency's permanent custody of his two minor sons was not deemed to have been given with a clear understanding that his consent was to termination of all parental rights, including the right to continued communication with the children. The short trial court record did not contain any indication that the trial court had specifically informed the father that he would be waiving all parental rights including communication and conversely, there were references in the record to the father's request to continue communication, which created an implication that such contact would automatically be permitted. In re D.R., 2006 Ohio App. LEXIS 3471, 2006 Ohio 3513, (2006).

Considering the parent's reluctance to surrender permanent custody, the court should not have accepted the waiver of parental

rights: In re Terrence-Jamieson S., 162 Ohio App. 3d 229, 833 N.E.2d 306, 2005 Ohio 3600, (2005).

Wishes of child

Since there was no evidence suggesting that a mother's son, who was only two and one-half years old at the time of the permanent custody hearing, was capable of expressing or verbalizing his wishes under RC § 2151.414(D)(2), the trial court did not err in not considering the son's wishes in ascertaining the best interest of the child. In re Parks, 2006 Ohio App. LEXIS 5835, 2006 Ohio 5890, (2006).

Since there was no evidence suggesting that a mother's son, who was only four years old at the time of the permanent custody hearing, was capable of expressing or verbalizing his wishes under RC § 2151.414(D)(2), the trial court did not err in not considering the son's wishes in ascertaining the best interest of the child. In re Elder, 2006 Ohio App. LEXIS 5834, 2006 Ohio 5889, (2006).

Because the children's wishes were inconsistent with those of the mother, who sought reunification, she lacked standing to assert as error the trial court's failure to appoint counsel for her children in the permanent custody proceeding. In re J.S., 2006 Ohio App. LEXIS 615, 2006 Ohio 702, (2006).

In a permanent custody proceeding under RC § 2151.414, the trial court did not err in not considering the wishes of the mother's three children as to their custody placement. Evidence that the seven-year-old child and the four-year-old twins were developmentally delayed constituted competent, credible evidence for the trial court to find that the children were not mature enough to understand the proceedings and to express their wishes in a meaningful manner. In re B.K., 2006 Ohio App. LEXIS 4359, 2006 Ohio 4424, (2006).

Trial court did not abuse its discretion in not conducting an in camera interview of a father's five-year-old child to ascertain her wishes with respect to the permanent custody proceeding. A guardian ad litem represented the child's wishes at the permanent custody hearing and concluded that permanent custody was in the child's best interests. In re Z. D., 2006 Ohio App. LEXIS 2858, 2006 Ohio 2978, (2006).

Trial court's finding that the grant of permanent custody, under RC § 2151.414, of a mother's children to a family services agency was in the children's best interests was proper. The evidence showed that, while the children had indicated that they wished to be reunited with their mother, the children demonstrated behavioral issues, including inappropriate sexual behavior; one of them had been exposed to sexual acts; and they seemed to be unaffected by discipline. In re Thornton Children, 2006 Ohio App. LEXIS 2400, 2006 Ohio 2519, (2006).

Trial court abused its discretion in finding that granting the agency permanent custody was in the best interest of the children, pursuant to RC § 2151.414(D), because the trial court did not allow the children the opportunity to express their desires as to whether they wanted to live with their father, it did not observe their demeanor, assess their maturity, or weigh the credibility of their testimony. In re C.F., 2006 Ohio App. LEXIS 68, 2006 Ohio 88, (2006), reversed by 113 Ohio St. 3d 73, 2007 Ohio 1104, 862 N.E.2d 816, 2007 Ohio LEXIS 673 (2007).

Mother failed to demonstrate any prejudicial error because the children's wishes as expressed were that they were happy where they were and did not want to live with their mother. Other factors cited by the trial court supported its finding that permanent custody was in the children's best interest, including their custodial history, their interaction and interpersonal relationships, and their need for a legally secure placement. In re E.W., 2006 Ohio App. LEXIS 2431, 2006 Ohio 2609, (2006).

Magistrate erred in awarding permanent custody of a child to a child services agency as testimony by the mother that the child was too young to be able to express his wishes did not fulfill the requirement of RC § 2151.414(D)(2) that the child's wishes be expressed directly by the child or the child's guardian ad litem (GAL) and the GAL's report did not state the child's wishes. It was error to fail to conduct a hearing to determine whether the child was entitled to independent counsel. In re Walling, 2006 Ohio App. LEXIS 729, 2006 Ohio 810, (2006).

Although a mother's son expressed a desire to live with her, the trial court did not err in finding that an award of permanent

custody of the son to the county children services agency was in the son's best interest since the child's preference is one of many factors under RC § 2151.414(D) and was not controlling. Further, the son had taken on a parental role in the home, attempting to do what the mother could not, and the evidence indicated that this role of being a "parentified child" was harmful and was very stressful for the son. In re D.B., 2006 Ohio App. LEXIS 410, 2006 Ohio 479, (2006).

Trial court's finding that it was in the best interest of a mother's four children to award permanent custody to a children services agency was not against the manifest weight of the evidence. While the children expressed a wish to live with their mother, the children had been in the agency's custody for more than 12 months of a consecutive 22-month period, they had significant psychological conditions that required a legally secure placement, and they were doing well with their foster families. In re Devon J., 2006 Ohio App. LEXIS 4050, 2006 Ohio 4130, (2006).

In granting a motion filed by a county children's services agency for permanent custody of a mother's three children, the trial court properly considered the children's wishes pursuant to RC § 2151.414(D)(2). By stating that it had considered all of the requisite factors, the trial court stated implicitly that it had considered the children's wishes, and since the youngest child was an infant who could not express or verbalize his wishes, there was no prejudicial error. In re Parks, 2006 Ohio App. LEXIS 5836, 2006 Ohio 5891, (2006).

Clear and convincing evidence did not support a finding that permanent custody was in the children's best interest, pursuant to RC § 2151.414(D), because the trial court failed to discern whether the children were capable of expressing their views and, if so, what those views were. There was nothing in the record suggesting that anyone asked the older child his wishes, and no one testified as to what those wishes were, nor was there evidence that the guardian ad litem interviewed either child, or even observed either child personally. In re T.V., 2005 Ohio App. LEXIS 3884, 2005 Ohio 4280, (2005).

Trial court failed to consider the wishes of the younger child, as required by RC § 2151.414(D)(2), because the child did not testify, nor was she interviewed in camera, and the guardian ad litem's report failed to express her wishes and it did not indicate that she was unable to express her own wishes. In re Miller, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

Trial court properly determined that termination of a mother's parental rights was in the child's best interests pursuant to RC § 2151.414(D), after finding that the child could not be placed with either of his parents within a reasonable time and that he should not be placed with his parents in the foreseeable future, under RC § 2151.414(B)(1)(a); as the child was only four years old at the time of the hearing, he called his foster mother "mom" and his real mother by her first name, and the child's guardian ad litem testified that the child was too immature and too young to express his wishes regarding the outcome of the proceeding, it was not an abuse of discretion for the trial court not to consider his wishes and not to interview him in camera. In re Wright, 2004 Ohio App. LEXIS 3668, 2004 Ohio 4045, (2004).

Pursuant to RC § 2151.414(D), termination of a father's parental rights was in the best interest of the children because during an in camera interview, neither child expressed an interest in residing with the father; one child specifically expressed an interest in being adopted by foster parents. In re Bradley John B., 2004 Ohio App. LEXIS 1175, 2004 Ohio 1328, (2004).

Juvenile court did not and could not have adequately discussed the factor of the children's wishes because, although the wishes were expressed as to the daughter, the middle child was eight years old at the time of the hearing and clearly of an age when he might have possessed the maturity to express a meaningful opinion regarding custody; moreover, a community support provider testified as to the child's desire to be with his mother, which, pursuant to RC § 2151.414(D), the juvenile court had to consider as a factor affecting the child's best interests with due regard for his maturity. In re Ridenour, 2004 Ohio App. LEXIS 1703, 2004 Ohio 1958, (2004).

Juvenile court adequately considered the wishes of the eight-year-old minor son in determining whether the parental rights of his mother in the minor son should be terminated, and even though the son expressed a preference for living with the mother,

the trial court's finding that the mother's inability to provide the minor son with a stable and structured home environment outweighed his preference was not error under the circumstances of the case. In re Krems, 2004 Ohio App. LEXIS 2584, 2004 Ohio 2449, (2004).

A guardian ad litem's report was defective for not containing a statement of the children's wishes as to custody in a termination of parental rights case because the children did not testify at the permanent custody hearing and the elder child consistently expressed a desire to remain with his mother. In re Williams, 2003 Ohio App. LEXIS 3246, 2003 Ohio 3550, (2003), affirmed by 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Trial court erred in terminating a mother's parental rights because it failed to comply with RC § 2151.414(D); the children (about 7, 6, and 4 years old) did not testify and were not interviewed in chambers, and their guardian ad litem did not specifically address their wishes as to their placement. In re Swisher, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 4901, 2003 Ohio 5446, (Oct. 14, 2003).

Appeals court affirmed termination of parental rights (TPR) and transfer of permanent custody to a children's services board (CSB) under RC § 2151.414(B); the evidence indicated that all three children wished to be placed in the permanent custody of the CSB. In re McCulloch, 2003 Ohio App. LEXIS 5115, 2003 Ohio 5739, (2003).

Withdrawal of life-sustaining treatment

RC § 2133.08 does not permit the withdrawal of life-sustaining treatment for a minor. The probate court exceeded its statutory authority in granting the guardian the power to withdraw life-supporting treatments before the parents' rights were permanently terminated. In re Guardianship of Stein, 105 Ohio St. 3d 30, 821 N.E.2d 1008, 2004 Ohio 7114, (2004).

[§ 2151.41.5] § 2151.415 Motion requesting disposition order upon expiration of temporary custody order; extension.

(A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 [2151.41.3] of the Revised Code is required to be made, a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 [2151.35.3] of the Revised Code, not later than thirty days prior to the earlier of the date for the termination of the custody order pursuant to division (F) of section 2151.353 [2151.35.3] of the Revised Code or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court that issued the order of disposition requesting that any of the following orders of disposition of the child be issued by the court:

(1) An order that the child be returned home and the custody of the child's parents, guardian, or custodian without any restrictions;

(2) An order for protective supervision;

(3) An order that the child be placed in the legal custody of a relative or other interested individual;

(4) An order permanently terminating the parental rights of the child's parents;

(5) An order that the child be placed in a planned permanent living arrangement;

(6) In accordance with division (D) of this section, an order for the extension of temporary custody.

(B) Upon the filing of a motion pursuant to division (A) of this section, the court shall hold a dispositional hearing on the date set at the dispositional hearing held pursuant to section 2151.35 of the Revised Code, with notice to all parties to the action in accordance with the

Juvenile Rules. After the dispositional hearing or at a date after the dispositional hearing that is not later than one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, the court, in accordance with the best interest of the child as supported by the evidence presented at the dispositional hearing, shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with sections 2151.413 [2151.41.3] and 2151.414 [2151.41.4] of the Revised Code. In issuing an order of disposition under this section, the court shall comply with section 2151.42 of the Revised Code.

(C)(1) If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D) of section 2151.414 [2151.41.4] of the Revised Code, and the child retains a significant and positive relationship with a parent or relative;

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing for independent living.

(2) If the court issues an order placing a child in a planned permanent living arrangement, both of the following apply:

(a) The court shall issue a finding of fact setting forth the reasons for its finding;

(b) The agency may make any appropriate placement for the child and shall develop a case plan for the child that is designed to assist the child in finding a permanent home outside of the home of the parents.

(D)(1) If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable

cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.

(2) Prior to the end of the extension granted pursuant to division (D)(1) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section or requesting the court to extend the temporary custody order of the child for an additional period of up to six months. If the agency requests the issuance of an order of disposition under divisions (A)(1) to (5) of this section or does not file any motion prior to the expiration of the extension period, the court shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

If the agency requests an additional extension of up to six months of the temporary custody order of the child, the court shall schedule and conduct a hearing in the manner set forth in division (D)(1) of this section. The court may extend the temporary custody order of the child for an additional period of up to six months if it determines at the hearing, by clear and convincing evidence, that the additional extension is in the best interest of the child, there has been substantial additional progress since the original extension of temporary custody in the case plan of the child, there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise placed in a permanent setting before the expiration of the additional extension period. In determining whether to grant an additional extension, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child for an additional period pursuant to this division, upon request it shall issue findings of fact.

(3) Prior to the end of the extension of a temporary custody order granted pursuant to division (D)(2) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section. Upon the filing of the motion by the agency or, if the agency does not file the motion prior to the expiration of the extension period, upon its own motion, the court, prior to the expiration of the extension period, shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

(4) No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section.

(E) After the issuance of an order pursuant to division (B) of this section, the court shall retain jurisdiction over the child until the child attains the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one if the child is mentally retarded, developmen-

tally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, unless the court's jurisdiction over the child is extended pursuant to division (E) of section 2151.353[†] [2151.35.3] of the Revised Code.

(F) The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section. In rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.

(G) If the court places a child in a planned permanent living arrangement with a public children services agency or a private child placing agency pursuant to this section, the agency with which the child is placed in a planned permanent living arrangement shall not remove the child from the residential placement in which the child is originally placed pursuant to the case plan for the child or in which the child is placed with court approval pursuant to this division, unless the court and the guardian ad litem are given notice of the intended removal and the court issues an order approving the removal or unless the removal is necessary to protect the child from physical or emotional harm and the agency gives the court notice of the removal and of the reasons why the removal is necessary to protect the child from physical or emotional harm immediately after the removal of the child from the prior setting.

(H) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 [2151.41.6] of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:

(1) Determine the continued necessity for and the appropriateness of the child's placement;

(2) Determine the extent of compliance with the child's case plan;

(3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;

(4) Project a likely date by which the child may be returned to the child's home or placed for adoption or legal guardianship;

(5) Approve the permanency plan for the child consistent with section 2151.417 [2151.41.7] of the Revised Code.

HISTORY: 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 147 v H 484 (Eff 3-18-99); 148 v H 176. Eff 10-29-99.

[†] So in enrolled bill, division (A)(1). But see the HB 274 (146 v —) version, in which the preposition "to" was inadvertently deleted.

Cross-References to Related Sections

Administrative reviews of case plan; annual report, RC § 2151.41.6.

Confidentiality of residential addresses of public children services

agency or private child placing agency personnel, RC § 2151.14.2.

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Ohio Rules

Dispositional proceedings, JuvR 29(F), 34, 35(A).

Dispositional review, JuvR 36.

Motions, JuvR 19, 22.

Termination of temporary custody orders, JuvR 14.

Ohio Administrative Code

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Authority to assume and retain custody of a child. OAC 5101:2-42-04.

Obtaining permanent custody of child: termination of parental rights. OAC 5101:2-42-95.

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CASE NOTES AND OAC

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Generally

The thirty-day provision in RC § 2151.41.5 is merely directory. Omission of RC § 2151.41.5(D)(1) information in an order is not prejudicial where the parents were given notice of the hearing and an opportunity to appear: *Endsley v. Endsley*, 89 Ohio App. 3d 306, 624 N.E.2d 270 (1993).

A parent's demonstration of lack of commitment toward her child is sufficient to support a finding that the child cannot be placed with the parent within a reasonable time. Testimony that the foster mother would adopt the child satisfies RC § 2151.41.4(D)(1). The time limits specified in RC §§ 2151.35.3 and 2151.41.5 are not unconstitutional as applied to a minor parent: *In re McCrary*, 75 Ohio App. 3d 601, 600 N.E.2d 347 (1991).

Appeal

While a proceeding for custody is a special proceeding, court's order denying appellant's motion for permanent custody of a minor child and continuing its orders for the child's temporary custody with appellant-agency is not a final appealable order within the meaning of RC § 2505.02 as such order does not affect

a substantial right: *In re Wilkinson*, 1996 Ohio App. LEXIS 1091 (2nd Dist. 1996).

Custody grant to relative

Because the motion to grant legal custody to the uncle and his wife was filed after the dispositional hearing, it was a motion to modify the prior dispositional order and RC § 2151.415(A)(3) applied. The father participated in the hearing and was aware that his brother and his wife were potential custodians because the father had acquiesced to the temporary custody arrangement and thus, the trial court's reference to RC § 2151.353(A)(3) constituted harmless error. *In re McCallum*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 905, 2007 Ohio 995, (Mar. 1, 2007).

Trial court did not err in declining to grant change of legal custody to children's aunt and maternal grandparents pursuant to RC § 2151.415(A)(3) as the aunt had not had any contact with the children for two or three years and had no independent housing or employment, and their grandparents, who lived in New York, had also had limited contact with the children and had limited bedroom space in their residence. Moreover, the trial court expressed particular concern that these relatives expressed belief that the children should be with their mother, and pursuant to Ohio R. Juv. P. 2(Z), a trial court may properly recognize that legal custody to third parties will not provide a legal barrier to a parent's future attempted assertion of his or her residual rights concerning the child. *In re Morales*, 2006 Ohio App. LEXIS 6356, 2006 Ohio 6384, (2006).

Trial court clearly had an adequate basis to find that it was in the child's best interests, under RC § 2151.414(D), to be placed in the legal custody of her aunt and uncle, pursuant to RC § 2151.415(A)(3). The child was removed when she was five months old upon discovery of physical injuries, she had lived outside her mother's home for 18 months, the guardian ad litem strongly recommended legal custody be granted to the relatives, the father was incarcerated and the mother failed to remedy the conditions that resulted in the child being removed from the home, the mother had unresolved issues concerning her impulse control and self-esteem, and the mother had not ended her relationship with the boyfriend who was suspected of physically abusing the child, despite a court order. *In re Starks*, 2005 Ohio App. LEXIS 1824, 2005 Ohio 1912, (2005).

Trial court used a higher burden of proof than was necessary, when it found by clear and convincing evidence that legal custody of the child was to be awarded to the relatives, given the fact neither parents' residual parental rights were being terminated. Despite that fact, the use of the incorrect standard was clearly harmless error on the part of the trial court. *In re Starks*, 2005 Ohio App. LEXIS 1824, 2005 Ohio 1912, (2005).

Trial court did not abuse its discretion when it determined by clear and convincing evidence that legal custody of the child be granted to the relatives, under RC § 2151.415(A)(3). In light of the results of the mother's psychological evaluation, as well as her alleged refusal to sever contact with the individual suspected of abusing her child, the trial court's decision to deny custody to the mother was not against the manifest weight of the evidence. *In re Starks*, 2005 Ohio App. LEXIS 1824, 2005 Ohio 1912, (2005).

Due process

Under the circumstances, the trial court violated the mother's due process rights where it refused to allow witnesses proffered by the mother to testify at the permanent custody hearing on the basis that they had not filed a motion for custody. *In re Beatty*, 167 Ohio App. 3d 730, 856 N.E.2d 1042, 2006 Ohio 3698, (2006), appeal dismissed for want of debatable question by 113 Ohio St. 3d 1207, 2007 Ohio 860, 862 N.E.2d 839, 2007 Ohio LEXIS 507 (2007).

The total time an agency can be granted custody of an abused or dependent child is two years. The court's failure to render a decision within the time limit may violate parental due process rights: *In re Omosun Children*, 106 Ohio App. 3d 813, 667 N.E.2d 431 (1995).

Duration of temporary custody order

If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be

unruly or delinquent pursuant to RC § 2151.35.4(A)(1) or RC § 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5: OAG No. 2003-004 (2003).

Extension

Trial court did not have the authority to grant a third extension of temporary custody because temporary custody of children in the care of a children's services agency was limited to a period of two years—an initial period of one year, followed by up to two extensions of six months each. *In re D.J.*, 2006 Ohio App. LEXIS 6276, 2006 Ohio 6304, (2006).

When a trial court considered, in a permanent custody proceeding, a mother's motion, under RC § 2151.415(D)(1), to extend an agency's temporary custody of her child, it was not an abuse of discretion for the trial court to deny the motion because, under RC § 2151.414(D)(4), it was not simply charged with finding a "stable, suitable, and loving" placement for the child but was obligated to consider the child's need for a legally secure permanent placement and whether that type of placement could be achieved without a grant of the child's permanent custody to an agency, and extending temporary custody would not achieve this goal as neither parent was capable of parenting the child, and no relatives came forward to develop a relationship with the child or to request consideration for custody. *In re P.B.*, 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

In a permanent custody proceeding, a mother did not show it was in a child's best interest to extend the child's temporary custody with an agency for six months, under RC § 2151.415(D)(1), because clear and convincing evidence did not show an extension of temporary custody was in the child's best interest, as the mother had made only minimal progress on her case plan and there was no reason to believe that reunification of the child with the mother would occur within six months. *In re P.B.*, 2006 Ohio App. LEXIS 5420, 2006 Ohio 5419, (2006).

Trial court abused its discretion when it failed to grant the mother's six-month extension of temporary custody, under RC § 2151.415(D)(1), to address her case plan and reunify with her children because the mother did not exhibit any parenting problems related to the reason for the removal of the child, she had made significant progress on her case plan, and there was reasonable cause to believe that the children could be reunified with her within the period of extension. *In re E.T.*, 2006 Ohio App. LEXIS 2308, 2006 Ohio 2413, (2006).

When a mother sought, under RC § 2151.415(D)(1), to extend an agency's temporary custody of her child, when the agency had filed a motion for permanent custody of the child, to give her additional time to work on her case plan, the trial court did not abuse its discretion by denying the motion because the mother had made no significant progress on her case plan and there was no reason to believe that she would remedy her parenting problems within the next six months, as, while she had completed parenting classes, she had not complied with any other requirement of her case plan. *In re M.C.*, 2006 Ohio App. LEXIS 944, 2006 Ohio 1041, (2006).

Trial court did not abuse its discretion in denying the mother's request for an extension of time to attempt to regain custody of her child because sufficient time had already been provided to allow her to remedy any and all problems causing the child to be removed from her care. The trial court found that the chemical dependency of the mother was so severe that it made the mother unable to provide an adequate, permanent home for the child, within one year after the date of this hearing. *In re English*, 2006 Ohio App. LEXIS 2952, 2006 Ohio 3067, (2006).

Trial court did not err in extending an original order of temporary custody for six months, so that a mother could secure appropriate housing and maintain sobriety, as temporary custody could be properly extended so as to exceed a total of two years, as the jurisdictional grant of RC § 2151.353(E)(1) was not limited; hence, a judge could enter an order of disposition pursuant to RC § 2151.415(A) after the sunset date when the problems that led to the original temporary custody order remained unresolved. *In re N.B.*, 2003 Ohio App. LEXIS 3295, 2003 Ohio 3656, (2003), criticized by *In re D.J.*, 2006 Ohio 6304, 2006 Ohio App. LEXIS 6276 (Ohio Ct. App., Montgomery County Dec. 1, 2006).

Issues concerning extension of temporary custody essentially

become moot after a court grants an agency's motion for permanent or legal custody. The mother's compliance with the case plan was immaterial where returning the children to her would subject them to violence by her husband: *In re Nice*, 141 Ohio App. 3d 445, 751 N.E.2d 552, 2001 Ohio 3214, (2001).

Absent a showing of prejudice, the failure to file a motion for extension of custody within the time constraints of RC § 2151.41.5(A) is harmless error. The time limitation is directory, not mandatory: *In re Amy W.*, 1995 Ohio App. LEXIS 277 (4th Dist. 1995).

Extension of temporary custody reversed where no evidentiary hearing was held: *In re Kleich Children*, 1994 Ohio App. LEXIS 3835 (5th Dist. 1994).

Foster care

The evidence supported the long-term foster care placement, but not the court's specific findings of fact. RC § 2151.41.5(C)(1)(c) applies only to children who are sixteen or over at all relevant times: *In re Bacorn*, 116 Ohio App. 3d 489, 658 N.E.2d 575 (1996).

Where, upon hearing a motion requesting permanent custody of a child, a court decides to deny the motion, the court may proceed in accordance with RC § 2151.41.5 and make any disposition listed in that statute, including placement of a child in long-term foster care: *In re McDaniel*, 1993 Ohio App. LEXIS 806 (4th Dist. 1993).

Jurisdiction

The passing of the statutory time period ("sunset date") pursuant to RC § 2151.35.3(F) does not divest juvenile courts of jurisdiction to enter dispositional orders: *In re Young Children*, 76 Ohio St. 3d 632, 669 N.E.2d 1140 (1996).

A court loses jurisdiction to determine the custody of children after the "sunset" date provided by RC § 2151.35.3. RC § 2151.41.5 authorizes no more than two six month extensions: *In re Travis Children*, 80 Ohio App. 3d 620, 609 N.E.2d 1356 (1992).

A juvenile court retains jurisdiction over a child who has been adjudicated to be unruly or delinquent until the child attains twenty-one years of age, and may continue to make dispositional orders with respect to the child until that time, regardless of whether the court's order of temporary custody has expired under the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5. OAG No. 2003-004 (2003).

Planned permanent living arrangement

Children's services agency did not request the trial court to consider the alternative of placing the child in the planned permanent living arrangement, which was one of the first prerequisites of RC § 2151.415(C)(1). Also, since the child was only two and a half years old, it was unlikely that he needed to be learning the necessary skills for independent living when it was anticipated that he may be adopted or live in a foster home. *In re English*, 2006 Ohio App. LEXIS 2952, 2006 Ohio 3067, (2006).

Because the agency filed a permanent custody motion pursuant to RC § 2151.413(D)(1) before the mother filed her planned permanent living arrangement (PPLA) motion, there the trial court did not err in denying her motion. Pursuant to RC § 2151.415(A), a party cannot file a PPLA motion when the court is required to make a permanent custody determination under RC § 2151.413(D)(1). *In re SW*, 2006 Ohio App. LEXIS 2829, 2006 Ohio 2958, (2006), writ of certiorari denied by 127 S. Ct. 1152, 166 L. Ed. 2d 999, 2007 U.S. LEXIS 1222, 75 U.S.L.W. 3384 (U.S. 2007).

After a public children services agency or private child placing agency is granted temporary custody of a child and files a motion for permanent custody, a juvenile court does not have the authority to place the child in a planned permanent living arrangement when the agency does not request this disposition: *In re A.B.*, 110 Ohio St. 3d 230, 852 N.E.2d 1187, 2006 Ohio 4359, (2006).

Trial court did not err by determining that a planned permanent living arrangement would fail to serve the child's best interests where there was evidence the child was unable to function in a family-like setting due to his apparent history of sexually offenses. *In re Beasley*, 2003 Ohio App. LEXIS 3207, 2003 Ohio 3462, (2003).

Right to counsel

Where the guardian ad litem appointed for a parent who fled to China with a child was also an attorney, the court did not err by terminating parental rights without granting a continuance so that new counsel could be appointed for the parent to replace counsel who withdrew due to lack of communication with the parent: *In re Zhang*, 135 Ohio App. 3d 350, 734 N.E.2d 379 (1999).

Termination of parental rights

Trial court was without jurisdiction to grant the aunt's motion for an order terminating the mother's parental rights, pursuant to RC § 2151.415(F), because a request made for permanent termination of parental rights, whether made through RC § 2151.415(A) or RC § 2151.415(F), had to be accompanied by a motion for permanent custody and had to be filed by a children's services agency. Under RC ch. 2151, permanent termination of parental rights and permanent custody must go together, the terms are used interchangeably, and the terms must be construed with reference to each other. *In re Webster*, 2006 Ohio App. LEXIS 1852, 2006 Ohio 2029, (2006).

Grant of permanent custody to a Children Services Board was in the best interest of the children, as the mother's parental rights to her two other children previously had been terminated under RC §§ 2151.353, 2151.414, or 2151.415, and evidence supported the trial court's findings under the RC § 2151.414(D)(1)-(5) factors, as the mother's interactions with her children were poor and had not progressed, she resisted treatment of her borderline personality disorder and continued to abuse crack cocaine, the older child had bonded with the foster family, the children had been in the Board's custody significant portions of their lives and needed a secure placement. *In re J.G.*, 2004 Ohio App. LEXIS 2237, 2004 Ohio 2513, (2004).

Time limits

Because the mother was given notice and an opportunity to be heard, any failure of the agency to comply with time limit set forth in RC § 2151.415 was harmless. The agency filed its motion for legal custody 24 days before the dispositional hearing, the mother fully participated in the hearing, her counsel cross-examined each of the agency's witnesses, and she testified on her own behalf. *In re T.A.*, 2006 Ohio App. LEXIS 4397, 2006 Ohio 4468, (2006).

Trial court was not required to dismiss a family services agency's motion for permanent custody on the ground that it was not filed within 30 days prior to the annual review, as required by RC § 2151.415, because the trial court had discretion to make dispositional orders for the children, in that the problems that led to the original grant of temporary custody had not been resolved or sufficiently mitigated. *In re Thornton Children*, 2006 Ohio App. LEXIS 2400, 2006 Ohio 2519, (2006).

[§ 2151.41.6] § 2151.416 Administrative reviews of case plan; annual report.

(A) Each agency that is required by section 2151.412 [2151.41.2] of the Revised Code to prepare a case plan for a child shall complete a semiannual administrative review of the case plan no later than six months after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. After the first administrative review, the agency shall complete semiannual administrative reviews no later than every six months. If the court issues an order pursuant to section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code, the agency shall complete an administrative review no later than six months after the court's order and continue to complete administrative reviews no later than every six months after the first review, except that the court hearing held pursuant to section 2151.417 [2151.41.7] of the Revised Code may take the place of any administrative review that would otherwise be held at the time of the court hearing. When conducting a review,

the child's health and safety shall be the paramount concern.

(B) Each administrative review required by division (A) of this section shall be conducted by a review panel of at least three persons, including, but not limited to, both of the following:

(1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the child's case plan;

(2) A person who is not responsible for the management of the child's case plan or for the delivery of services to the child or the parents, guardian, or custodian of the child.

(C) Each semiannual administrative review shall include, but not be limited to, a joint meeting by the review panel with the parents, guardian, or custodian of the child, the guardian ad litem of the child, and the child's foster care provider and shall include an opportunity for those persons to submit any written materials to be included in the case record of the child. If a parent, guardian, custodian, guardian ad litem, or foster care provider of the child cannot be located after reasonable efforts to do so or declines to participate in the administrative review after being contacted, the agency does not have to include them in the joint meeting.

(D) The agency shall prepare a written summary of the semiannual administrative review that shall include, but not be limited to, all of the following:

(1) A conclusion regarding the safety and appropriateness of the child's foster care placement;

(2) The extent of the compliance with the case plan of all parties;

(3) The extent of progress that has been made toward alleviating the circumstances that required the agency to assume temporary custody of the child;

(4) An estimated date by which the child may be returned to and safely maintained in the child's home or placed for adoption or legal custody;

(5) An updated case plan that includes any changes that the agency is proposing in the case plan;

(6) The recommendation of the agency as to which agency or person should be given custodial rights over the child for the six-month period after the administrative review;

(7) The names of all persons who participated in the administrative review.

(E) The agency shall file the summary with the court no later than seven days after the completion of the administrative review. If the agency proposes a change to the case plan as a result of the administrative review, the agency shall file the proposed change with the court at the time it files the summary. The agency shall give notice of the summary and proposed change in writing before the end of the next day after filing them to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days after the date the notice is sent to object to and request a hearing on the proposed change.

(1) If the court receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code to be held not later than thirty days after the court receives the request. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(2) If the court does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a review hearing to be held pursuant to section 2151.417 [2151.41.7] of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of this division and division (D) of section 2151.417 [2151.41.7] of the Revised Code, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(F) The director of job and family services may adopt rules pursuant to Chapter 119. of the Revised Code for procedures and standard forms for conducting administrative reviews pursuant to this section.

(G) The juvenile court that receives the written summary of the administrative review, upon determining, either from the written summary, case plan, or otherwise, that the custody or care arrangement is not in the best interest of the child, may terminate the custody of an agency and place the child in the custody of another institution or association certified by the department of job and family services under section 5103.03 of the Revised Code.

HISTORY: RC § 5103.15.1, 136 v H 156 (Eff 1-1-77); 137 v H 832 (Eff 3-13-79); 138 v H 695 (Eff 10-24-80); 141 v H 428 (Eff 12-23-86); RC § 2151.41.6, 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 471. Eff 7-1-2000; 151 v H 66, § 101.01, eff. 6-30-05; 151 v S 238, § 1, eff. 9-21-06.

The effective date is set by § 612.12 of 151 v H 66.

The effective date is set by section 12(A) of HB 471.

Effect of Amendments

151 v S 238, effective September 21, 2006, deleted (H), pertaining to an annual report on the results of the review of case plans of each agency.

151 v H 66, effective June 30, 2005, in (H), deleted "and on the results of the summaries submitted to the department under section 3107.10 of the Revised Code" from the end of the first sentence in the introductory language, and (4), which read: "A compilation and analysis of data submitted to the department under section 3107.10 of the Revised Code".

Cross-References to Related Sections

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Definitions, RC § 2151.01.1.

Procedure when hearing takes place of administrative review, RC § 2151.41.5.

Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.

Ohio Rules

Social history, examinations and investigation, JuvR 32.

Ohio Administrative Code

Requirements of semiannual administrative review. OAC 5101:2-42-43.

CASE NOTES AND OAG

Generally

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to RC § 2151.41.2 and to hold semiannual reviews of the case plan pursuant to RC § 2151.41.6: OAG No. 99-041 (1999).

[§ 2151.41.7] § 2151.417 Court review of child's placement or custody arrangement; continuing jurisdiction; citizen's review board.

(A) Any court that issues a dispositional order pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code may review at any time the child's placement or custody arrangement, the case plan prepared for the child pursuant to section 2151.412 [2151.41.2] of the Revised Code, the actions of the public children services agency or private child placing agency in implementing that case plan, the child's permanency plan, if the child's permanency plan has been approved and any other aspects of the child's placement or custody arrangement. In conducting the review, the court shall determine the appropriateness of any agency actions, the safety and appropriateness of continuing the child's placement or custody arrangement, and whether any changes should be made with respect to the child's permanency plan or placement or custody arrangement or with respect to the actions of the agency under the child's placement or custody arrangement. Based upon the evidence presented at a hearing held after notice to all parties and the guardian ad litem of the child, the court may require the agency, the parents, guardian, or custodian of the child, and the physical custodians of the child to take any reasonable action that the court determines is necessary and in the best interest of the child or to discontinue any action that it determines is not in the best interest of the child.

(B) If a court issues a dispositional order pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code, the court has continuing jurisdiction over the child as set forth in division (E)(1) of section 2151.353 [2151.35.3] of the Revised Code. The court may amend a dispositional order in accordance with division (E)(2) of section 2151.353 [2151.35.3] of the Revised Code at any time upon its own motion or upon the motion of any interested party. The court shall comply with section 2151.42 of the Revised Code in amending any dispositional order pursuant to this division.

(C) Any court that issues a dispositional order pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code shall hold a review hearing one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care to review the case plan prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code and the child's placement or custody arrangement, to approve or review the permanency plan for the child, and to make changes to the case plan and placement or custody arrangement consistent with the permanency plan. The court shall schedule the review hearing at the time that it holds the

dispositional hearing pursuant to section 2151.35 of the Revised Code.

The court shall hold a similar review hearing no later than every twelve months after the initial review hearing until the child is adopted, returned to the parents, or the court otherwise terminates the child's placement or custody arrangement, except that the dispositional hearing held pursuant to section 2151.415 [2151.41.5] of the Revised Code shall take the place of the first review hearing to be held under this section. The court shall schedule each subsequent review hearing at the conclusion of the review hearing immediately preceding the review hearing to be scheduled.

(D) If, within fourteen days after a written summary of an administrative review is filed with the court pursuant to section 2151.416 [2151.41.6] of the Revised Code, the court does not approve the proposed change to the case plan filed pursuant to division (E) of section 2151.416 [2151.41.6] of the Revised Code or a party or the guardian ad litem requests a review hearing pursuant to division (E) of that section, the court shall hold a review hearing in the same manner that it holds review hearings pursuant to division (C) of this section, except that if a review hearing is required by this division and if a hearing is to be held pursuant to division (C) of this section or section 2151.415 [2151.41.5] of the Revised Code, the hearing held pursuant to division (C) of this section or section 2151.415 [2151.41.5] of the Revised Code shall take the place of the review hearing required by this division.

(E) If a court determines pursuant to section 2151.419 [2151.41.9] of the Revised Code that a public children services agency or private child placing agency is not required to make reasonable efforts to prevent the removal of a child from the child's home, eliminate the continued removal of a child from the child's home, and return the child to the child's home, and the court does not return the child to the child's home pursuant to division (A)(3) of section 2151.419 [2151.41.9] of the revised code, the court shall hold a review hearing to approve the permanency plan for the child and, if appropriate, to make changes to the child's case plan and the child's placement or custody arrangement consistent with the permanency plan. The court may hold the hearing immediately following the determination under section 2151.419 [2151.41.9] of the Revised Code and shall hold it no later than thirty days after making that determination.

(F) The court shall give notice of the review hearings held pursuant to this section to every interested party, including, but not limited to, the appropriate agency employees who are responsible for the child's care and planning, the child's parents, any person who had guardianship or legal custody of the child prior to the custody order, the child's guardian ad litem, and the child. The court shall summon every interested party to appear at the review hearing and give them an opportunity to testify and to present other evidence with respect to the child's custody arrangement, including, but not limited to, the following: the case plan for the child; the permanency plan, if one exists; the actions taken by the child's custodian; the need for a change in the child's custodian or caseworker; and the need for any specific action to be taken with respect to the child. The court shall require any interested party to testify or present other evidence when necessary to a proper determination of the issues presented at the review hearing.

(G) After the review hearing, the court shall take the following actions based upon the evidence presented:

(1) If an administrative review has been conducted, determine whether the conclusions of the review are supported by a preponderance of the evidence and approve or modify the case plan based upon that evidence;

(2) If the hearing was held under division (C) or (E) of this section, approve a permanency plan for the child that specifies whether and, if applicable, when the child will be safely returned home or placed for adoption, for legal custody, or in a planned permanent living arrangement. A permanency plan approved after a hearing under division (E) of this section shall not include any provision requiring the child to be returned to the child's home.

(3) If the child is in temporary custody, do all of the following:

(a) Determine whether the child can and should be returned home with or without an order for protective supervision;

(b) If the child can and should be returned home with or without an order for protective supervision, terminate the order for temporary custody;

(c) If the child cannot or should not be returned home with an order for protective supervision, determine whether the agency currently with custody of the child should retain custody or whether another public children services agency, private child placing agency, or an individual should be given custody of the child.

The court shall comply with section 2151.42 of the Revised Code in taking any action under this division.

(4) If the child is in permanent custody, determine what actions are required by the custodial agency and of any other organizations or persons in order to facilitate an adoption of the child and make any appropriate orders with respect to the custody arrangement or conditions of the child, including, but not limited to, a transfer of permanent custody to another public children services agency or private child placing agency;

(5) Journalize the terms of the updated case plan for the child.

(H) The court may appoint a referee or a citizens review board to conduct the review hearings that the court is required by this section to conduct, subject to the review and approval by the court of any determinations made by the referee or citizens review board. If the court appoints a citizens review board to conduct the review hearings, the board shall consist of one member representing the general public and four members who are trained or experienced in the care or placement of children and have training or experience in the fields of medicine, psychology, social work, education, or any related field. Of the initial appointments to the board, two shall be for a term of one year, two shall be for a term of two years, and one shall be for a term of three years, with all the terms ending one year after the date on which the appointment was made. Thereafter, all terms of the board members shall be for three years and shall end on the same day of the same month of the year as did the term that they succeed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term.

(I) A copy of the court's determination following any review hearing held pursuant to this section shall be sent to the custodial agency, the guardian ad litem of the child who is the subject of the review hearing, and, if that child

is not the subject of a permanent commitment hearing, the parents of the child.

(J) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 [2151.41.6] of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:

(1) Determine the continued necessity for and the safety and appropriateness of the child's placement;

(2) Determine the extent of compliance with the child's case plan;

(3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;

(4) Project a likely date by which the child may be safely returned home or placed for adoption or legal custody.

(K)(1) Whenever the court is required to approve a permanency plan under this section or section 2151.415 [2151.41.5] of the Revised Code, the public children services agency or private child placing agency that filed the complaint in the case, has custody of the child, or will be given custody of the child shall develop a permanency plan for the child. The agency must file the plan with the court prior to the hearing under this section or section 2151.415 [2151.41.5] of the Revised Code.

(2) The permanency plan developed by the agency must specify whether and, if applicable, when the child will be safely returned home or placed for adoption or legal custody. If the agency determines that there is a compelling reason why returning the child home or placing the child for adoption or legal custody is not in the best interest of the child, the plan shall provide that the child will be placed in a planned permanent living arrangement. A permanency plan developed as a result of a determination made under division (A)(2) of section 2151.419 [2151.41.9] of the Revised Code may not include any provision requiring the child to be returned home.

HISTORY: 142 v S 89 (Eff 1-1-89); 146 v H 274 (Eff 8-8-96); 147 v H 484. Eff 3-18-99.

† So in enrolled bill, division (F).

Cross-References to Related Sections

Administrative reviews of case plan; annual report, RC § 2151.41.6.

Agency may file motion requesting permanent custody, RC § 2151.41.3.

Case plan, RC § 2151.41.2.

Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.

Consideration of whether return to parents is in best interest of child; certain orders granting legal custody intended to be permanent, RC § 2151.42.

Definitions, RC § 2151.01.1.

Determination as to whether agency made reasonable efforts to prevent removal or to return child to home, RC § 2151.41.9.

Duties of public children services agency as to children in need of public care or protective services, RC § 5153.16.

Motion requesting disposition order upon expiration of temporary custody order, RC § 2151.41.5.

Parent killing other parent, custody order defined, RC § 3109.41.

Rights of foster caregivers, relative, or prospective adoptive parent, RC § 2151.42.4.

Ohio Rules

Continuing jurisdiction, JuvR 35(A).

Process, JuvR 15-17.

Ohio Administrative Code

Department of job and family services, division of social services

Substitute care. OAC ch. 5101:2-42.

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Generally

Revised Code § 2151.41.7 is permissive, and it is discretionary with the court as to whether to review an order: In re Franklin, 88 Ohio App. 3d 277, 623 N.E.2d 720 (1993).

Revised Code § 2151.41.7 contemplates that one not a party to the original action may subsequently seek a review of an agency's plan. It provides a trial court with the broad authority and discretion necessary to reconsider and to modify a child's custodial arrangement when reviewing the appropriateness of any agency action if to do so would be in the best interest of the child: In re Moorehead, 75 Ohio App. 3d 711, 600 N.E.2d 778 (1991).

Adoption

Where permanent custody had already been granted to an agency, the juvenile court's grant of legal custody to parties who were ineligible to adopt thwarted the children's right to an expeditious adoption: In re Hitchcock, 120 Ohio App. 3d 88, 696 N.E.2d 1090 (1996).

Applicability

Where a mother sought to vacate a prior court order that had awarded legal custody of her child to custodians, Ohio R. Juv. P. 36 and RC § 2151.417 were deemed inapplicable to the proceeding, as those dealt with modification or termination of a child custody arrangement upon a showing of a change in circumstances and a finding that such change was in the child's best interest. As no modification or termination was contemplated by the mother's motion, but rather, an examination of the circumstances at the time of the original custody award was mandated, there could have been no changed circumstances. In re H.B., 2006 Ohio App. LEXIS 1969, 2006 Ohio 2124, (2006).

Children out of wedlock

Award of legal custody of a mother's son to his purported father was in the best interest of the son. While the father had a prior assault conviction and while his legal status as father was uncertain, the trial court considered these concerns but was also provided with evidence that the father lived with the son after he was born, that the father was listed as the father of the son in a California record, and that the father was undergoing counseling sessions with the son. In re Callier, 2002 Ohio App. LEXIS 7304, 2002 Ohio 2406, (2002), criticized by In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E.2d 914, 2006 Ohio App. LEXIS 173 (Ohio Ct. App., Butler County 2006).

Custody grant to relative

Award of legal custody of a mother's daughter to the daughter's maternal grandmother and of the mother's son to his father under RC § 2151.417 was not error even though neither custodian filed motions for legal custody because the mother was provided with

adequate notice of the possibility of legal custody, was afforded with opportunities to be heard, and actively participated in the proceedings. In re Callier, 2002 Ohio App. LEXIS 7304, 2002 Ohio 2406, (2002), criticized by In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E.2d 914, 2006 Ohio App. LEXIS 173 (Ohio Ct. App., Butler County 2006).

While a trial court did not err in granting legal custody of her children under RC § 2151.417 to relatives without a motion for legal custody first being filed, in that the mother received adequate notice of the intention to award legal custody and participated in the proceedings, the trial court erred in failing to make findings that granting legal custody to the relatives was in the children's best interests. In re C.M., 2005 Ohio App. LEXIS 5918, 2005 Ohio 6548, (2005).

Evidence supported the trial court's refusal to modify, pursuant to RC § 2151.417(B), an award of custody to the mother's sister pursuant to RC § 2151.353; granting custody to the father was not in the best interest of the child pursuant to RC § 2151.42(A), as the father was barely known by the child, had had two children taken from him, and could not show that the test establishing his paternity was a change in circumstances under RC § 2151.42(B). In re Osberry, 2003 Ohio App. LEXIS 4922, 2003 Ohio 5462, (2003).

Trial court did not err by not giving the father a parental unsuitability determination before awarding custody of the child to the maternal grandmother because the child was adjudicated neglected and it was in the child's best interest to be with the grandmother. In re C.F., 2003 Ohio App. LEXIS 2920, 2003 Ohio 3260, (2003), criticized by In re C.R., 2004 Ohio 4465, 2004 Ohio App. LEXIS 4053 (Ohio Ct. App., Cuyahoga County Aug. 26, 2004).

Delinquent or unruly child

Upon a determination during reviewing hearings held pursuant to RC § 2151.417 and Ohio R. Juv. P. 36(A) that a juvenile was not benefiting from a residential treatment program that he was originally committed to upon being declared a delinquent pursuant to RC § 2151.35(A)(1) and that he was acting out, a juvenile court's placement of the juvenile with the Department of Youth Services was not error pursuant to RC § 2151.354(5) and (6); the juvenile was not amenable to treatment or rehabilitation due to his conduct at the residential treatment facility. In re D.B., 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3, the juvenile court is required to hold periodic reviews pursuant to RC § 2151.41.7 and JuvR 36(A): OAG No. 99-041 (1999).

Hearing

In the absence of a showing of prejudice, absence of the minor from a hearing under RC § 2151.41.7 is not cause for reversal: Lovejoy v. Cuyahoga County Dep't of Human Services, 76 Ohio App. 3d 514, 602 N.E.2d 405 (1991).

Jurisdiction

Trial court had jurisdiction, pursuant to RC § 2151.353(E)(1) and RC § 2151.417(A), to modify or amend its prior disposition, including terminating the mother's parental rights, because, when the trial court returned the children to the mother, it specifically ordered that the agency maintain protective supervision. As such, the trial court had jurisdiction to proceed in the same case, under the same case number, when the agency asserted that the children needed to be removed from the mother's home based upon matters observed while the children remained under the agency's protective supervision. In re Peterson, 2006 Ohio App. LEXIS 1367, 2006 Ohio 1499, (2006).

Juvenile court magistrate exceeded his authority and lacked jurisdiction to order a county social services agency to commence adoption proceedings that were to culminate in the adoption of a child by designated individuals, as the probate court had exclusive jurisdiction to grant or deny an adoption, pursuant to RC §§ 2151.417(G)(4) and 3107.01(C). However, the magistrate's determination, which was adopted by the juvenile court, that the

child's placement should be with the particular individuals during the permanent custody, was based on sufficient evidence and was proper. In re A.W., 2005 Ohio App. LEXIS 3758, 2005 Ohio 4127, (2005).

Child's ongoing dependency action provided the trial court with subject matter jurisdiction as well as the authority to make ongoing decisions regarding his care, pursuant to RC § 2151.417(A) and (B) and RC § 2151.353(E)(1). In re Unger Children, 2005 Ohio App. LEXIS 2291, 2005 Ohio 2414, (2005).

Where a juvenile court grants temporary custody to a children services agency under RC § 2151.35.3, it has continuing jurisdiction until the child reaches eighteen: In re Doe Children, 93 Ohio App. 3d 134, 637 N.E.2d 977 (1994).

Revised Code § 2151.35.3 authorizes a juvenile court to retain jurisdiction over a neglected child. Thus prohibition will not issue to prevent a juvenile court from ordering, under the threat of a contempt finding, that any adoption proceedings be stayed until the court has relinquished jurisdiction: State ex rel. Cuyahoga County Dep't of Children & Family Servs. v. Ferreri, 96 Ohio App. 3d 660, 645 N.E.2d 837 (1994).

Notice

Revised Code § 2151.41.7 and JuvR 36(A) allow a court to review a child's placement or custody arrangement at any time. However, a party with current custody of the child is entitled to prior notice that a change of custody will be considered at a hearing ostensibly concerning visitation rights: In re Bowman, 101 Ohio App. 3d 599, 656 N.E.2d 355 (1995).

Protective supervision

Trial court did not err in failing to make a finding that a mother's children could not or should not be returned to her, under the protective supervision from the county children's services board, where the "review hearing" prerequisite under RC § 2151.417(G) referred to the standard post-dispositional review processes, and RC § 2151.417(G)(3)(c) clearly envisioned cases where the agency was still involved in the case; where the county board was no longer a participant in the case at the time of the custody hearing at issue, rendering the "can and should be returned home" finding was unnecessary. In re Mahley, 2004 Ohio App. LEXIS 1571, 2004 Ohio 1772, (2004).

Visitation

Where a wife was granted legal custody of her niece's child due to the niece's incarceration and the wife and her husband had a parental relationship with the child, upon the parties' divorce, there was sufficient evidence to support the juvenile court's determination that the husband should have visitation with the child, as it was within her best interests due to the paternal and loving relationship she had with him pursuant to RC § 2151.417(A); RC § 3109.051 was not applicable to the determination of visitation, as the issue did not arise out of a divorce or other applicable type of proceeding, but rather, out of a juvenile court action. In re Haywood, 2006 Ohio App. LEXIS 523, 2006 Ohio 576, (2006).

[§ 2151.41.8] § 2151.418 Amended and renumbered RC § 5103.03.18 in HB 332 (148 v.—), eff 1-1-2001.

[§ 2151.41.9] § 2151.419 **Determination as to whether agency made reasonable efforts to prevent removal or to return child to home.**

(A)(1) Except as provided in division (A)(2) of this section, at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314 [2151.31.4], 2151.33, or 2151.353 [2151.35.3] of the Revised Code at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency or private child placing

agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts. If the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal of the child, from determining that the agency made those reasonable efforts. In determining whether reasonable efforts were made, the child's health and safety shall be paramount.

(2) If any of the following apply, the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home:

(a) The parent from whom the child was removed has been convicted of or pleaded guilty to one of the following:

(i) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(ii) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(iii) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(iv) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(v) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (A)(2)(a)(i) or (iv) of this section.

(b) The parent from whom the child was removed has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food. If the parent has withheld medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the court or agency shall comply with the requirements of division (A)(1) of this section.

(c) The parent from whom the child was removed has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 [2151.41.2] of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring such treatment of the parent.

(d) The parent from whom the child was removed has abandoned the child.

(e) The parent from whom the child was removed has had parental rights involuntarily terminated pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code with respect to a sibling of the child.

(3) At any hearing in which the court determines whether to return a child to the child's home, the court may issue an order that returns the child in situations in which the conditions described in divisions (A)(2)(a) to (e) of this section are present.

(B)(1) A court that is required to make a determination as described in division (A)(1) or (2) of this section shall issue written findings of fact setting forth the reasons supporting its determination. If the court makes a written determination under division (A)(1) of this section, it shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home.

(2) If a court issues an order that returns the child to the child's home in situations in which division (A)(2)(a), (b), (c), (d), or (e) of this section applies, the court shall issue written findings of fact setting forth the reasons supporting its determination.

(C) If the court makes a determination pursuant to division (A)(2) of this section, the court shall conduct a review hearing pursuant to section 2151.417 [2151.41.7] of the Revised Code to approve a permanency plan with respect to the child, unless the court issues an order returning the child home pursuant to division (A)(3) of this section. The hearing to approve the permanency plan may be held immediately following the court's determination pursuant to division (A)(2) of this section and shall be held no later than thirty days following that determination.

HISTORY: 142 v S 89 (Eff 1-1-89); 147 v H 484 (Eff 3-18-99); 148 v H 176. Eff 10-29-99.

Cross-References to Related Sections

Adjudicatory hearing; shelter care determination; summons, RC § 2151.28.

Agency may file motion requesting permanent custody, RC § 2151.41.3.

Alcohol or other drug testing and treatment of parent or other caregiver, RC § 2151.35.14.

Apprehension, custody and detention of child, RC § 2151.31.

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Detention or shelter care hearing, RC § 2151.31.4.

Disposition of abused, neglected or dependent child, RC § 2151.35.3.

Duties of public children services agency as to children in need of public care or protective services, RC § 5153.16.

Temporary custody orders, RC § 2151.33.

Ohio Rules

Avoiding court action, JuvR 9.

Ohio Administrative Code

Department of job and family services, division of social services—

Supportive services: reasonable efforts. OAC 5101:2-39-05.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Generally

RC § 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to RC § 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time. The trial court satisfied its duty under RC § 2151.414(D) and properly exercised its discretion to consider the wishes of the children as expressed through their guardian ad litem. The statute does not impose the additional requirement that the trial court also consider whether the children want to testify or whether testifying would be detrimental to them: In re C.F., 113 Ohio St. 3d 73, 862 N.E.2d 816, 2007 Ohio 1104, (2007).

Prior adjudication of permanent custody does not constitute a de facto termination of parental rights as to children born later. The trial court erred in finding the child to be dependent where the agency failed to provide current, affirmative evidence of the parents' unfitness and inability to care for the child: In re Nicholas P., 169 Ohio App. 3d 570, 863 N.E.2d 1102, 2006 Ohio 6213, (2006).

Since the children were in the temporary custody of the agency for more than 12 months out of a consecutive 22-month period under RC § 2151.414(B)(1)(d), the trial court was required only to determine the best interests of the children by clear and convincing evidence. Trial court's finding that a five-year-old was too young to express her wishes was not supported by clear and convincing evidence. The agency made sufficient efforts to accommodate a parent's inability to speak English by providing him with an interpreter and a Spanish-speaking attorney: In re Lopez, 166 Ohio App. 3d 688, 852 N.E.2d 1266, 2006 Ohio 2251, (2006).

Trial court erred in finding that a family services agency was not required to provide services or make reasonable efforts to prevent the continued removal of appellant's son from his home because there was evidence that appellants had continued in and arguably benefited from case plan services after their two daughters were removed from their custody. The record revealed that, since the caseworkers knew that appellants had lost custody of two other children in the past, it presumed that the parents were unfit, took custody of the child, never considered reunification as a possible goal, and did not pursue discovery of information regarding the completion of services or whether the parents were now capable of taking care of the son. The caseworkers relied solely on the fact that appellants had lost custody of two other children. In re Nicholas P., 169 Ohio App. 3d 570, 863 N.E.2d 1102, 2006 Ohio 6213, (2006).

Because the agency sought permanent custody of one of the children under RC § 2151.413, the trial court was not required to comply with RC § 2151.419(B)(1) by entering a specific listing of the facts leading to its decision. *In re Miller*, 2005 Ohio App. LEXIS 875, 2005 Ohio 856, (2005).

Where a mother contracted a contagious disease, a county agency properly temporarily terminated her visitation with the children, pending an indication that she had taken the necessary medication in order to not expose the children to the disease. Although the agency erred in terminating phone contact between the mother and her children pending her submission to a drug screening, as that was a substantive change that required modification of the case plan, pursuant to RC § 2151.412(E)(2), such did not require reversal of the trial court's grant of permanent custody to the agency pursuant to RC § 2151.414(C), as reasonable efforts at reunification had been made under RC § 2151.419(A)(1) and evidence supported the trial court's decision. *In re Townsend*, 2005 Ohio App. LEXIS 2355, 2005 Ohio 2473, (2005).

Trial court properly found that the child services board was not required to attempt to reunite a minor child with her mother and father because of the court's finding, pursuant to RC § 2151.414(E)(11), that parental rights for a sibling had previously been terminated due to the inability of the parents to have a stable home for the child; specifically, the mother, who was incarcerated, had parental rights terminated for five different children on two prior occasions and the father for two children on one occasion. *In re Richardson*, 2004 Ohio App. LEXIS 1876, 2004 Ohio 2170, (2004).

Because the materials before the trial court, when it ruled on the mother's objections to the magistrate's decision finding that the Children Services Board was not required to make reasonable efforts to eliminate the continued removal of the four children from the mother's home, did not specify the law under which the mother lost her parental rights with respect to the children's siblings, the validity of the trial court's proceedings was presumed. *In re T. W.*, — Ohio App. 3d —, — N.E. 2d —, 2004 Ohio App. LEXIS 3928, 2004 Ohio 4332, (Aug. 18, 2004).

Ordinarily, at the time of a RC § 2151.413 filing, a child services agency will either have already complied with the requirement that it make a reasonable effort to return the child to its natural parent or parents, or the agency will have properly determined that any such effort would be futile, and the trial court will have made its findings accordingly; thus, a child services agency is not required to prove compliance with RC § 2151.419(A) when proceeding with a motion for permanent custody pursuant to RC § 2151.413. *In re Christian*, 2003 Ohio App. LEXIS 6662, 2003 Ohio 7333, (2003).

Revised Code § 2151.41.9 requires a determination of whether the agency made reasonable efforts to prevent removal or to make it possible for the child to return home: *In re Brown*, 98 Ohio App. 3d 337, 648 N.E.2d 576 (1994).

A court is justified in awarding temporary custody to the children services board where the father has already been found to have abused the children and the mother, who is contesting the award, is planning a sham separation in order to gain custody and flee the jurisdiction: *In re Pieper*, 85 Ohio App. 3d 318, 619 N.E.2d 1059 (1993).

A children services board seeking permanent custody under RC § 2151.41.3 must satisfy the reasonable efforts requirement of RC § 2151.41.9 with respect to a natural parent whenever: (1) the board has not previously satisfied the reasonable efforts requirement with respect to that parent; and (2) the parent has not waived or abandoned his rights as a natural parent: *In re Stevens*, 1993 Ohio App. LEXIS 3526 (2nd Dist. 1993).

Abandonment of child

Since a trial court made a finding that a mother's child had been abandoned under RC § 2151.414(B)(1)(b), which the mother did not dispute, the trial court was not required to make a finding that the agency made reasonable case planning efforts under RC § 2151.419(A)(1). *In re Stafford*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 826, 2007 Ohio 928, (Mar. 5, 2007).

The children were presumptively abandoned where the mother did not visit them for more than ninety days while they were in foster care. Thus the agency was not required to prove that it

made sufficient reunification efforts: *In re Starkey*, 150 Ohio App. 3d 612, 782 N.E.2d 665, 2002 Ohio 6892, (2002).

Applicability

Court rejected a mother's contention that a children services agency failed to make reasonable efforts to implement the assigned case plan. The "reasonable efforts" requirement in RC § 2151.419 is not applicable to permanent custody cases involving RC §§ 2151.413 and 2151.414. *In re V.M.*, 2006 Ohio App. LEXIS 4370, 2006 Ohio 4461, (2006), affirmed by 113 Ohio St. 3d 161, 2007 Ohio 1254, 863 N.E.2d 167, 2007 Ohio LEXIS 788 (2007).

Trial court did not err in finding that the agency was not required to make reasonable efforts to prevent removal of the child from the home, pursuant to RC § 2151.419(A)(2)(e), because the mother's parental rights to two other children had previously been terminated. The mother was given three opportunities to complete parenting classes, but never showed up or canceled them, she did not complete the previous case plan; and there remained an on-going mental health concern and except for some household improvements, there were continued concerns over the mother's parenting skills. *In re Craig*, 2006 Ohio App. LEXIS 2908, 2006 Ohio 3026, (2006), writ of certiorari denied by 127 S. Ct. 1816, 167 L. Ed. 2d 327, 2007 U.S. LEXIS 3103, 75 U.S.L.W. 3497 (U.S. 2007).

Reasonable efforts requirement in RC § 2151.419, regarding reunification, was not applicable because the agency requested an award of permanent custody of the children under RC § 2151.413 and the trial court held a hearing under RC § 2151.414 to address the motions. Therefore, the trial court could award permanent custody without a finding that the agency made reasonable efforts to reunify the children with their mother. *In re J.S.*, 2006 Ohio App. LEXIS 615, 2006 Ohio 702, (2006).

Where a mother and father were convicted of sexual battery of two of their children, in violation of RC § 2907.03(A)(5), a trial court was mandated to make a determination that a social service agency was not required to make reasonable efforts to reunite the children with their parents, pursuant to RC § 2151.419(A)(2)(a)(iv); accordingly, there was no error in the trial court's decision to grant legal custody to the agency rather than to reunite the children with their parents. *In re Hilyard*, 2006 Ohio App. LEXIS 1809, 2006 Ohio 1976, (2006).

Requirement in RC § 2151.419(A)(1) that a children's services agency make "reasonable efforts" to reunify children removed from their home with their families applied to hearings held pursuant to RC §§ 2151.28, 2151.31(E), 2151.314, 2151.33, and 2151.353, but it did not apply when permanent custody was sought pursuant to RC § 2151.413 or when such a motion was heard pursuant to RC § 2151.414, so it did not apply to an agency's motion for permanent custody of a father's children. *In re R.A.M.*, 2006 Ohio App. LEXIS 3149, 2006 Ohio 3242, (2006).

Since a permanent custody hearing was held pursuant to a motion filed under RC § 2151.413, the statute requiring that a children services agency make reasonable efforts at reunification, RC § 2151.419(A), did not apply, and thus, the trial court was not required to find that the agency made reasonable efforts at reunification before awarding the agency permanent custody of the father's children. *In re Bradley*, 2006 Ohio App. LEXIS 2276, 2006 Ohio 2367, (2006).

Permanent custody sought subsequent to adjudication in a separate motion made under RC § 2151.413 is not subject to a hearing held under any of the statutes referred to in RC § 2151.419(A). Thus, RC § 2151.419(A) does not apply to permanent custody sought under RC § 2151.413 after adjudication and initial disposition. *In re Samples*, 2006 Ohio App. LEXIS 963, 2006 Ohio 1056, (2006).

Father's reliance on RC § 2151.419(A)(1) in a parental rights termination proceeding involving his two children was misplaced, as it did not apply to the father's situation where the motion for permanent custody of his children was filed by an agency under RC § 2151.413. Accordingly, a reasonable efforts determination was not required and further, as the father was incarcerated, any such efforts would have been futile for purposes of reunification. *In re Z.Y.*, 2006 Ohio App. LEXIS 260, 2006 Ohio 300, (2006).

Mother's claim on appeal that a trial court erred in terminating her parental rights over her minor child without first making a

finding that the agency had used reasonable and diligent efforts to reunify the mother with her child lacked merit, as there was no such finding required under RC § 2151.419, as such did not apply to permanent custody hearings under RC § 2151.414. The trial court followed the statutory requirements of RC § 2151.414 prior to granting the permanent custody motion under RC § 2151.413, and there was no duty on the agency to prove that it exerted reasonable and diligent efforts towards reunification under RC § 2151.414. In re C.W., 2005 Ohio App. LEXIS 6093, 2005 Ohio 6739, (2005).

Clear and convincing evidence supported the finding that it was in the child's best interest to permanently commit him to the custody of the agency. Because the child had been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period prior to the agency's permanent custody motion, RC § 2151.414(E)(1) did not serve as a basis for the agency's effort to seek permanent custody as the initial disposition and thus, the agency was not under a duty to pursue the mother's reunification with her son after it filed its motion for permanent custody as RC § 2151.419(A)(1) did not apply. In re S.S., 2005 Ohio App. LEXIS 3887, 2005 Ohio 4282, (2005).

Because a children services' board filed its motion for permanent custody under RC § 2151.413, the "reasonable efforts" requirement of RC § 2151.419(A) was not applicable; therefore, the trial court had authority to grant permanent custody to the board under RC § 2151.414(B)(1) when it found, *inter alia*, that the mother had abandoned the child during the mother's incarceration and that she had failed to secure permanent housing. In re S.P., 2005 Ohio App. LEXIS 1104, 2005 Ohio 1079, (2005).

While the agency was not required to reunite the child and her parents, such efforts were made prior to an agency seeking permanent custody of the child and the termination to the parent's rights; a prior termination of the parents' parental rights exempted the agency from the reasonable effort requirement of RC § 2151.419. In re Jackson, 2004 Ohio App. LEXIS 497, 2004 Ohio 542, (2004).

On its face, RC § 2151.419(A) is not applicable to motions to modify a disposition to permanent custody pursuant to RC § 2151.413. In re Christian, 2003 Ohio App. LEXIS 6662, 2003 Ohio 7333, (2003).

Bypass order

Children's services agency was granted a "by-pass" order, pursuant to RC § 2151.419(A)(2)(e), due to the fact that the parents had their parental rights involuntarily terminated with respect to the six siblings of the child, which excused the agency from its duty to make "reasonable efforts" to reunite the child with the parents and allowed the agency to immediately proceed with a goal of termination of parental rights and permanent adoption without providing services to the parents. In re Melchizedek M., 2006 Ohio App. LEXIS 2961, 2006 Ohio 3062, (2006).

Dependency finding

There was no error in finding that the mother's children were dependent, pursuant to RC § 2151.04(C), because, although the children were in the care of their father's girlfriend, (the father had to leave the state to face criminal charges) the condition of the children required removal from the home. The agency did exactly what RC § 2151.419 demanded: once matters stabilized, it returned the boys to their home as soon as possible and that home was with the girlfriend since the father as the legal custodian had initiated the arrangement with her. In re Elliott, 2006 Ohio App. LEXIS 669, 2006 Ohio 738, (2006).

Where the parental rights of the mother and the father had been terminated as to two older siblings of the infant child at issue, and the evidence showed that the problems leading to that termination still existed, there was sufficient evidence to support a dependency finding as to the infant. In re D.B., 2003 Ohio App. LEXIS 4028, 2003 Ohio 4526, (2003).

Efforts found reasonable

Juvenile court properly found that a child services agency put forth good faith and diligent efforts to reunify a family where the child was removed from the home at the mother's request because she feared that the child might hurt himself or someone

else, but the agency did not provide the child with anger management classes and did not address his behavior. The reunification plan required the parents to complete a psychological evaluation and to follow any recommendations for therapy, to attend parenting education classes, and to be assessed for case management services and the record supported a finding that notwithstanding the agency's diligent efforts, the parents were unable to resolve the issues and to provide an adequate home for the child. In re Adkins, 2006 Ohio App. LEXIS 381, 2006 Ohio 431, (2006), reversed by 113 Ohio St. 3d 88, 2007 Ohio 1105, 862 N.E.2d 829, 2007 Ohio LEXIS 674 (2007).

Trial court properly determined that a family services department used reasonable efforts to assist a mother in completing her case plan and used reasonable efforts to prevent the removal of the mother's child. The record was replete with evidence to establish that, although the mother worked on her case plan, she made no progress toward alleviating the core concerns despite the department's reasonable efforts to reunify the family. In re Mastache, 2006 Ohio App. LEXIS 6853, 2006 Ohio 6937, (2006).

Trial court did not err in finding that the agency put forth a good faith effort to rehabilitate the family, as required by RC § 2151.419(A)(1) and RC § 2151.414(E)(1), because trial testimony illustrated the efforts and services provided by the agency in an attempt to reunify the family. The father showed a lack of effort and commitment to the reunification process; due to his incarcerations, his failure to attend court hearings, and failure to correspond in any manner with the social worker, services were not successfully completed. In re Peterson, 2006 Ohio App. LEXIS 1370, 2006 Ohio 1500, (2006).

There was no error in the dependency finding, pursuant to RC § 2151.04(C), because the record was replete with attempts by the agency to find the mother for the purpose of eventually reuniting her with her sons, pursuant to RC § 2151.419(A)(1). The agency tried to contact the mother and tried to obtain interstate compact home studies of the various purported residences the mother had, but was unsuccessful. In re Elliott, 2006 Ohio App. LEXIS 669, 2006 Ohio 738, (2006).

While a trial court erroneously relied on a mother's failure to successfully complete a previous case plan to support its finding that, pursuant to RC § 2151.419(A)(1), the agency had made reasonable efforts toward reunification of the mother with her children since prior actions involving prior case plans are not admissible under Ohio R. Evid. 608(B), this error was harmless because the record supported the conclusion that reasonable case planning efforts would have been futile, in that the children had been out of the custody of their parents for four years, the mother suffered from chronic substance abuse and mental illness, and at the time of the hearing, the mother was incarcerated for failing to appear at a criminal trial. In re Chestnut, 2006 Ohio App. LEXIS 611, 2006 Ohio 684, (2006).

Although a county children service agency was not obligated to make reasonable efforts pursuant to RC § 2151.419(A)(2)(e) with respect to a mother whose child was the subject of a permanent custody proceeding, as four of the mother's other children had been removed from her custody and her parental rights had been involuntarily terminated, there was evidence that such efforts were made to assist the mother in dealing with her substance abuse and related issues. In re I. J., 2006 Ohio App. LEXIS 6257, 2006 Ohio 6263, (2006).

Family services agency made reasonable efforts to reunify a mother and her two children by devising a comprehensive reunification plan designed to assist the mother in remedying the problems which caused the children's removal from the home, including housing, counseling, and assistance with parenting and life skills. The agency worked with the family for an extensive period of time with no significant improvements. In re Daulton, 2006 Ohio App. LEXIS 5324, 2006 Ohio 5352, (2006).

Court rejected a father's contention that a family services agency did not use reasonable efforts to assist him in completing his case plan because the evidence showed that the father was provided with a case plan that required him to enroll in a long term batterer's treatment program, to undergo extensive outpatient treatment for substance abuse problems, to submit to weekly urine screens, to complete parenting classes, and to obtain employment. The father, however, failed to do comply with the

case plan. In re Davidson-Rush, 2006 Ohio App. LEXIS 4781, 2006 Ohio 4873, (2006).

Placing the children's health and safety as its paramount concern, the trial court had before it ample evidence that the agency made reasonable efforts to prevent the continued removal of the children from the mother, pursuant to RC § 2151.419(A). The mother had a history with the agency, she completely failed to comply with her new case plan, and the children had already been under protective supervision due to a recent, prior complaint filed by the agency. In re T. A., 2006 Ohio App. LEXIS 4397, 2006 Ohio 4468, (2006).

Prior to terminating the father's parental rights, under RC § 2151.414, the trial court explicitly determined that the agency used reasonable efforts to reunify the family and the record supported that finding. The agency provided the parents with case planning, referrals, and transportation and, although the agency did not specifically direct the father to find a job, the father was already under a domestic relations court order to join a seek work program, which he chose not to join until faced with permanently losing his children. In re Link, 2006 Ohio App. LEXIS 476, 2006 Ohio 529, (2006).

County social service agency made reasonable efforts to reunify parents with their child for purposes of a permanent custody determination, pursuant to RC § 2151.419(A)(1), where it provided the father with visitation, parenting instruction, financial assistance, and case management; accordingly, the court complied with RC § 2151.353(H) and removal of the child from the parents' home was proper. In re West, 2005 Ohio App. LEXIS 2779, 2005 Ohio 2978, (2005).

When a father's three children had severe behavioral and emotional problems, with one child requiring long term therapeutic care and the father's interaction with the other two being insufficient to deal with their problems, yet the father denied that the children had any problems, there was competent, credible evidence showing the agency awarded permanent custody of the children met its burden to make reasonable efforts to reunify the children and the father, under RC § 2151.419(A)(1). In re Jesus, 2005 Ohio App. LEXIS 2153, 2005 Ohio 2267, (2005).

Trial court did not err in finding that the agency made reasonable efforts to reunite the mother and her children, pursuant to RC § 2151.419 prior to the permanent custody determination, wherein the mother's parental rights were terminated pursuant to RC § 2151.414. It was the agency that reunited the mother with her children after she had abandoned them for six years and it would have been difficult to assist the mother in finding housing because, during the last year, she had lived in four different places in different counties. In re Jesus, 2005 Ohio App. LEXIS 2152, 2005 Ohio 2266, (2005).

In the permanent custody case, the Licking County Department of Job and Family Services established that it made reasonable efforts to reunify the children with the stepfather as required under RC § 2151.419. The Department devised a case plan that addressed sex offender counseling, budgeting, parenting and life skills, and assistance to meet the special needs of the children, and the Department had worked with the family for an extensive period of time with no significant improvement. In re Caine, 2004 Ohio App. LEXIS 2035, 2004 Ohio 2270, (2004).

Trial court did not err when it made a factual finding in support of its "reasonable efforts" finding under RC § 2151.419(A)(1) that the mother had not cleaned her home to a degree required for in-home visits by the child; caseworker could not see the floor and the mother barred further inspections by the agency. In re Boring-Myers, 2004 Ohio App. LEXIS 951, 2004 Ohio 1065, (2004).

Where the child had been removed from the parents' home, the agency made reasonable and diligent efforts to reunify the parents and child as required under RC § 2151.419(A)(1); the plan was specifically adjusted to help the mother with the mother's cognitive disabilities, and given that the child was removed in part because of the unsanitary conditions in the home, it was not unreasonable to require the parents to maintain a safe and stable living environment. In re Thomas, 2003 Ohio App. LEXIS 5230, 2003 Ohio 5885, (2003).

Trial court reasonably could have concluded that the agency made sufficient reasonable efforts to prevent the child's removal pursuant to RC § 2151.419 where evidence demonstrated that

the agency provided substantial services to the mother, worked with her for more than two years, and actually reunited her with her daughter. In re Lewis, 2003 Ohio App. LEXIS 4763, 2003 Ohio 5262, (2003).

County agency made reasonable efforts to prevent a minor child's removal from an unstable and abusive home where the evidence showed that temporary intervention was required before counseling would have been effective. In re Day, 2003 Ohio App. LEXIS 3253, 2003 Ohio 3544, (2003).

Trial court did not err in finding that the county welfare agency made reasonable efforts to prevent the continued removal of the children from the home of the parents, especially since the parents did not advance any error in that regard. In re Myers, 2003 Ohio App. LEXIS 2492, 2003 Ohio 2776, (2003).

Where a children's services board had been granted permanent custody of a child's half sibling and the child's mother had no contact with her for more than 90 days, the trial court properly found that the board made more than reasonable efforts to prevent the need for the ongoing removal of the child from her parent's care and was not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home. In re Ebenschweiger, 2003 Ohio App. LEXIS 5325, 2003 Ohio 5990, (2003).

Expert assistance

Where a county children services board requested that a mother be evaluated by a forensic psychologist to determine whether she was a suitable parent and that psychologist's testimony was a critical part of the trial court's ultimate conclusion, the trial court abused its discretion when it denied the mother's motion to be evaluated by an independent expert at the state's expense. In re Elliott, 2004 Ohio App. LEXIS 344, 2004 Ohio 388, (2004).

Findings required

In a parental rights termination proceeding pursuant to RC § 2151.414, the trial court was not required to make a finding that the county social service agency made reasonable efforts to reunite the child with the mother pursuant to RC § 2151.419(A)(2), as two of her other minor children had been involuntarily removed from her care previously. The trial court made the requisite findings regarding both parents' lack of success in completing their case plans and the reasonable efforts made by the agency pursuant to RC § 2151.412, which was based on the parents' inability or unwillingness to provide an adequate permanent home and stable living conditions to raise the child, and the fact that they were dependents of society due to their situations, including the mother's mental illnesses and her refusal to take her medication. In re Shifflet, 2006 Ohio App. LEXIS 3521, 2006 Ohio 3576, (2006).

Granting an agency's motion for permanent custody is error absent a further finding in full conformity with RC § 2151.419(B) that reasonable efforts at reunification were made or would have been futile. In re Elliott, 2004 Ohio App. LEXIS 344, 2004 Ohio 388, (2004).

Ineffective assistance of counsel

Trial court's findings regarding termination of parental rights and custody order at least minimally complied with RC § 2151.419, and where the record contained the transcript of the dependency hearing before the magistrate, the mother suffered no prejudice from her counsel's failure to procure a transcript of the proceeding. In re Teasley, 2003 Ohio App. LEXIS 4580, 2003 Ohio 5079, (2003).

Stipulation to disposition

Trial court's failure to include a reasonable efforts finding in its decision as to a mother's daughters' disposition in a dependency proceeding was harmless error, as she stipulated to the girls' disposition, which was an implicit agreement by her to all aspects of that disposition; however, it was not harmless error to fail to make a reasonable efforts finding with respect to the mother's son, pursuant to RC §§ 2151.419(A)(1), (B)(1), and 2151.353(H), as no such stipulation was made and while she did not object to the recommended disposition, she never expressly agreed to it. In re Ohm, 2005 Ohio App. LEXIS 3245, 2005 Ohio 3500, (2005).

Termination of parental rights

Because the mother's parental rights were involuntarily terminated with respect to two other children and because of the father's complete lack of involvement in the child's life, RC § 2151.419(A)(2)(d) and (e) relieved the agency of a duty to use reasonable efforts. In re Harness, 2006 Ohio App. LEXIS 6311, 2006 Ohio 6359, (2006).

Although the county child welfare agency was statutorily required to develop case plans for children in their custody and the case plans should have included objectives for each of the parents, the trial court did not err in awarding permanent custody to the county child welfare agency without attempting to reunify the child with the mother, as its attempt to reunify the minor child with the mother would have been futile given the mother's little or no contact with the child for more than eight years, especially since testimony indicated the attempted reunification would have been traumatic for the minor child. In re Leitwein, 2004 Ohio App. LEXIS 1131, 2004 Ohio 1296, (2004).

Trial court properly granted permanent custody of two children to children's services agency as the mother was serving almost 15 years in prison with little chance for clemency, the father was deceased, and none of the mother's relatives was willing to assume permanent custody. In re McDonald, 2003 Ohio App. LEXIS 4325, 2003 Ohio 4808, (2003).

§ 2151.42 Consideration of whether return to parents is in best interest of child; certain orders granting legal custody intended to be permanent.

(A) At any hearing in which a court is asked to modify or terminate an order of disposition issued under section 2151.353 [2151.35.3], 2151.415 [2151.41.5], or 2151.417 [2151.41.7] of the Revised Code, the court, in determining whether to return the child to the child's parents, shall consider whether it is in the best interest of the child.

(B) An order of disposition issued under division (A)(3) of section 2151.353 [2151.35.3], division (A)(3) of section 2151.415 [2151.41.5], or section 2151.417 [2151.41.7] of the Revised Code granting legal custody of a child to a person is intended to be permanent in nature. A court shall not modify or terminate an order granting legal custody of a child unless it finds, based on facts that have arisen since the order was issued or that were unknown to the court at that time, that a change has occurred in the circumstances of the child or the person who was granted legal custody, and that modification or termination of the order is necessary to serve the best interest of the child.

HISTORY: 147 v H 484 (Eff 3-18-99); 148 v H 176. Eff 10-29-99.

Not analogous to former RC § 2151.42 (GC § 1639-46; 117 v 520; 119 v 731; 121 v 537; Bureau of Code Revision, 10-1-53; 130 v 625), repealed 134 v H 511, § 2, eff 1-1-74.

Cross-References to Related Sections

Court review of child's placement or custody arrangement, RC § 2151.41.7.

Disposition of abused, neglected or dependent child, RC § 2151.35.3.

Motion requesting disposition order upon expiration of temporary custody order; extension, RC § 2151.41.5.

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Generally

RC § 3109.04(E)(1)(a) precludes a trial court from modifying a prior decree allocating parental rights and responsibilities unless it finds, based on facts that have arisen since the time of the decree or were unknown to it at that time, not only that a change has occurred in circumstances of the child, the child's residential parent, or either parent subject to a shared-parenting decree, but also that the modification of the prior custody decree is necessary to serve the best interest of the child. The provisions of RC § 3109.04(E)(1)(a) promote stability in the development of children and are not unconstitutional as applied where a noncustodial parent has not evidenced that a change has occurred in the circumstances of the child. In re James, 113 Ohio St. 3d 420, 866 N.E.2d 467, 2007 Ohio 2335, (2007).

Award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities. Juvenile court adjudication of abuse, neglect, or dependency is a determination about the care and condition of a child and implicitly involves a determination of the unsuitability of the child's custodial and/or noncustodial parents. When a juvenile court adjudicates a child to be abused, neglected, or dependent, it has no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding legal custody to a nonparent. In re C.R., 108 Ohio St. 3d 369, 843 N.E.2d 1188, 2006 Ohio 1191, (2006).

Best interest of child

Juvenile court, in ruling on whether the father or the uncle should get legal custody of the minor children, erred in finding that a parental unsuitability standard should be used to make that decision; since the underlying dependency proceeding was initiated by the county children's services agency, statutory law dictated that a "best interest of the child" standard be used. In re Trowbridge, 2004 Ohio App. LEXIS 2335, 2004 Ohio 2645, (2004).

Modification of order

Evidence supported the trial court's refusal to modify, pursuant to RC § 2151.417(B), an award of custody to the mother's sister pursuant to RC § 2151.353; granting custody to the father was not in the best interest of the child pursuant to RC § 2151.42(A), as the father was barely known by the child, had had two children taken from him, and could not show that the test establishing his paternity was a change in circumstances under RC § 2151.42(B). In re Osberry, 2003 Ohio App. LEXIS 4922, 2003 Ohio 5462, (2003).

Trial court did not abuse its discretion in reaching its decision to modify custody as the evidence supported the finding that the mother overmedicated the son, to reduce bad behavior, and did not follow through with visitation as ordered during the summer and during one holiday; the trial court was justified in finding that the mother made it difficult for the children by her negative attitude toward the father and the paternal grandmother, resulting in harm to the children. In re Dawkins, 2003 Ohio App. LEXIS 3991, 2003 Ohio 4503, (Aug. 26, 2003).

Parental unsuitability

When, after children were removed from the custody of their mother, who had been their residential parent, and placed with their fathers, an agency retained temporary legal custody of the children, a trial court was not required to find that the fathers were unfit to reach this result because a determination of unfitness applied in a permanent custody proceeding, under RC § 2151.414, and, in the proceedings in the trial court, the fathers retained their residual parental rights, including the right to seek full custody of the children, under RC § 2151.42, so the trial court's judgment was properly based on the best interests of the children. In re B. C., 2006 Ohio App. LEXIS 3197, 2006 Ohio 3286, (2006).

Trial court did not err by not giving the father a parental unsuitability determination before awarding custody of the child to the maternal grandmother because the child was adjudicated neglected and it was in the child's best interest to be with the grandmother. In re C.F., 2003 Ohio App. LEXIS 2920, 2003 Ohio 3260, (2003), criticized by In re C.R., 2004 Ohio 4465, 2004 Ohio

App. LEXIS 4053 (Ohio Ct. App., Cuyahoga County Aug. 26, 2004).

Where a child's best interests under R.C. § 2151.42 were served by granting legal custody under R.C. § 2151.011(B)(19) to the child's relatives due to the mother's mental and/or physical condition pursuant to R.C. § 2151.04(B), the mother's unsuitability was implicit and a separate finding was not required; reasonable efforts to promote a reunification plan were made. In re Reeher, 2003 Ohio App. LEXIS 3152, 2003 Ohio 3470, (2003).

Protective supervision

Where the parties stipulated the children were dependent and awarded the department of children and families protective supervision prior to the father's motion for custody of the minor child, the trial court applied the proper legal standard under RC § 3109.04 when it granted the father's motion. In re Rosier-Lemmon/Rosier Children, 2004 Ohio App. LEXIS 1149, 2004 Ohio 1290, (2004).

[§ 2151.42.1] § 2151.421 Duty to report child abuse or neglect; investigation and followup procedures.

(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 [5120.17.3] of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 [5120.17.3] of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; corner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; employee of the department of mental retardation and developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 [5123.17.1] of the

Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient relationship described in division (A)(2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The abuse or neglect does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(4)(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in section 5120.173 [5120.17.3] of the Revised Code, the person making the report shall make it

to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 [5120.17.3] of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

(i) The penitent, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 [5120.17.3] of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173

[5120.17.3] of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 [2151.42.5] of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 [2151.42.2] of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code relative to that center.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician,

immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 [2151.42.2] of the Revised Code.

(F)(1) Except as provided in section 2151.422 [2151.42.2] of the Revised Code or in an interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case† the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.

(H)(1) Except as provided in divisions (H)(4) and (M) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 [5120.17.3] of the Revised

Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 [2151.42.2] of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society;

(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 [2151.42.6] of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and

standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 [2151.42.6] of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 [2151.42.2] of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation

with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M)(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered non-public school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 [3301.07.1] or Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 [2151.42.2] of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

HISTORY: 130 v 625 (Eff 10-10-63); 131 v 632 (Eff 11-11-65); 133 v S 49 (Eff 8-13-69); 133 v H 338 (Eff 11-25-69); 136 v H 85 (Eff 11-28-75); 137 v H 219 (Eff 11-1-77); 140 v S 321 (Eff 4-9-85); 141 v H 349 (Eff 3-6-86); 141 v H 528 (Eff 7-9-86); 141 v H 529 (Eff 3-11-87); 143 v H 257 (Eff 8-3-89); 143 v H 44 (Eff 7-24-90); 143 v S 3 (Eff 4-11-91); 144 v H 154 (Eff 7-31-92); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 146 v S 223 (Eff 3-18-97); 147 v H 215 (6-30-97); 147 v H 408 (Eff 10-1-97); 147 v S 212 (Eff 9-30-98); 147 v H 606 (Eff 3-9-99); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 149 v H 510 (Eff 3-31-2003); 149 v H 374 (Eff 4-7-2003); 149 v S 221. Eff 4-9-2003; 150 v S 178, § 1, eff. 1-30-04; 150 v H 106, § 1, eff. 9-16-04;

150 v S 185, § 1, eff. 4-11-05; 150 v S 66, § 1, eff. 5-6-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 238, § 1, eff. 9-21-06.

† As enrolled, 151 v S 238. Was "to" inadvertently deleted?

The provisions of § 3 of 151 v S 238 read as follows:

SECTION 3. The Department of Job and Family Services shall develop, implement, oversee, and evaluate, on a pilot basis, an "Alternative Response" approach to reports of child abuse, neglect, and dependency. The pilot program shall be implemented in not more than ten counties that are selected by the Department and that agree to participate in the pilot program.

The pilot program shall last eighteen months, not including time expended in preparation for the implementation of the pilot program and any post-pilot program evaluation activity.

The Department shall assure that the Alternative Response pilot is independently evaluated with respect to outcomes for children and families, costs, worker satisfaction, and any other criteria the Department determines will be useful in the consideration of statewide implementation of an Alternative Response approach to child protection. The measure associated with the eighteen-month pilot program shall, for the purposes of the evaluation, be compared with those same measures in the pilot counties during the eighteen-month period immediately preceding the beginning of the pilot-program period.

The Department may adopt rules in accordance with section 111.15 of the Revised Code, as if they were internal management rules, as necessary to carry out the purposes of this section.

The provisions of § 6 of 151 v S 17 read as follows:

SECTION 6. Section 2151.421 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. S.B. 66 and Sub. S.B. 185 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 4 of S.B. 178 (150 v —) read as follows:

Section 4. Section 2151.421 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 374, Sub. H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. Section 5126.28 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 538 and Sub. S.B. 171 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

Effect of Amendments

151 v S 238, effective September 21, 2006, added the language beginning "employee of a facility" to the end of (A)(1)(b) and made related changes; and rewrote the second paragraph of (F)(1).

151 v S 17, effective August 3, 2006, rewrote the section.

150 v S 66, effective May 6, 2005, rewrote (D); in (F)(1), inserted "or in an interagency . . . the particular report"; added the last sentence to (H)(4); in (H)(5), inserted "including a report . . . of the Revised Code"; in (J), added (1)(i) and (4); and, in (K), inserted "or of the children's advocacy center . . . of the Revised Code" in the introductory language of (1), and "or center" in (1)(a) through (c).

150 v S 185, effective April 11, 2005, in (F)(1), redesignated the former final three sentences as the second paragraph, and added the last two sentences to the end of the first paragraph.

150 v H 106, effective September 16, 2004, added (M)(1) and redesignated former (M) and (N) as (M)(2) and (3), and corrected internal references.

S.B. 178, Acts 2004, effective January 30, 2004, added "superintendent, board member . . . developmental disabilities" to the end of (A)(1)(b), and made related changes.

Cross-References to Related Sections

- Penalties, RC § 2151.99.
- Child abuse and child neglect prevention programs, RC § 3109.13 et seq.
- Child fatality review board access to confidential information, RC § 307.62.7.
- Community schools, terms of contract between sponsor and governing authority of school, RC § 3314.03.
- Confidentiality of residential addresses of public children services agency or private child placing agency personnel, RC § 2151.14.2.
- Confidential mental health outpatient services for minors; duty to report, RC § 5122.04.
- Court control of child following commitment to department, RC § 2152.22.
- Definitions, RC § 2151.01.1.
 - Abused child, RC § 2151.03.1.
 - Child without proper parental care, RC § 2151.05.
 - Dependent child, RC § 2151.04.
 - Neglected child, RC § 2151.03.
- Domestic violence, filing of proceedings report, RC § 3113.31.
- Duration of dispositional order, RC § 2151.38.
- Duties to children in need of public care or protective services, RC § 5153.16.
- Guardian ad litem for abused child; civil action against person required to file report of known abuse, RC § 2151.28.1.
- Information to be disclosed concerning deceased child, RC § 5153.17.2.
- Making or causing false report of child abuse or neglect, RC § 2921.14.
- Petition for protection order to protect victim of menacing by stalking, RC § 2903.21.4.
- Privileged communications, RC § 2317.02.
- Procedure where child is living in domestic violence or homeless shelter, RC § 2151.42.2.
- Review of report of abuse, neglect or misappropriation by employee, RC § 5123.51.
- Summary removal of abused child by humane society agent, RC § 1717.14.

Ohio Rules

- Immediate temporary care and medical treatment, JuvR 13(A)-(D).
- Notifying physicians of affidavits alleging abuse under RC § 2919.12, SupR 24.

Ohio Administrative Code

- Department of job and family services, division of social services—
 - Alleged child abuse and neglect; those mandated to report. OAC ch. 5101:2-34.
 - Central registry reports on child abuse and neglect; referral procedures for children's protective services. OAC ch. 5101:2-35.
 - Children services definition of terms: mandated reporter. OAC 5101:2-1-01.
 - Documentation of comprehensive health care for children in custody. OAC 5101:2-42-662.
 - Family and children services information system (FACSIS) reporting requirements. OAC 5101:2-33-05.
 - Supportive services. OAC ch. 5101:2-39.
- Incident reporting, complaint resolution, and documentation procedures—
 - Alcohol and drug addiction programs. OAC 3793:2-1-05.
 - Child day camps. OAC 5101:2-18-07.
 - Child day-care centers. OAC 5101:2-12-45.
 - Childrens residential centers, group homes, etc. OAC 5101:2-9-23.
 - Community residential centers of department of youth services. OAC 5139-35-11.
 - Programs and services of department of MR/DD. OAC 5123:2-17-01 et seq.
 - Residential facilities of department of mental health. OAC 5122-30-16.
 - Type A family day-care homes. OAC 5101:2-13-43.

- Type B family day-care homes. OAC 5101:2-14-62.
- Training in child abuse recognition for personnel—
 - Child day camps. OAC 5101:2-18-11.
 - Child day-care centers. OAC 5101:2-12-30, 5101:2-12-32.
 - School child day-care centers. OAC 5101:2-17-262.
- Type A family day-care homes. OAC 5101:2-13-29, 5101:2-13-31.
- Type B family day-care homes. OAC 5101:2-14-13.

Comparative Legislation

- Child abuse statutes:
 - 42 USCS § 5101 et seq
 - CA—Cal Pen Code §§ 270 et seq, 11164 et seq
 - FL—Fla. Stat. §§ 39.001 et seq, 827.01 et seq
 - IL—325 ILCS § 5/1 et seq
 - IN—Burns Ind. Code Ann. §§ 31-33-1-1 et seq, 35-46-1-3 et seq
 - KY—KRS § 508.100 et seq
 - MI—MCLS §§ 722.601 et seq, 750.135 et seq
 - NY—NY CLS Family Ct Act §§ 812 et seq, 1011 et seq; NY CLS Soc Serv § 411 et seq
 - PA—23 P.S. § 6301 et seq, 55 P.S. § 3490.1 et seq
- Reporting child abuse:
 - CA—Cal Pen Code § 11164 et seq
 - FL—Fla. Stat. § 39.201
 - IL—325 ILCS § 5/4; 735 ILCS § 5/8-802
 - IN—Burns Ind. Code Ann. § 35-46-1-14
 - KY—KRS §§ 620.030-620.050
 - MI—MCLS §§ 722.623-722.625
 - NY—NY CLS Soc Serv § 413 et seq
 - PA—23 P.S. § 6311 et seq

Practice Manuals and Treatises

- Ohio Transaction Guide: Family Law & Forms § 4.29 Reporting Child Abuse or Neglect

Practice Checklists

- Report of Child Abuse or Neglect, Ohio Transaction Guide: Family Law & Forms § 4.122
- Report of Child Abuse or Neglect, Ohio Transaction Guide: Family Law & Forms § 4.112

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Constitutionality

Revised Code § 2151.42.1(G) does not violate the equal protection or due process rights of persons accused of child abuse: *Cudlin v. Cudlin*, 64 Ohio App. 3d 249, 580 N.E.2d 1170 (1990).

Procedural due process does not require a county agency to provide a family reunification plan after a child has been removed

from the family but before a final adjudication of abuse or dependency has been made; thus, RC § 2151.42.1 is not unconstitutional on its face: *Lesher v. Lavrich*, 632 F. Supp. 77 (N.D. Ohio 1984).

Generally

RC § 2151.421, requiring certain individuals to report child abuse, does not once make mention of child endangering and certainly does not require the presence of serious disfigurement, as the statute simply requires reporting of any known or suspected, actual or threatened, physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

RC § 2151.421, requiring certain individuals to report child abuse, does not state that a person must review the totality of the circumstances. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

While courts generally should not look to future versions of a statute in determining legislative intent, the fact that language was added to RC § 2151.421 making it apparent that the duty to report child abuse is based on an objectively reasonable person standard only bolsters the argument that the standard was always intended to be objective. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

RC § 2151.421(A)(1)(a), regarding the duty to report child abuse, describes the kinds of indicators on which the reporter may rely, and the qualifying language clarifies that the duty to report does not require absolute proof but rather is triggered when the condition reasonably indicates abuse or neglect, so the statute's focus is on the condition, not the reporter. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

When a father sued a school board regarding a teacher's failure to report his child's abuse, it was error for the trial court to allow an expert to testify to the jury about what the reporting statute, RC § 2151.412(A)(1)(a), "said," because the testimony erroneously editorialized on the statute, including elements not contained in its language. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

When a father sued a school board regarding a teacher's failure to report his child's abuse, and the father asked the trial court to instruct the jury on the teacher's duty to report abuse by using the text of the reporting statute, RC § 2151.412(A)(1)(a), the trial court should have given the text of the statute to the jury without elaborating because the statute spoke for itself. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

RC § 2151.421 places a duty on a school teacher, school employee, and school authority to report known or suspected child abuse, and a teacher's failure to report known or suspected abuse is imputed to the teacher's employer pursuant to the doctrine of respondeat superior. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

When a father sued a school board regarding a teacher's failure to report his child's abuse, it was error for the trial court to instruct the jury that the duty imposed on teachers by RC § 2151.421 to report abuse was subjective, rather than objective, because neither the statute nor caselaw authorized such an interpretation. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

Parents' reliance on RC § 2151.421 for the creation of a duty to investigate a claim of child abuse leveled by a family against a child care provider was misplaced. The only duty imposed upon a child care referral service by § 2151.421 is the duty to report suspicion or knowledge of child abuse or neglect; the duty to investigate is allotted to public and human services agencies and law enforcement. *Fishpaw v. Francisco*, 2006 Ohio App. LEXIS 3402, 2006 Ohio 3450, (2006).

In a prosecution for gross sexual imposition, when the parents of one victim had made allegations to a resident of their neighborhood who was a police officer, and whose child was subsequently victimized, defendant's counsel did not provide ineffective assistance by not cross-examining this officer about his failure to report these allegations, pursuant to the duty to report in RC § 2151.421, because, when the officer received the allegations, he was not acting in his official capacity as a police officer, but was a private citizen, and defendant did not show the result of the trial would have been different had counsel conducted such a cross-examination. *State v. Walker*, 2006 Ohio App. LEXIS 4561, 2006 Ohio 4637, (2006).

Parents' suit against referral service to recover for injuries their daughter sustained from criminal act of day care provider referred by service was properly dismissed. Any duty under RC § 2151.421 to report a prior abuse incident involving another child was owed to the other child, not to the parents or their daughter. *Fishpaw v. Francisco*, 2006 Ohio App. LEXIS 3402, 2006 Ohio 3450, (2006).

When a child sued a hospital for failing to promptly report suspicions that she had been sexually abused, under RC § 2151.421, the child was not required to introduce expert testimony in support of her claim, as to proximate cause and damages, because a violation of the statute was negligence per se, and a lay juror could determine the effect of the abuse on the child, so the hospital was not entitled to a directed verdict, on this ground, under Ohio R. Civ. P. 50(A)(4). *Grimm v. Summit County Children Servs. Bd.*, 2006 Ohio App. LEXIS 2304, 2006 Ohio 2411, (2006).

Generally, in order to maintain a claim of negligence per se based on violation of a statute, the plaintiff must show that he is among the class of individuals that the statute is designed to protect. RC § 2151.42.1 imposes a duty which is owed solely to the minor child of whom reports have been received concerning abuse or neglect: *Curran v. Walsh Jesuit High Sch.*, 99 Ohio App. 3d 696, 651 N.E.2d 1028 (1995).

Revised Code § 2151.42.1 is not an exclusive listing of those persons who must report knowledge or suspicion of child abuse. A duty to report abuse can arise from a special relationship at law, irrespective of a statutory duty. Since a parent has a special relationship to the child, the duty of care, protection and support under RC § 2921.22(A) would create a duty to stop the alleged acts of abuse: *Hite v. Brown*, 100 Ohio App. 3d 606, 654 N.E.2d 452 (1995).

Revised Code § 2151.42.1 imposes a duty to investigate owed to a minor child who has allegedly been abused or neglected. It does not impose a duty to that child's grandparents or to any other member of the public who files a charge with a children services board: *Neuenschwander v. Wayne County Children Servs. Bd.*, 92 Ohio App. 3d 767, 637 N.E.2d 102 (1994).

In investigating a report of child abuse pursuant to RC § 2151.42.1, a public children services agency is required to consider the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect; the cause of the injuries, abuse, neglect, or threat; and the person or persons responsible for the injuries, abuse, neglect, or threat. Thus, a public children services agency must consider whether, in accordance with RC § 3319.41(G), a school teacher, principal, administrator, nonlicensed employee, or bus driver has used reasonable and necessary force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property: OAG No. 2002-019 (2002).

Revised Code § 2151.42.1(A) does not impose upon a professional counselor or social worker licensed under RC Chapter 4757, the duty to report knowledge or suspicion of child abuse of an individual if, when the professional counselor or social worker learns of the child abuse, the individual no longer is a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. However, if information provided to a professional counselor or social worker who is acting in an official or professional capacity gives that person reason to know or suspect that an individual who currently is a child is at risk of child abuse, RC § 2151.42.1(A)

requires that such knowledge or suspicion be reported: OAG No. 2001-035 (2001).

A public children services agency is required, pursuant to RC § 2151.42.1(F)(1), to investigate as alleged child abuse a report received by it of an incident in which a sixteen year old female has been assaulted by her husband: OAG No. 92-073 (1992).

Revised Code § 2151.42.1 does not require that a public children services agency routinely share child abuse and neglect investigation materials with the Air Force Office of Special Investigations, an agency of the federal government: OAG No. 92-046 (1992).

Revised Code § 2151.42.1 sets forth a comprehensive scheme for the reporting of allegations of child abuse and neglect and threats of child abuse and neglect and for the investigation of such reports by public children services agencies: OAG No. 89-108 (1989).

The provisions of RC § 2151.42.1 impose the duties of investigation and disposition of reported cases of child abuse and neglect solely on children services boards and county welfare departments which have assumed the functions of a children services board, and, therefore, prohibit delegation of these duties to private entities: OAG No. 79-067 (1979).

The phrase "having reason to believe," as used in RC § 2151.42.1, is equivalent to "known or suspected" as used in 45 CFR 1340.3-3(d). The term "child neglect," as used in RC § 2151.42.1, applies to children without proper parental care or guardianship as defined by RC § 2151.05: OAG No. 78-038 (1978).

Adopted children

Records concerning whether an adopted child was sexually abused prior to the adoption were not discoverable: *Swartzentruber v. Orrville Grace Brethren Church*, 163 Ohio App. 3d 96, 836 N.E.2d 619, 2005 Ohio 4264, (2005).

Authority to investigate

A children services board and its agents have a duty to investigate and report their findings as required by RC § 2151.42.1 when a specific child is identified as abused or neglected, and the public duty doctrine may not be raised as a defense for agency failure to comply with such statutory requirements: *Brodie v. Summit County Children Services Bd.*, 51 Ohio St. 3d 112, 554 N.E.2d 1301 (1990).

The powers of the State Highway Patrol or special police officers designated by the Superintendent of the State Highway Patrol to investigate and to enforce laws on state properties and in state institutions do not restrict the authority of public children services agencies to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect pertaining to such locations: OAG No. 89-108 (1989).

Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at detention homes established pursuant to RC § 2151.34, at the Ohio Veterans' Children's Home operated pursuant to RC Chapter 5909., and at public schools operating under standards set by the State Board of Education pursuant to RC Chapter 3301.: OAG No. 89-108 (1989).

Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Mental Health pursuant to RC Chapter 5122., at facilities operated by the Department of Mental Retardation and Developmental Disabilities pursuant to RC Chapter 5123., and at facilities operated by the Department of Youth Services pursuant to RC Chapter 5139.: OAG No. 89-108 (1989).

Public children services agencies have authority to investigate all reports of known or suspected child abuse or neglect or threats of child abuse or neglect within their respective counties of jurisdiction unless there is some provision of law restricting that authority with respect to particular persons or locations: OAG No. 89-108 (1989).

Big Brother or Big Sister

A Big Brother or Big Sister is not subject to the child abuse or neglect reporting requirements of RC § 2151.42.1(A)(1), but a Big Brother or Big Sister who, during the course of his or her

activities as a Big Brother or Big Sister, learns of or suspects child abuse or neglect, may, in accordance with RC § 2151.42.1(B), report such knowledge or suspicion to one of the agencies or authorities described therein: OAG No. 97-031 (1997).

Child victim detective

Revenue from a levy under RC § 5705.24 may be used to fund a "Child Victim" Detective's position within the office of the county sheriff if it is reasonably determined that funding for that position is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language by which the levy was adopted. Opinion No. 2005-043 (2005).

Compatibility of positions

A person may not serve simultaneously as a township police chief and member of the board of education of a local school district that has territory in the township. Opinion No. 2006-023 (2006).

Concealing child from parent

Revised Code § 2919.24(A) is a strict liability offense. Concealing the child from a parent to prevent alleged abuse does not constitute an affirmative defense: *State v. Thompson*, 97 Ohio App. 3d 629, 647 N.E.2d 226 (1994).

Construction with other laws

Viability of the public duty rule/special relationship exception as it applies to political subdivisions, at least in regards to RC § 2151.421, requiring certain individuals to report child abuse, has been confirmed. *Kraynak v. Youngstown City Sch. Dist. Bd. of Educ.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1165, 2007 Ohio 1236, (Mar. 12, 2007).

Revised Code § 2151.42(H)(1) references only the "reports" which are required to be made by certain categories of persons designated in subsections (A) and (B) of that section. Thus, "reports" as used there is very limited in its scope and is not so inclusive as to encompass any report made by anyone regarding the subject child. On the other hand, RC § 5153.17 is very broad: *Sharpe v. Sharpe*, 85 Ohio App. 3d 638, 620 N.E.2d 916 (1993).

Disclosure of records, generally

Requestor was not entitled to a writ of mandamus compelling a children services board to disclose, pursuant to RC § 149.43, records the requestor sought because (1) to the extent she sought reports of child abuse or neglect or information derived from such reports, that information was confidential, under RC § 2151.421(H)(1), and (2) to the extent she sought other records of the board, those records, with exceptions not applicable here, were confidential under RC § 5153.17 unless the agency's executive director gave written consent to release them, which could only be obtained on a showing of good cause to do so, and the requestor specifically averred that her reason for wanting the records was none of the director's concern. *Wiley v. Summit County Children Servs.*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1389, 2007 Ohio 1476, (Mar. 30, 2007).

When defendant was prosecuted for rape and unlawful sexual conduct with a minor, and he asserted that he was entitled to discover various records about his victim pursuant to RC § 2151.421(H)(1), those records also had to be discoverable under Ohio R. Crim. P. 16 before he could have access to them. *State v. Donnal*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1488, 2007 Ohio 1632, (Apr. 9, 2007).

In a case seeking disclosure of records relating to child molestation incidents, most of the redactions made were identifying information of the molested children, addresses of incidents, and information as to their relatives, which redactions were within the exception of identifying information concerning abused children and their parents; other information, such as Social Security numbers, and Department of Children and Family Service reports of child abuse and neglect, were also exempt from disclosure and were properly redacted. *State ex rel. White v. Watson*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 5231, 2006 Ohio 5234, (Sept. 29, 2006).

While the mother's parenting ability was certainly relevant to the custody question, the father gave the court no reason to believe that exigent circumstances existed which justified forcing

the court to examine the agency records, required to be kept by RC § 2151.421(H)(1), alleging abuse in camera. The father's request for the confidential records therefore looked like a fishing expedition for evidence that was wholly unrelated to the imminent health and welfare of the children, and, under the circumstances, the trial court did not have an obligation to conduct an in camera inspection of the agency's records. In re J.C., — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 2787, 2006 Ohio 2893, (June 8, 2006).

CCDCFS records are not absolutely privileged. Where records are necessary and relevant to a proceeding and good cause for disclosure has been shown, access to those records may be warranted: *State v. Sahady*, 2004 Ohio App. LEXIS 3120, 2004 Ohio 3481, (2004).

Confidential information drawn from reports made to children services agencies pursuant to RC § 2151.421 is exempt from disclosure by police under RC § 149.43: *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 104 Ohio St. 3d 399, 819 N.E.2d 1087, 2004 Ohio 6557, (2004).

Trial court erred in refusing to allow a child care provider's counsel access to the records of the department of children and family services which the trial court reviewed in camera and which the trial court relied on in upholding the revocation of the child care provider's home care certification. *Child Care Provider Certification Dep't v. Harris*, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 5789, 2003 Ohio 6500, (Dec. 4, 2003).

A court may conduct an in camera inspection of child abuse records and has inherent power to order disclosure in appropriate circumstances: *Johnson v. Johnson*, 134 Ohio App. 3d 579, 731 N.E.2d 1144 (1999).

The Cuyahoga county ombudsman office is a "public office" whose records are subject to disclosure. RC § 2151.42.1 does not exempt its child abuse and neglect reports: *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 684 N.E.2d 1239, 1997 Ohio 349, (1997).

Records of a county children services board investigation made pursuant to RC §§ 5153.17 and 2151.42.1 are "official records" within the ambit of the sealing provisions of RC § 2953.52. The trial court should weigh the privacy interests of the person seeking to seal the official records against the legitimate needs of the agency in maintaining those records: *State v. S.R.*, 63 Ohio St. 3d 590, 589 N.E.2d 1319 (1992).

Child abuse investigation reports are confidential and not subject to inspection: *State ex rel. Renfro v. Cuyahoga County Dep't of Human Services*, 54 Ohio St. 3d 25, 560 N.E.2d 230 (1990).

Each report and investigation of alleged child abuse or neglect made under RC § 2151.42.1 is confidential and, pursuant to OAC 5101:2-34-38, the dissemination of such confidential information to an agency or organization is permitted only if the agency or organization has rules or policies governing the dissemination of confidential information that are consistent with those of rule 5101:2-34-38: OAG No. 92-046 (1992).

A public children services agency may, pursuant to [1991-1992 Monthly Record, vol. 1] OAC 5101:2-34-71, at 280, include the Air Force Office of Special Investigations as a voluntary subscriber to a county plan of cooperation prepared pursuant to RC § 2151.42.1(j), if the Office wishes to be a voluntary subscriber and if the agency determines that the participation of the Office would be appropriate. If the Office has suitable rules or policies governing the use and dissemination of confidential information, the Office may receive investigatory materials as provided in the county plan of cooperation and in OAC 5101:2-34-38(D)(4): OAG No. 92-046 (1992).

A public children services agency may disclose child abuse and neglect investigation materials to the Air Force Office of Special Investigations when such disclosure is in compliance with RC §§ 2151.42.1, 5153.17, and OAC 5101:2-34-38 and is for purposes authorized by those provisions; the agency is not required to obtain assurance that the Office will not use the materials for purposes other than criminal prosecution: OAG No. 92-046 (1992).

Child abuse and neglect investigation records maintained by public children services agencies do not constitute "public records" within the meaning of RC § 149.43 to which the right of public access attaches. Records of child abuse or neglect investi-

gations under RC §§ 2151.42.1(H)(1) and 5153.17 are "records the release of which is prohibited by state law" under RC § 149.43(A)(1): OAG No. 91-003 (1991).

Public children services agencies are local agencies for purposes of RC Chapter 1347., which governs the maintenance of personal information systems: OAG No. 89-084 (1989).

Child abuse and neglect investigatory records maintained by public children services agencies constitute "investigatory material compiled for law enforcement purposes" within the meaning of RC § 1347.04(A)(1)(e). Personal information systems that are comprised of such records are, pursuant to RC § 1347.04(A)(1)(e), exempt from the provisions of RC Chapter 1347.: OAG No. 89-084 (1989).

Discovery

When the mother of a child in the custody of a department of children and family services sued it, its director, and its employee because the child's father sexually assaulted her during a visitation supervised by the department, RC §§ 5153.17 and 2151.421(H)(1) did not bar the mother's discovery of documents from the department specifically related to the father's assault of the child and generally related to the department's supervised visitation practices, nor did they bar the mother from deposing the director and employee, because (1) the documents were relevant and necessary to the mother's claim, (2) the mother showed good cause to discover them, because the child's best interests would be served by imposing liability on the parties responsible for any deficiencies in her supervision, and (3) statutory confidentiality considerations did not destroy the discoverability of the information sought as discovery in the father's resulting criminal case lessened pertinent due process rights protections, and any further protections of other employees who might be implicated by the discovery would not be affected by general disclosures of supervised visitation practices. *Rankin v. C.C.D.C.F.S.*, 2006 Ohio App. LEXIS 6674, 2006 Ohio 6759, (2006).

There was no abuse of discretion by the trial court in denying, following its in-camera review, the subpoena of the children's services board's records concerning the sexual victim because the disclosure of the records would not have outweighed the confidentiality considerations of RC § 5153.17. Defendant incorrectly attempted to expand the limited confidentiality exception concerning RC § 2151.421 "reports" into an unfettered right to the discovery of all of the files connected with the victim, past and present. *State v. Dixon*, — Ohio App. 3d —, — N.E. 2d —, 2004 Ohio App. LEXIS 3584, 2004 Ohio 3940, (July 26, 2004).

Evidence

Reports of suspected child abuse otherwise admissible under RC § 2151.42.1 may be excluded if they are not adequately authenticated and contain hearsay. *State v. Humphries*, 79 Ohio App. 3d 589, 607 N.E.2d 921 (1992).

Federal civil rights law

A father who alleges that he has been denied reasonable visitation rights with his children due to the county welfare department's failure to complete within 30 days an investigation of a report of child abuse by the father cannot maintain a § 1983 action, since his complaint alleges, at the most, a procedural due process violation, and, for that, there is an adequate state remedy available to the plaintiff: *Haag v. Cuyahoga County*, 619 F. Supp. 262 (N.D. Ohio 1985).

Hospitals

The hospital did not have a statutory duty to report an employee when he quit his employment. At that time the hospital had no reason to know or suspect that any particular child was being abused or in danger of being abused by the employee: *Douglass v. Salem Cmty. Hosp.*, 153 Ohio App. 3d 350, 794 N.E.2d 107, 2003 Ohio 4006, (2003), appeal denied by 100 Ohio St. 3d 1530, 2003 Ohio 6458, 800 N.E.2d 47, 2003 Ohio LEXIS 3349 (2003).

Immunity, liability

When a child sued the employees of a children's services board for allegedly failing to investigate, under RC § 2151.421(F)(1), the child's complaint of sexual abuse, the employees were im-

mune from liability because RC § 2744.03(A)(5) did not impose liability on them, as it was not shown they acted with malice, recklessness, wantonness, or bad faith, so the employees were entitled to a directed verdict. *Grimm v. Summit County Children Servs. Bd.*, 2006 Ohio App. LEXIS 2304, 2006 Ohio 2411, (2006).

When a department of children and family services was sued for wrongful death after an abused child it returned to her mother was killed, there were genuine issues of material fact regarding the immunity of the department and its employees because, inter alia, there were genuine fact issues about whether the department had reported the child's initial abuse to the police, as required by RC § 2151.421(C). *O'Toole v. Denihan*, 2006 Ohio App. LEXIS 5960, 2006 Ohio 6022, (2006).

Pursuant to RC § 2151.421(A)(1), a public employee was required to report any reasonable suspicion of child abuse; but where reports of the father's sexual abuse of his son were potentially reckless, and outside the scope of immunity, dismissal was error. *Tracy v. Tinnerman*, 2003 Ohio App. LEXIS 5967, 2003 Ohio 6675, (2003).

Revised Code § 2151.42.1 creates a duty only to a specific child. Where a school employee sexually assaulted a student, the school's failure to report a prior alleged incident between the employee and a different student did not qualify as an exception to immunity under RC § 2744.02(B)(5): *Yates v. Mansfield Bd. of Educ.*, 150 Ohio App. 3d 241, 780 N.E.2d 608, 2002 Ohio 6311, (2002), reversed by 99 Ohio St. 3d 48, 2003 Ohio 2461, 788 N.E.2d 1062, 2003 Ohio LEXIS 1365 (2003), reversed by 102 Ohio St. 3d 205, 2004 Ohio 2491, 808 N.E.2d 861, 2004 Ohio LEXIS 1303 (2004).

Where RC § 2151.42.1 provides immunity, summary judgment may be granted as a matter of law: *Liedtke v. Carrington*, 145 Ohio App. 3d 396, 763 N.E.2d 213 (2001).

Within the meaning of RC §§ 2744.02(B)(5) and 2744.03(A)(6)(c), RC § 2151.42.1 expressly imposes liability for failure to perform the duty to report known or suspected child abuse. Pursuant to RC § 2744.02(B)(5), a political subdivision may be held liable for failure to perform a duty expressly imposed by RC § 2151.42.1. Pursuant to RC § 2744.03(A)(6)(c), an employee of a political subdivision may be held liable for failure to perform a duty expressly imposed by RC § 2151.42.1: *Campbell v. Burton*, 92 Ohio St. 3d 336, 750 N.E.2d 539, 2001 Ohio 206, (2001).

Within the meaning of RC §§ 2744.02(B)(5) and 2744.03(A)(6)(c), RC § 2151.42.1 does not expressly impose liability for failure to investigate reports of child abuse: *Marshall v. Montgomery County Children Servs. Bd.*, 92 Ohio St. 3d 348, 750 N.E.2d 549, 2001 Ohio 209, (2001).

Entries denying a subdivision's motion for judgment on the pleadings based on immunity were not final appealable orders. Orders regarding protective orders were not appealable absent compliance with CivR 54(B): *Chambers v. Chambers*, 137 Ohio App. 3d 355, 738 N.E.2d 834 (2000).

Revised Code § 2151.42.1 provides absolute immunity to medical professionals who are asked to provide assistance to law enforcement agencies and social services providers: *Casbohm v. Metrohealth Med. Ctr.*, 140 Ohio App. 3d 58, 746 N.E.2d 661 (2000).

A report of suspected child abuse by a day-care center administrator or employee is entitled to immunity and is exempt from discovery, regardless of whether it was filed in good faith: *Walters v. Enrichment Ctr.*, 133 Ohio App. 3d 66, 726 N.E.2d 1058 (1999).

Anyone who participates in a mandatory report under RC § 2151.42.1(A) or who participates in good faith in a permissive report under RC § 2151.42.1(B) is entitled to immunity. Immunity is not limited to the initial reporter: *Surdell v. Metrohealth Med. Ctr.*, 135 Ohio App. 3d 141, 733 N.E.2d 281 (1999).

When a state voluntarily undertakes to protect neglected children from harm, it may also acquire a duty under state tort law to provide the child with adequate protection and may be liable for doing so in a negligent fashion: *Rich v. Erie County Dept of Human Resources*, 106 Ohio App. 3d 88, 665 N.E.2d 278 (1995).

Former RC § 2151.42.1(G) confers immunity upon those who, as a result of a report of a known or suspected incident of child abuse and/or neglect, participate in a judicial proceeding: *Gersper*

v. Ashtabula County Children Services Bd., 59 Ohio St. 3d 127, 570 N.E.2d 1120 (1991).

Division (G) of RC § 2151.42.1 does not confer immunity upon those who fail to carry out the mandate of the statute: *Brodie v. Summit County Children Services Bd.*, 51 Ohio St. 3d 112, 554 N.E.2d 1301 (1990).

A claim that a children services board and its employees failed to properly investigate an instance of alleged child abuse pursuant to duties imposed by RC § 2151.42.1 is not subject to the general immunity granted to political subdivisions by RC § 2744.02(A), or to the immunity granted to employees by RC § 2744.03(A)(6): *Crago v. Lorain County Comm'rs*, 69 Ohio App. 3d 24, 590 N.E.2d 15 (1990).

Anyone participating in a judicial proceeding involving a child abuse complaint is absolutely immune from civil liability. This immunity protects the judge, the juvenile court employees, the county department of human services and its employees, and the attorneys representing the person accused of abuse: *Scarso v. Cuyahoga County Dept. of Human Services*, 747 F. Supp. 381 (N.D. Ohio 1989).

Because an administrator of a child day-care center has a duty under RC § 2151.42.1(A)(1) to report suspected child abuse and immunity under RC § 2151.42.1(G) for doing so, the administrator cannot be liable for defamation in making such a report: *Lail v. Madisonville Child Care Project, Inc.*, 55 Ohio App. 3d 37, 561 N.E.2d 1063 (1989).

A former wife who files a false report that her former husband has sexually abused the parties' child is absolutely immune from liability in a civil action filed against her. The grant of immunity pursuant to RC § 2151.42.1(G) extends to anyone making reports of child abuse whether in good faith or not: *Hartley v. Hartley*, 42 Ohio App. 3d 160, 537 N.E.2d 706 (1988).

A hospital and medical center's report to child welfare authorities that a minor child has a sexually transmitted disease is immune from liability under RC § 2151.42.1 even though (1) the diagnosis is mistaken, and (2) the child presents no evidence of a wound, injury, trauma, disability, or condition of a nature that reasonably indicates child abuse: *Criswell v. Brentwood Hosp.*, 49 Ohio App. 3d 163, 551 N.E.2d 1315 (1988).

A licensed psychologist who met with a child and her mother and subsequently made a report to the county welfare department about possible child abuse by the child's father is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of such report: *Haag v. Cuyahoga County*, 619 F. Supp. 262 (N.D. Ohio 1985).

Malicious prosecution

The father's claim that county employees maliciously pursued a false allegation of child abuse against him was not subject to dismissal under CivR 12(B)(6): *Roe v. Franklin County*, 109 Ohio App. 3d 772, 673 N.E.2d 172 (1996).

Priority of investigation

When a public children services agency receives a report of the spanking of a student by a school administrator, the agency must assign the report a priority rating in accordance with OAC 5101:2-34-08. A report that is rated Priority I, II, or III must be investigated as required by RC § 2151.42.1, in accordance with the procedures prescribed in OAC 5101:2-34-32, 5101:2-34-33, and 5101:2-34-34. A report that is rated Priority IV may be resolved by termination pursuant to OAC 5101:2-34-08 if it is determined that the report alleges only action that is permitted under RC §§ 3319.31 and 2919.22, for then the report does not constitute an allegation of abuse or neglect: OAG No. 92-082 (1992).

Privileged communications

Juvenile court did not err in disclosing and admitting the statements made by the mother to her mental health counselors, to the effect that she had hurt her daughter in the past and had thoughts of continuing to do so, as the mental health counselors were required by statutory law to report the statements to the proper authorities, and, thus, the normal client-counselor privilege did not apply to such communications. In *re Hauenstein*, 2004 Ohio App. LEXIS 2550, 2004 Ohio 2915, (2004).

Court admitted testimony from the nurse of appellant's physi-

cian in child neglect action. The exception of RC § 2151.42.1 does not apply to the challenged testimony because the nurse's statements went beyond whether appellant kept her appointments to appellant's diagnosis, treatment and medication: *In re Riddle*, 1996 Ohio App. LEXIS 2054 (5th Dist. 1996).

Any privilege under RC § 2317.02 or RC § 4732.19 is automatically waived under RC § 2151.42.1(A)(3) in certain child abuse cases: *State v. Stewart*, 111 Ohio App. 3d 525, 676 N.E.2d 912 (1996).

Under RC § 2151.42.1, there is no exception for communications by a penitent to a clergy member as there is for communications from patient to physician or client to attorney: *Niemann v. Cooley*, 93 Ohio App. 3d 81, 637 N.E.2d 943 (1994).

Schools

Pursuant to former RC § 2744.02(B)(5), a board of education may be held liable when its failure to report the sexual abuse of a minor student by a teacher in violation of RC § 2151.421 proximately results in the sexual abuse of another minor by the same teacher: *Yates v. Mansfield Bd. of Educ.*, 102 Ohio St. 3d 205, 808 N.E.2d 861, 2004 Ohio 2491, (2004).

If, in investigating a report of child abuse pursuant to RC § 2151.42.1, a public children services agency finds that action consisting of reasonable and necessary force and restraint was used by a school teacher, principal, administrator, nonlicensed employee, or bus driver in accordance with RC § 3319.41(G) to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property, the public children services agency is precluded from finding that such action constituted child abuse for purposes of RC § 2151.42.1: OAG No. 2002-019 (2002).

"School employee" and "school authority" were included in occupations listed in RC § 2151.42.1(A)(1) and a referral made to a "county department of human services exercising the children services function" described by RC § 2151.42.1(A)(1) provided absolute immunity pursuant to RC § 2151.42.1(G)(1): *Merk v. Watts*, 1994 Ohio App. LEXIS 3999 (9th Dist. 1994).

A board of education may require by rule, adopted pursuant to RC § 3313.20, that an investigator from a county children services board obtain parental consent or permit a school official to be present before allowing such investigator to interview a child on school property in the course of an investigation required to be conducted under RC § 2151.42.1. The reasonableness of any such rule is, however, subject to judicial review: OAG No. 82-029 (1982).

Self incrimination

The privilege against compulsory self-incrimination is self-executing and applied in a proceeding for termination of parental rights. Where the parents were given a choice of admitting the father's abuse of the child or of permanently losing custody, they had to be afforded protection against use of the admission in a subsequent prosecution: *In re Amanda W.*, 124 Ohio App. 3d 136, 705 N.E.2d 724 (1997).

Statute of limitations

Amendment of RC § 2901.13 from a six-year limitations period to a 20-year limitations period with respect to various sexual offenses charged against defendant was not a violation of his due process rights under Ohio Const. art. I, § 10, as defendant's prosecution for the 1988 offenses was not barred before the effective date of the amendment because the statute of limitations was tolled pursuant to § 2901.13(F) due to the victim's age. There was no indication that a "responsible person" under RC § 2151.421(A)(1) had been informed of the conduct in order to commence the running of the limitations period prior to the time the minor victim reached the age of majority. *State v. Warren*, 168 Ohio App. 3d 268, 859 N.E.2d 998, 2006 Ohio 4104, (2006).

When the child victim of defendant's gross sexual imposition told her mother, who was a registered nurse, of defendant's acts, this did not cause the statute of limitations in RC § 2901.13(A)(1) to begin running, even though the mother was generally required, under RC § 2151.421, to report allegations of sexual abuse to authorities. The mother did not receive the information from her

daughter in her professional capacity, so she was not required to report it, nor, when the mother consulted with close friends and family who were "responsible adults," under § 2151.421, did that cause the statute of limitations to begin to run because they, as well, were not required to report the allegations, as they were not acting in their professional capacities when they received the information. *State v. Simms*, 2005 Ohio App. LEXIS 6248, 2005 Ohio 6934, (2005).

Because the corpus delicti of the crime was discovered in January of 1993, and the tolling provisions to RC § 2901.13(F) and (G) did not apply, the trial court erred in refusing to dismiss the gross sexual imposition charge against defendant as being barred by the statute of limitations. It was clear that the social worker, a "responsible adult," as listed in RC § 2151.421, was aware of the crime as of the first counseling session, although he failed to report it, defendant's request that the social worker not report him did not specifically waive the statute of limitations for the crime, and the statute was not tolled because defendant did not purposely avoid prosecution. *State v. Koerner*, 2004 Ohio App. LEXIS 417, 2004 Ohio 457, (2004).

The corpus delicti of a crime involving sexual abuse of children is discovered when an employee of a children services agency or other "responsible adult" as that term is defined in RC § 2151.42.1 had knowledge of both the act itself and the criminal nature of the act: *State v. Ritchie*, 95 Ohio App. 3d 569, 642 N.E.2d 1168 (1994).

A parent's knowledge of child sexual abuse does not trigger the running of the statute of limitations. The limitation period begins to run when a responsible adult, as defined in RC § 2151.42.1, acquires the requisite knowledge while acting in his or her official or professional capacity: *State v. Rosenberger*, 90 Ohio App. 3d 735, 630 N.E.2d 435 (1993).

For purposes of RC § 2901.13(F), the corpus delicti of crimes involving child abuse or neglect is discovered when a responsible adult, as listed in RC § 2151.42.1, has knowledge of both the act and the criminal nature of the act: *State v. Hensley*, 59 Ohio St. 3d 136, 571 N.E.2d 711 (1991).

[§ 2151.42.2] § 2151.422 Procedure where child is living in domestic violence or homeless shelter; homeless shelter to obtain last known residence information.

(A) As used in this section, "homeless shelter" means a facility that provides accommodations to homeless individuals.

(B) On receipt of a notice pursuant to division (A), (B), or (D) of section 2151.421 [2151.42.1] of the Revised Code, the public children services agency shall determine whether the child subject to the report is living in a shelter for victims of domestic violence or a homeless shelter and whether the child was brought to that shelter pursuant to an agreement with a shelter in another county. If the child is living in a shelter and was brought there from another county, the agency shall immediately notify the public children services agency of the county from which the child was brought of the report and all the information contained in the report. On receipt of the notice pursuant to this division, the agency of the county from which the child was brought shall conduct the investigation of the report required pursuant to section 2151.421 [2151.42.1] of the Revised Code and shall perform all duties required of the agency under this chapter with respect to the child who is the subject of the report. If the child is not living in a shelter or the child was not brought to the shelter from another county, the agency that received the report pursuant to division (A), (B), or (D) of section 2151.421 [2151.42.1] of the Revised Code shall conduct the investigation required pursuant to section 2151.421 [2151.42.1] of the Revised Code and

shall perform all duties required of the agency under this chapter with respect to the child who is the subject of the report. The agency of the county in which the shelter is located in which the child is living and the agency of the county from which the child was brought may ask the shelter to provide information concerning the child's residence address and county of residence to the agency.

(C) If a child is living in a shelter for victims of domestic violence or a homeless shelter and the child was brought to that shelter pursuant to an agreement with a shelter in another county, the public children services agency of the county from which the child was brought shall provide services to or take custody of the child if services or custody are needed or required under this chapter or section 5153.16 of the Revised Code.

(D) When a homeless shelter provides accommodations to a person, the shelter, on admitting the person to the shelter, shall determine, if possible, the person's last known residential address and county of residence. The information concerning the address and county of residence is confidential and may only be released to a public children services agency pursuant to this section.

HISTORY: 147 v H 215. Eff 6-30-97.

Not analogous to former RC § 2151.42.2 (132 v S 316), repealed 137 v H 565, § 2, eff 11-1-78.

Cross-References to Related Sections

Duties of public children services agency as to children in need of public care or protective services, RC § 5153.16.

Duty to report child abuse or neglect, RC § 2151.42.1.

Shelter to obtain last known residence information, RC § 3113.40.

[§ 2151.42.3] § 2151.423 Disclosure of confidential information to agencies responsible for protecting children from abuse or neglect.

A public children services agency shall disclose confidential information discovered during an investigation conducted pursuant to section 2151.421 [2151.42.1] or 2151.422 [2151.42.2] of the Revised Code to any federal, state, or local government entity that needs the information to carry out its responsibilities to protect children from abuse or neglect.

Information disclosed pursuant to this section is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code by the agency to whom the information was disclosed. The agency receiving the information shall maintain the confidentiality of information disclosed pursuant to this section.

HISTORY: 151 v S 238, § 1, eff. 9-21-06.

[§ 2151.42.4] § 2151.424 Rights of foster caregiver, relative, or prospective adoptive parent.

(A) If a child has been placed in a certified foster home or is in the custody of a relative of the child, other than a parent of the child, a court, prior to conducting any hearing pursuant to division (E)(2) or (3) of section 2151.412 [2151.41.2] or section 2151.28, 2151.33, 2151.35, 2151.414 [2151.41.4], 2151.415 [2151.41.5], 2151.416 [2151.41.6], or 2151.417 [2151.41.7] of the Revised Code with respect to the child, shall notify the foster caregiver or relative of the date, time, and place of

the hearing. At the hearing, the foster caregiver or relative may present evidence.

(B) If a public children services agency or private child placing agency has permanent custody of a child and a petition to adopt the child has been filed under Chapter 3107. of the Revised Code, the agency, prior to conducting a review under section 2151.416 [2151.41.6] of the Revised Code, or a court, prior to conducting a hearing under division (E)(2) or (3) of section 2151.412 [2151.41.2] or section 2151.416 [2151.41.6] or 2151.417 [2151.41.7] of the Revised Code, shall notify the prospective adoptive parent of the date, time, and place of the review or hearing. At the review or hearing, the prospective adoptive parent may present evidence.

(C) The notice and the opportunity to present evidence do not make the foster caregiver, relative, or prospective adoptive parent a party in the action or proceeding pursuant to which the review or hearing is conducted.

HISTORY: 147 v H 484 (Eff 3-18-99); 148 v H 448. Eff 10-5-2000.

[CHILDREN'S ADVOCACY CENTERS]

[§ 2151.42.5] § 2151.425 Definitions.

As used in sections 2151.426 [2151.42.6] to 2151.428 [2151.42.8] of the Revised Code:

(A) "Children's advocacy center" means a center operated by participating entities within a county or two or more contiguous counties to perform functions and activities and provide services, in accordance with the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, regarding reports received under section 2151.421 [2151.42.1] of the Revised Code of alleged sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction and regarding the children who are the subjects of the report.

(B) "Sexual abuse of a child" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code, with a person under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

HISTORY: 150 v S 66, § 1, eff. 5-6-05.

[§ 2151.42.6] § 2151.426 Establishment of children's advocacy center.

(A)(1) A children's advocacy center may be established to serve a single county by execution of a memorandum of understanding regarding the participation in the operation of the center by any of the following entities in the county to be served by the center:

(a) The public children services agency;

(b) Representatives of any county or municipal law enforcement agencies serving the county that investigate any of the types of abuse specified in the memorandum of understanding creating the center as being within the center's jurisdiction;

(c) The prosecuting attorney of the county or a village solicitor, city director of law, or similar chief legal officer of a municipal corporation in the county who prosecutes

any of the types of abuse specified in the memorandum of understanding creating the center as being within the center's jurisdiction in the area to be served by the center;

(d) Any other entity considered appropriate by all of the other entities executing the memorandum.

(2) A children's advocacy center may be established to serve two or more contiguous counties if a memorandum of understanding regarding the participation in the operation of the center is executed by any of the entities described in division (A)(1) of this section in each county to be served by the center.

(3) Any memorandum of understanding executed under this section may include a provision that specifies types of abuse of a child, in addition to sexual abuse of a child, that are to be within the jurisdiction of the children's advocacy center created as a result of the execution of the memorandum. If a memorandum of understanding executed under this section does not include any provision of that nature, the children's advocacy center created as a result of the execution of the memorandum has jurisdiction only in relation to reports of alleged sexual abuse of a child.

(B) Each entity that participates in the execution of a memorandum of understanding under this section shall cooperate in all of the following:

(1) Developing a multidisciplinary team pursuant to section 2151.427 [2151.42.7] of the Revised Code to perform the functions and activities and provide the services specified in the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, regarding reports received under section 2151.421 [2151.42.1] of the Revised Code of alleged sexual abuse of a child and reports of allegations of another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, and regarding the children who are the subjects of the reports;

(2) Participating in the operation of the center in compliance with standards for full membership established by the national children's alliance;

(3) Employing the center's staff.

(C) A center shall do both of the following:

(1) Operate in accordance with sections 2151.427 [2151.42.7] and 2151.428 [2151.42.8] of the Revised Code, the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code relative to the center, and the standards for full membership established by the national children's alliance;

(2) Register annually with the attorney general.

HISTORY: 150 v S 66, § 1, eff. 5-6-05.

[§ 2151.42.7] § 2151.427 Assembling of multidisciplinary team.

(A) The entities that participate in a memorandum of understanding executed under section 2151.426 [2151.42.6] of the Revised Code establishing a children's advocacy center shall assemble the center's multidisciplinary team.

(B)(1) The multidisciplinary team for a single county center shall consist of the following members who serve the county:

(a) Any county or municipal law enforcement officer;

(b) The executive director of the public children services agency or a designee of the executive director;

(c) The prosecuting attorney of the county or the prosecuting attorney's designee;

(d) A mental health professional;

(e) A medical health professional;

(f) A victim advocate;

(g) A center staff member;

(h) Any other person considered appropriate by all of the entities that executed the memorandum.

(2) If the center serves two or more contiguous counties, the multidisciplinary team shall consist of the members described in division (B)(1) of this section from the counties to be served by the center, with each county to be served by the center being represented on the multidisciplinary team by at least one member described in that division.

(C) The multidisciplinary team shall perform the functions and activities and provide the services specified in the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, regarding reports received under section 2151.421 [2151.42.1] of the Revised Code of alleged sexual abuse of a child and reports of allegations of another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction and regarding the children who are the subjects of the reports.

HISTORY: 150 v S 66, § 1, eff. 5-6-05.

[§ 2151.42.8] § 2151.428 Interagency agreement regarding reports of alleged child abuse; obligations of public official or agency unaffected.

(A) If a children's advocacy center is established under section 2151.426 [2151.42.6] of the Revised Code, in addition to the memorandum of understanding executed under that section, each public children services agency that participates in the execution of the memorandum of understanding, the children's advocacy center, and the children's advocacy center's multidisciplinary team assembled under section 2151.427 [2151.42.7] of the Revised Code shall enter into an interagency agreement that stipulates all of the following regarding reports received under section 2151.421 [2151.42.1] of the Revised Code of alleged sexual abuse of a child and reports of allegations of another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction:

(1) The protocol and procedures for any and all referrals and investigations of the reports;

(2) Any and all coordinating activities between the parties that enter into the agreement;

(3) The authority or responsibility for performing any and all functions and activities, and providing any and all services, regarding the reports and the children who are the subjects of the reports.

(B) The parties that enter into an interagency agreement under division (A) of this section shall comply with the agreement in referring the reports, investigating the reports, coordinating the activities between the parties, and performing and providing the functions, activities, and services relative to the reports and the children who are the subjects of the reports.

(C) Nothing in this section, section 2151.421 [2151.42.1], or sections 2151.425 [2151.42.5] to 2151.427 [2151.42.7] of the Revised Code pertaining to the operation of a children's advocacy center shall relieve any

public official or agency from any legal obligation or responsibility.

HISTORY: 150 v S 66, § 1, eff. 5-6-05.

[PROCEDURE IN ADULT CASES]

§ 2151.43 Charges against adults; defendant bound over to grand jury.

In cases against an adult under sections 2151.01 to 2151.54 of the Revised Code, any person may file an affidavit with the clerk of the juvenile court setting forth briefly, in plain and ordinary language, the charges against the accused who shall be tried thereon. When the child is a recipient of aid pursuant to Chapter 5107, or 5115, of the Revised Code, the county department of job and family services shall file charges against any person who fails to provide support to a child in violation of section 2919.21 of the Revised Code, unless the department files charges under section 3113.06 of the Revised Code, or unless charges of nonsupport are filed by a relative or guardian of the child, or unless action to enforce support is brought under Chapter 3115, of the Revised Code.

In such prosecution an indictment by the grand jury or information by the prosecuting attorney shall not be required. The clerk shall issue a warrant for the arrest of the accused, who, when arrested, shall be taken before the juvenile judge and tried according to such sections.

The affidavit may be amended at any time before or during the trial.

The judge may bind such adult over to the grand jury, where the act complained of constitutes a felony.

HISTORY: GC § 1639-39; 117 v 520(533); 119 v 731; Bureau of Code Revision, 10-1-53; 127 v 847 (Eff 9-16-57); 132 v H 390 (Eff 11-7-67); 133 v H 361 (Eff 9-23-69); 134 v H 511 (Eff 1-1-74); 141 v H 425 (Eff 12-23-86); 144 v H 298 (Eff 7-26-91); 146 v H 249 (Eff 7-17-95); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

Cross-References to Related Sections

Action against parent for county's cost of maintaining child, RC § 3113.06.

County humane society agents may arrest and convey persons to court, RC § 1717.06.

Ohio Rules

Complaint and warrant, CrimR 3.

Definitions, SupR 2.

Ohio Administrative Code

Department of job and family services, division of public assistance —

Child support enforcement agency (CSEA). OAC ch. 5101:1-30.

Federal and state offset programs to enforce past-due support obligations. OAC 5101:1-30-77 et seq.

Income withholding and other methods of enforcement. OAC 5101:1-30-41.1 et seq.

Interstate services: Uniform Interstate Family Support Act (UIFSA). OAC 5101:1-30-50 et seq.

Locating absent parents. OAC 5101:1-30-01 et seq.

Paternity establishment. OAC 5101:1-30-23.

Suspension of professional, other license upon default of support obligation. OAC 5101:1-30-88 et seq.

Title IV-D cases. OAC ch. 5101:1-29.

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Double jeopardy

The procedure of filing a complaint in the juvenile court on a charge of contributing to the delinquency of a minor and then binding the prisoner over to the grand jury upon concluding that a felony over which the juvenile court lacked jurisdiction had been committed did not violate the federal right to be free from double jeopardy: *Grear v. Maxwell*, 35 Ohio Op. 2d 333, 355 F.2d 991 (6th Cir. 1966).

Jurisdiction

The court of common pleas and municipal courts have jurisdiction in offenses involving adults, concurrent with that of the juvenile court, arising under RC § 2151.41 or RC § 2151.42; 1950 OAG No. 1901 overruled: 1958 OAG No. 2016 (1958).

§ 2151.44 Complaint after hearing.

If it appears at the hearing of a child that any person has abused or has aided, induced, caused, encouraged, or contributed to the dependency, neglect, or delinquency of a child or acted in a way tending to cause delinquency in such child, or that a person charged with the care, support, education, or maintenance of any child has failed to support or sufficiently contribute toward the support, education, and maintenance of such child, the juvenile judge may order a complaint filed against such person and proceed to hear and dispose of the case as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

On the request of the judge, the prosecuting attorney shall prosecute all adults charged with violating such sections.

HISTORY: GC §§ 1639-40, 1639-42; 117 v 520(533, 534); Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Ohio Rules

Complaint and warrant, CrimR 3, 4.

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Generally

This section is in nowise an exclusive provision and it does not contemplate that no charge of contributing or tending to contribute to the delinquency of a minor may be filed unless and until after hearing of a charge against the child: *State v. Van Horn*, 32 Ohio L. Ab. 406 (App 1940).

When at a hearing upon a charge that a child is delinquent, neglected, or dependent, it appears that a person has contributed to bring about the commission of any of these offenses, or in a manner tending to cause them, all the provisions of GC § 1639-40 (RC § 2151.44) does is to vest authority in the juvenile judge to then order complaint filed against such person and

proceed upon such complaint: *State v. Van Horn*, 32 Ohio L. Ab. 406 (App 1940).

§ 2151.45 Repealed, 148 v S 179, § 4 [GC § 1639-41; 117 v 520(533); Bureau of Code Revision, 10-1-53]. Eff 1-1-2002.

This section concerned expense of extradition.
The effective date is set by section 5 of SB 179.

§ 2151.46 Repealed, 148 v S 179, § 4 [GC § 1639-43; 117 v 520(534); Bureau of Code Revision, 10-1-53]. Eff 1-1-2002.

This section concerned bail.
The effective date is set by section 5 of SB 179.

§ 2151.47 Renumbered RC § 2152.67 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.48 Repealed, 148 v S 179, § 4 [GC § 1639-48; 117 v 520(535); Bureau of Code Revision, 10-1-53; 145 v H 571]. Eff 1-1-2002.

This section concerned commitment of adult females.
The effective date is set by section 5 of SB 179.

§ 2151.49 Suspension of sentence.

In every case of conviction under sections 2151.01 to 2151.54 of the Revised Code, where imprisonment is imposed as part of the punishment, the juvenile judge may suspend sentence, before or during commitment, upon such condition as the juvenile judge imposes. In the case of conviction for nonsupport of a child who is receiving aid under Chapter 5107, or 5115, of the Revised Code, if the juvenile judge suspends sentence on condition that the person make payments for support, the payment shall be made to the county department of job and family services rather than to the child or custodian of the child.

The court, in accordance with sections 3119.29 to 3119.56 of the Revised Code, shall include in each support order made under this section the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court.

HISTORY: GC § 1639-49; 117 v 520(535); Bureau of Code Revision, 10-1-53; 132 v H 390 (Eff 11-7-67); 141 v H 428 (Eff 12-23-86); 144 v H 298 (Eff 7-26-91); 146 v H 249 (Eff 7-17-95); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 657. Eff 12-13-2002.

Cross-References to Related Sections

Forfeiture of bond, RC § 2151.50.

Interfering with action to issue or modify support order, RC § 2919.23.1.

Support payments to be made to office of child support, RC § 3121.44.

Ohio Rules

Suspension of sentence, AppR 8.

Practice Checklists

Methods of Obtaining Support Orders, Ohio Transaction Guide:
Family Law & Forms § 14.136

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Generally

By the express terms of this section the juvenile court is authorized to "suspend sentence" either before or after commitment, which is construed to mean suspension of the execution of the sentence rather than postponement of imposition of sentence: *In re Keagy*, 76 Ohio App. 95, 31 Ohio Op. 405, 63 N.E.2d 216 (1945).

Under the provisions of GC § 1639-49 (RC § 2151.49), read in the light of GC § 1639-50 (RC § 2151.50), a juvenile court is authorized and empowered to suspend the execution of sentences, imposed for violation of this section or GC § 1639-46 (RC § 2151.42), where imprisonment is imposed as part of the punishment, "before or during commitment, upon such condition as he imposes," at least for such period as the juvenile court does not, by reason of age or otherwise, lose jurisdiction over the dependent, neglected, or delinquent child involved: 1942 OAG No. 4922 (1942).

Applicability

General Code §§ 13452-1 to 13452-11, 13451-8a, and 13451-8b (RC §§ 2951.02 to 2951.12, 2947.12 and 2947.13) have no application to persons convicted of violation of this section or GC § 1639-46 (RC § 2151.42), such suspensions of the execution of sentences being governed by GC §§ 1639-49 and 1639-50 (RC §§ 2151.49, 2151.50): 1942 OAG No. 4922 (1942).

Jurisdiction

Where the jurisdiction of the juvenile court has been invoked by the arrest of a father of minor children on a charge of nonsupport filed by the mother, and upon trial the father pleads guilty and is sentenced, which sentence is suspended and the defendant put on probation, the condition of the probation being that the defendant will pay a specified sum weekly for support, the minor children thereby become wards of the juvenile court and the subject of their support and the power to enforce the condition of probation is exclusively in that court until each child has reached the age of eighteen years: *Anderson v. Anderson*, 4 Ohio App. 2d 90, 33 Ohio Op. 2d 145, 212 N.E.2d 643 (1965).

Probation

The juvenile court may order reinstatement of a suspended commitment for lack of good behavior even though the juvenile's probationary period had expired before the juvenile engaged in such conduct if the court's order requiring good behavior had not yet expired at the time of the conduct: *In re Proctor*, 1997 Ohio App. LEXIS 5761 (9th Dist. 1997).

§ 2151.50 Forfeiture of bond.

When, as a condition of suspension of sentence under section 2151.49 of the Revised Code, bond is required and given, upon the failure of a person giving such bond to comply with the conditions thereof, such bond may be forfeited, the suspension terminated by the juvenile judge, the original sentence executed as though it had not been suspended, and the term of any sentence imposed in such case shall commence from the date of imprisonment of such person after such forfeiture and termination of suspension. Any part of such sentence which may have been served shall be deducted from any such period of imprisonment. When such bond is forfeited the judge may issue execution thereon without further proceedings.

HISTORY: GC § 1639-50; 117 v 520(535); Bureau of Code Revision. Eff 10-1-53.

§ 2151.51 Repealed, 148 v S 179, § 4 [GC § 1639-47; 117 v 520(535); Bureau of Code Revision, 10-1-53; 136 v H 1]. Eff 1-1-2002.

This section concerned provision for dependent children of person sentenced to workhouse or jail.

The effective date is set by section 5 of SB 179.

§ 2151.52 Appeals on questions of law.

The sections of the Revised Code and rules relating to appeals on questions of law from the court of common pleas shall apply to prosecutions of adults under this chapter, and from such prosecutions an appeal on a question of law may be taken to the court of appeals of the county under laws or rules governing appeals in other criminal cases to such court of appeals.

HISTORY: GC § 1639-51; 117 v 520(536); Bureau of Code Revision, 10-1-53; 129 v 290 (Eff 10-2-61); 141 v H 412. Eff 3-17-87.

Comparative Legislation

Appeals:

CA—Cal Wel & Inst Code §§ 395, 800
 FL—Fla. Stat. §§ 39.510, 39.815, 984.24, 985.234
 IL—Ill. Sup. Ct. R. 660
 IN—Burns Ind. Code Ann. § 31-32-15-1
 KY—KRS § 610.130
 MI—MCLS §§ 600.863, 600.867
 NY—NY CLS Family Ct Act § 1111 et seq

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Generally

Under the juvenile court act (RC § 2151.01 et seq) no appeal shall be taken to the court of appeals except for good cause shown, "upon motion and notice to the prosecuting attorney... or unless such motion is allowed by such court"; and where an appellant fails to make a showing of "good cause" preliminary to appealing, the appeal will be denied and the judgment of the lower court affirmed: *State v. Parks*, 105 Ohio App. 208, 6 Ohio Op. 2d 40, 152 N.E.2d 154 (1957).

Upon a motion for leave to appeal from a sentence imposed by the juvenile court, good cause is shown as that term is employed in GC § 1639-51 (RC § 2151.52), when a substantial question relating to the trial, conviction and sentence of the defendant is raised incident to the appeal: *State ex rel. Meng v. Todaro*, 92 Ohio App. 247, 49 Ohio Op. 342, 109 N.E.2d 669 (1954).

Where an adult father filed a motion to vacate the previous orders and to dismiss proceedings of a juvenile court, the one order, in part, adjudicating that his child is a dependent child and the other awarding its exclusive custody to the mother, and at the hearing on such motion it was stipulated that the sole issue was the court's jurisdiction to hear, decide and make the order delivered therein on a stated date, there is no right of appeal to the court of appeals on questions of law from the court's order overruling such motion, such proceedings not being classified as a prosecution of an adult within the meaning of the juvenile court code: *In re Griffin*, 73 Ohio App. 110, 28 Ohio Op. 177, 55 N.E.2d 133 (1943).

An alleged father who appears in juvenile court voluntarily at the hearing of an affidavit claiming his alleged daughter to be a neglected child, has no right to prosecute an appeal from the finding, where he is not being prosecuted, and under this section

appeals on questions of law apply to the prosecution of adults: *In re Hayes*, 62 Ohio App. 289, 16 Ohio Op. 10, 28 Ohio L. Ab. 154, 23 N.E.2d 956 (1939).

General Code § 1668 (see now RC § 2151.52) does not confer jurisdiction upon the court of appeals to review a judgment of the juvenile court adjudging defendants, minors, to be dependents and committing them to an institution: *Baker v. State*, 17 Ohio L. Ab. 384 (App 1934).

Termination of parental rights

An order of the juvenile Court made pursuant to a finding that the children are "neglected children," and committing said children to the permanent custody of the child welfare board for the purpose of placing them for adoption, is a final appealable order under OConst art IV, § 6: *In re Masters*, 165 Ohio St. 503, 60 Ohio Op. 474, 137 N.E.2d 752 (1965).

[GENERAL PROVISIONS]

§ 2151.53 Physical and mental examinations; records of examination; expenses.

Any person coming within sections 2151.01 to 2151.54 of the Revised Code may be subjected to a physical examination by competent physicians, physician assistants, clinical nurse specialists, and certified nurse practitioners, and a mental examination by competent psychologists, psychiatrists, and clinical nurse specialists that practice the specialty of mental health or psychiatric mental health to be appointed by the juvenile court. Whenever any child is committed to any institution by virtue of such sections, a record of such examinations shall be sent with the commitment to such institution. The compensation of such physicians, physician assistants, clinical nurse specialists, certified nurse practitioners, psychologists, and psychiatrists and the expenses of such examinations shall be paid by the county treasurer upon specifically itemized vouchers, certified by the juvenile judge.

HISTORY: GC § 1639-54; 117 v 520(536); Bureau of Code Revision (10-1-53); 149 v S 245. Eff 3-31-2003.

Ohio Rules

Social history, examinations and investigation, JuvR 32.

§ 2151.54 Fees and costs.

The juvenile court shall tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed in cases of delinquent, unruly, dependent, abused, or neglected children except as required by section 2743.70 or 2949.091 [2949.09.1] of the Revised Code or when specifically ordered by the court. The expense of transportation of children to places to which they have been committed, and the transportation of children to and from another state by police or other officers, acting upon order of the court, shall be paid from the county treasury upon specifically itemized vouchers certified to by the judge.

If a child is adjudicated to be a delinquent child or a juvenile traffic offender and the juvenile court specifically is required, by section 2743.70 or 2949.091 [2949.09.1] of the Revised Code or any other section of the Revised Code, to impose a specified sum of money as court costs in addition to any other court costs that the court is required or permitted by law to impose, the court shall

not waive the payment of the specified additional court costs that the section of the Revised Code specifically requires the court to impose unless the court determines that the child is indigent and the court either waives the payment of all court costs or enters an order in its journal stating that no court costs are to be taxed in the case.

HISTORY: GC § 1639-56; 117 v 520(537); 119 v 731; Bureau of Code Revision, 10-1-53; 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 138 v H 238 (Eff 8-8-80); 143 v S 131. Eff 7-25-90.

Ohio Rules

Cost of investigation, JuvR 32(D).

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Constitutionality

The placing of a delinquent child, who is indigent and whose family is totally dependent upon welfare payments for income, in a detention center until court costs are paid violates OConst art I, § 15 (no person shall be imprisoned for debt): *In re Rinehart*, 10 Ohio App. 3d 318, 10 Ohio B. 523, 462 N.E.2d 448 (1983).

Generally

In juvenile court cases in which the Ohio Rules of Juvenile Procedure apply, JuvR 17(B) grants a juvenile court the authority to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, pursuant to RC § 2151.54, such fees may not be taxed as costs and collected by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except when specifically ordered by the court. (1997 OAG No. 97-024, approved and followed; 1989 OAG No. 89-086, clarified); OAG No. 98-021 (1998).

Pursuant to RC § 2151.54, no fees or costs shall be taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in cases filed by the Trumbull County Children Services Board in which a particular child is alleged to be delinquent, unruly, abused, neglected, or dependent, or in which the board seeks to obtain custody of such a child, except as required by RC § 2743.70 or RC § 2949.09.1 or when specifically ordered by the court: OAG No. 97-024 (1997).

Except in cases of delinquent, unruly, dependent, abused, or neglected children, RC § 2151.54 grants a juvenile court the authority to tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed by the juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except as required by RC § 2743.70 or RC § 2949.09.1 or when specifically ordered by the court: OAG No. 97-024 (1997).

When the Trumbull County Children Services Board is a party to an action filed in the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, the board is subject to the provisions of RC § 2151.54 governing the taxation and collection of court costs. The Trumbull County Children Services Board may be required to pay court costs that are taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in accordance with the provisions of that section: OAG No. 97-024 (1997).

Expenses incurred by the county sheriff in serving summonses, warrants, citations, subpoenas, writs, and other papers issued by the juvenile court in connection with cases that are filed in the juvenile court shall, pursuant to RC § 2151.19, be paid out of the monthly allowance that is made available therefor by the board of county commissioners under RC § 325.07. Such expenses shall not be taxed and collected by the juvenile court as fees or costs under RC § 2151.54: OAG No. 89-086 (1989).

The judge of a juvenile court has the power to place a child, under its jurisdiction, in the custody of a relative or other fit

person in a home outside the state. Payment for transportation of a child placed in a home outside the state may be made from the county treasury upon specifically itemized vouchers certified to by the judge of juvenile court: 1938 OAG No. 1918 (1938).

The expense of gasoline and oil, and the necessary tires and repairs to an automobile owned by a probation officer, and used exclusively in carrying out the work of the juvenile court, may legally be paid from the county treasury under the provisions of this section: 1921 OAG vol. 2, p. 1014 (1921).

Where delinquent juveniles are sentenced to the boys' industrial school or girls' industrial home, the cost of the case and the expense of transporting said juveniles to the place to which they have been committed, are, pursuant to GC § 1682 (see now RC § 2151.54), payable by the county and not the state: 1921 OAG vol. 1, p. 114 (1921).

There is no authority for the purchase, with county funds, of an automobile for a probation officer of the juvenile court. He may use his own car in the performance of his duties, and be reimbursed, in the manner provided in GC § 1682 (see now RC § 2151.54): 1919 OAG vol. 2, p. 1433 (1919).

The sheriff is not entitled to fees for conveying girls to industrial school. The probation officer is the proper official to render this service, the cost to be payable from the county treasury upon the certificate of the juvenile judge: 1918 OAG vol. 1, p. 341 (1918).

Children services board

A county children services board is subject to the provisions of RC § 2151.54 governing the taxation and collection of court costs by the juvenile court, and may be required to pay court costs that are taxed by the juvenile court in accordance with the provisions of that section: OAG No. 97-024 (1997).

[§ 2151.54.1] § 2151.541 Additional fees to pay for computerizing court or office of clerk or for computerized legal research services.

(A)(1) The juvenile judge may determine that, for the efficient operation of the juvenile court, additional funds are required to computerize the court, to make available computerized legal research services, or both. Upon making a determination that additional funds are required for either or both of those purposes, the judge shall do one of the following:

(a) If he is clerk of the court, charge one additional fee not to exceed three dollars on the filing of each cause of action or appeal under division (A), (Q), or (U) of section 2303.20 of the Revised Code;

(b) If the clerk of the court of common pleas serves as the clerk of the juvenile court pursuant to section 2151.12 of the Revised Code, authorize and direct the clerk to charge one additional fee not to exceed three dollars on the filing of each cause of action or appeal under division (A), (Q), or (U) of section 2303.20 of the Revised Code.

(2) All moneys collected under division (A)(1) of this section shall be paid to the county treasurer. The treasurer shall place the moneys from the fees in a separate fund to be disbursed, upon an order of the juvenile judge, in an amount no greater than the actual cost to the court of procuring and maintaining computerization of the court, computerized legal research services, or both.

(3) If the court determines that the funds in the fund described in division (A)(2) of this section are more than sufficient to satisfy the purpose for which the additional fee described in division (A)(1) of this section was imposed, the court may declare a surplus in the fund and expend those surplus funds for other appropriate technological expenses of the court.

(B)(1) If the juvenile judge is the clerk of the juvenile court, he may determine that, for the efficient operation

of his court, additional funds are required to computerize the clerk's office and, upon that determination, may charge an additional fee, not to exceed ten dollars, on the filing of each cause of action or appeal, on the filing, docketing, and endorsing of each certificate of judgment, or on the docketing and indexing of each aid in execution or petition to vacate, revive, or modify a judgment under divisions (A), (P), (Q), (T), and (U) of section 2303.20 of the Revised Code. Subject to division (B)(2) of this section, all moneys collected under this division shall be paid to the county treasurer to be disbursed, upon an order of the juvenile judge and subject to appropriation by the board of county commissioners, in an amount no greater than the actual cost to the juvenile court of procuring and maintaining computer systems for the clerk's office.

(2) If the juvenile judge makes the determination described in division (B)(1) of this section, the board of county commissioners may issue one or more general obligation bonds for the purpose of procuring and maintaining the computer systems for the office of the clerk of the juvenile court. In addition to the purposes stated in division (B)(1) of this section for which the moneys collected under that division may be expended, the moneys additionally may be expended to pay debt charges on and financing costs related to any general obligation bonds issued pursuant to this division as they become due. General obligation bonds issued pursuant to this division are Chapter 133. securities.

HISTORY: 144 v H 405 (Eff 1-1-93); 144 v S 246. Eff 3-24-93.

[§ 2151.54.2] § 2151.542 Repealed,
149 v S 108, § 2.02(C) [146 v H 350]. Eff 7-6-2001.

This section concerned dispute resolution procedures; fees.

[FOSTER HOME PLACEMENT OUTSIDE COUNTY]

§ 2151.55 Required communication upon placement in foster home in another county.

When a private or governmental entity intends to place a child in a certified foster home in a county other than the county in which the child resided at the time of being removed from home, a representative of the placing entity shall orally communicate the intended placement to the foster caregiver with whom the child is to be placed and, if the child will attend the schools of the district in which the certified foster home is located, a representative of the school district's board of education.†

HISTORY: 148 v H 283 (Eff 9-29-99); 148 v H 448 (Eff 10-5-2000); 148 v H 332. Eff 1-1-2001.

† The amendments made by HB 448 (148 v —), effective 10-5-2000 and HB 332 (148 v —), effective 1-1-2001 are the same. The word "certified" is added before "foster home" by each amendment.

Analogous to former RC § 2151.55 (147 v H 215), repealed 148 v H 283, § 2, eff 9-29-99.

Not analogous to former RC § 2151.55 (CC § 1639-59; 117 v 520 (537); Bureau of Code Revision, 1-1-53), repealed 130 v 1682, § 2, eff 10-7-63.

The effective date is set by section 5 of HB 332.

Cross-References to Related Sections

Contents of communications, RC § 2151.55.1.

Information required to be provided in writing, RC § 2151.55.2.

Juvenile court has exclusive original jurisdiction, RC § 2151.23.

Ohio Constitution

Additional powers of supreme court, OConst art IV, § 5.

Ohio Administrative Code

Department of job and family services, division of social services

—
Substitute care—

Information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

Selection of a placement setting. OAC 5101:2-42-05.

[§ 2151.55.1] § 2151.551 Contents of communications.

During the oral communication described in section 2151.55 of the Revised Code, the representative of the placing entity shall do the following:

(A) Discuss safety and well-being concerns regarding the child and, if the child attends school, the students, teachers, and personnel of the school;

(B) Provide the following information:

(1) A brief description of the reasons the child was removed from home;

(2) Services the child is receiving;

(3) The name of the contact person for the placing entity that is directly responsible for monitoring the child's placement;

(4) The telephone number of the placing entity and, if the child is in the temporary, permanent, or legal custody of a private or government entity other than the placing entity, the telephone number of the entity with custody;

(5) The previous school district attended by the child;

(6) The last known address of the child's parents.

HISTORY: 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

Cross-References to Related Sections

Information required to be provided in writing, RC § 2151.55.2.
Notification of juvenile court concerning unruly or delinquent child, RC § 2151.55.4.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

[§ 2151.55.2] § 2151.552 Information required to be provided in writing.

No later than five days after a child described in section 2151.55 of the Revised Code is enrolled in school in the district described in that section, the placing entity shall provide in writing the information described in division (B) of section 2151.551 [2151.55.1] of the Revised Code to the school district and the child's foster caregiver.

HISTORY: 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

Cross-References to Related Sections

School district procedure, RC § 2151.55.3.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

[§ 2151.55.3] § 2151.553 School district procedure.

Each school district board of education shall implement a procedure for receiving the information described in section 2151.552 [2151.55.2] of the Revised Code.

HISTORY: 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

[§ 2151.55.4] § 2151.554 Notification of juvenile court concerning unruly or delinquent child.

When a private or governmental entity places a child who has been adjudicated to be an unruly or delinquent child in a certified foster home in a county other than the county in which the child resided at the time of being removed from home, the placing entity shall provide the following information in writing to the juvenile court of the county in which the certified foster home is located:

(A) The information listed in divisions (B)(2) to (4) of section 2151.551 [2151.55.1] of the Revised Code;

(B) A brief description of the facts supporting the adjudication that the child is unruly or delinquent;

(C) The name and address of the foster caregiver;

(D) Safety and well-being concerns with respect to the child and community.†

HISTORY: 148 v H 283 (Eff 9-29-99); 148 v H 448 (Eff 10-5-2000); 148 v H 332. Eff 1-1-2001.

† The amendments made by HB 448 (148 v —), effective 10-5-2000 and HB 332 (148 v —), effective 1-1-2001 are the same. The word “certified” is added before “foster home” by each amendment.

The effective date is set by section 5 of HB 332.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

[INTERSTATE COMPACT ON JUVENILES]

§ 2151.56 Interstate compact on juveniles.

The governor is hereby authorized to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

Article I—Findings and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II—Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III—Definitions

That, for the purposes of this compact, “delinquent juvenile” means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; “probation or parole” means any kind of conditional release of juveniles authorized under the laws of the states party hereto; “court” means any court having jurisdiction over delinquent, neglected or dependent children; “state” means any state, territory or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and “residence” or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV—Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile’s custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who

has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth records, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian *ad litem* for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian *ad litem* for

such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Article V—Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile de-

tained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

Article VI—Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV (a) or of Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guard-

ian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII—Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any

criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII—Responsibility for Costs

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b) or VII(d) of this compact.

Article IX—Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X—Supplementary Agreements

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and

equities of such delinquent juveniles and of the cooperating states.

Article XI—Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII—Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII—Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV—Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

Article XV—Severability

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

HISTORY: 127 v 530 (Eff 9-17-57); 142 v H 790. Eff 3-16-89.

The effective date is set by section 4 of HB 790.

Cross-References to Related Sections

Compact administrator; powers and duties, RC § 2151.57.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.
 Delinquent child, RC § 2152.02.
 Dependent child, RC § 2151.04.
 Juvenile traffic offender, RC § 2152.02.
 Neglected child, RC § 2151.03.
 Residence or legal settlement of child, RC § 2151.06.
 Unruly child, RC § 2151.02.2.
 Disposition of unruly child, RC § 2151.35.4.
 Jurisdiction of juvenile court, RC § 2151.23.
 Place of detention, RC § 2152.26.

Comparative Legislation

Interstate compact on juveniles:

CA—Cal Wel & Inst Code § 1300
 FL—Fla. Stat. § 985.501
 IL—45 ILCS §§ 10/1-10/7
 IN—Burns Ind. Code Ann. § 31-37-23-1 et seq
 KY—KRS §§ 615.010, 615.020
 MI—MCLS §§ 3.701-3.706
 NY—NY CLS Unconsol Laws Ch 74, § 1 et seq
 PA—62 P.S. § 731 et seq

Practice Manuals and Treatises

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Construction with other laws

The provisions of RC § 2151.39, are not applicable to the acceptance of a juvenile delinquent by the Ohio compact administrator pursuant to the provisions of RC §§ 2151.56 to 2151.61, inclusive: 1959 OAG No. 1041 (1959).

Fees and costs

Where the State of Ohio is responsible for the payment of transportation costs under RC § 2151.56, art. IV(b) or RC § 2151.56, art. V(b), the person or entity with legal custody of such juvenile is the party within the state which is responsible for the transportation costs of the juvenile's return, unless the juvenile court, in its disposition of a delinquent juvenile under RC § 2151.35.5(A), transferred the responsibility for the physical care and custody to another person or entity, which is then responsible for the payment of such costs: OAG No. 89-107 (1989).

Where a runaway juvenile or a delinquent juvenile is returned to this state from another state which is a party to the Interstate Compact on Juveniles, under RC § 2151.56, art. IV(b) or RC § 2151.56, art. V(b), respectively, the State of Ohio is responsible for payment of such return transportation costs: OAG No. 89-107 (1989).

Jurisdiction

For purposes of RC § 2151.56, a person over the age of twenty-one may qualify as a "delinquent juvenile," provided that the person has been adjudged delinquent by the sending state and, at the time the provisions of RC § 2151.56 are invoked, is subject to the jurisdiction of the court in the sending state that made the adjudication or subject to the jurisdiction or supervision of an agency or institution pursuant to an order of such court: OAG No. 88-050 (1988).

§ 2151.57 Compact administrator; powers and duties.

Pursuant to section 2151.56 of the Revised Code, the governor is hereby authorized and empowered, with the advice and consent of the senate, to designate an officer

who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Such compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

HISTORY: 127 v 530. Eff 9-17-57.

Cross-References to Related Sections

Disposition of unruly child, RC § 2151.35.4.

Ohio Constitution

Appointments subject to advice and consent of Senate, OConst art III, § 21.

§ 2151.58 Supplementary agreements.

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of such service.

HISTORY: 127 v 530. Eff 9-17-57.

Cross-References to Related Sections

Disposition of unruly child, RC § 2151.35.4.

Practice Forms

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§ 2151.59 Financial obligations.

The compact administrator, subject to the approval of the director of budget and management, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

HISTORY: 127 v 530 (Eff 9-17-57); 141 v H 201. Eff 7-1-85.

Cross-References to Related Sections

Disposition of unruly child, RC § 2151.35.4.

§ 2151.60 Enforcement by agencies of state and subdivisions.

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

HISTORY: 127 v 530. Eff 9-17-57.

Cross-References to Related Sections

Disposition of unruly child, RC § 2151.35.4.

[TRAINING AND REHABILITATION]**§ 2151.61 Additional article.**

In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

Article XVI—Additional Article

The governor is hereby authorized and directed to execute, with any other state or states legally joining in the same, an amendment to the interstate compact on juveniles in substantially the following form:

(a) That this Article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(b) For the purposes of Article XVI(c), "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

(c) When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

(d) All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent juvenile for the violation of any criminal law. Any juvenile charged with being a delinquent juvenile for violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in the case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the county in which the petition has been filed."

HISTORY: 127 v 530 (Eff 9-17-57); 144 v H 154. Eff 7-31-92.

Cross-References to Related Sections

Disposition of unruly child, RC § 2151.35.4.

Places where neglected, abused, dependent or unruly child may or may not be held, RC § 2151.31.2.

§ 2151.62 Amended and renumbered RC § 2152.72 in 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.65 Single-county and joint-county juvenile facilities.

Upon the advice and recommendation of the juvenile judge, the board of county commissioners may provide by purchase, lease, construction, or otherwise a school, forestry camp, or other facility or facilities where delinquent children, as defined in section 2152.02 of the Revised Code, dependent children, abused children, unruly children, as defined in section 2151.022 [2151.02.2] of the Revised Code, or neglected children or juvenile traffic offenders may be held for training, treatment, and rehabilitation. Upon the joint advice and recommendation of the juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners of such counties may form themselves into a joint board and proceed to organize a district for the establishment and support of a school, forestry camp, or other facility or facilities for the use of the juvenile courts of such counties, where delinquent, dependent, abused, unruly, or neglected children, or juvenile traffic offenders may be held for treatment, training, and rehabilitation, by using a site or buildings already established in one such county, or by providing for the purchase of a site and the erection of the necessary buildings thereon. Such county or district school, forestry camp, or other facility or facilities shall be maintained as provided in Chapters 2151. and 2152. of the Revised Code. Children who are adjudged to be delinquent, dependent, neglected, abused, unruly, or juvenile traffic offenders may be committed to and held in any such school, forestry camp, or other facility or facilities for training, treatment, and rehabilitation.

The juvenile court shall determine:

(A) The children to be admitted to any school, forestry camp, or other facility maintained under this section;

(B) The period such children shall be trained, treated, and rehabilitated at such facility;

(C) The removal and transfer of children from such facility.

HISTORY: 130 v 626 (Eff 10-14-63); 136 v H 85 (Eff 11-28-75); 138 v S 168 (Eff 10-2-80); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Additional orders of disposition, RC § 2152.19.

Adoption of rules for payment of assistance for the construction or acquisition of a district detention facility, RC § 5139.29.

County taxing authority may issue bonds for juvenile detention facilities; submission of bond issue to voters, RC § 2151.65.5.

Definitions, RC § 2151.01.1.

Abused child, RC § 2151.03.1.

Child without proper parental care, RC § 2151.05.

Delinquent child, RC § 2152.02.

Dependent child, RC § 2151.04.

Fiscal officer, RC § 133.01.

Juvenile traffic offender, RC § 2152.02.

Neglected child, RC § 2151.03.

Residence or legal settlement of child, RC § 2151.06.

Unruly child, RC § 2151.02.2.

Department of youth services—

Standards of financial assistance for construction of rehabilitation facility, RC § 5139.27.

Standards of operation of rehabilitation facility, RC §§ 5139.29, 5139.30.

Disposition of juvenile traffic offender, RC § 2152.21.
 District for the establishment and support of a school, forestry camp, or other facility or facilities for the use of the juvenile courts, tax levies, RC § 2151.66 et seq.
 Education of youth, RC § 2151.65.3.
 Nonresident admission, RC § 2151.65.4.
 School district liability for cost of education, RC § 2151.35.7.
 State assistance for juvenile facilities, RC § 2151.65.1.
 State purpose to provide single-county or joint-county juvenile facilities, RC § 307.02.1.
 Tax levy law—
 Subdivision, taxing authority defined, RC § 5705.01.
 Tax levy for youth rehabilitation facility, RC § 5705.19.

Comparative Legislation

Facilities for training, treatment and rehabilitation of children:
 42 USCS § 5631 et seq
 CA—Cal Wel & Inst Code § 1000 et seq
 FL—Fla. Stat. § 985.404
 IL—705 ILCS §§ 405/2-27, 405/3-28, 405/4-25
 IN—Burns Ind. Code Ann. § 31-31-8-2
 KY—KRS § 605.100
 MI—MCLS § 803.301 et seq
 NY—NY CLS Family Ct Law § 756
 PA—62 P.S. § 724

CASE NOTES AND OAG

Legal counsel

Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the joint board of county commissioners may employ legal counsel: OAG No. 83-064 (1983).

Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the county prosecuting attorneys of the participating counties have no duty to provide legal counsel for the joint board of county commissioners: OAG No. 83-064 (1983).

[§ 2151.65.1] § 2151.651 State assistance for juvenile facilities.

The board of county commissioners of a county which, either separately or as part of a district, is planning to establish a school, forestry camp, or other facility under section 2151.65 of the Revised Code, to be used exclusively for the rehabilitation of children between the ages of twelve to eighteen years, other than psychotic or mentally retarded children, who are designated delinquent children, as defined in section 2152.02 of the Revised Code, or unruly children, as defined in section 2151.022 [2151.02.2] of the Revised Code, by order of a juvenile court, may make application to the department of youth services, created under section 5139.01 of the Revised Code, for financial assistance in defraying the county's share of the cost of acquisition or construction of such school, camp, or other facility, as provided in section 5139.27 of the Revised Code. Such application shall be made on forms prescribed and furnished by the department.

HISTORY: 131 v 633 (Eff 8-10-65); 138 v S 168 (Eff 10-2-80); 139 v H 440 (Eff 11-23-81); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Inspection of schools and facilities by department of youth services, RC § 5139.31.
 Standards of financial assistance for construction of youth rehabilitation facility, RC § 5139.27.

Ohio Constitution

Capital improvement bonds, OConst art VIII, § 2i.

[§ 2151.65.2] § 2151.652 Repealed, 149 v H 94, §§ 2, 4a [131 v 633; 138 v S 168; 139 v H 440; 148 v S 179]. Eff 9-5-2001; 1-1-2002.

This section concerned state assistance for operation and maintenance. The version of this statute as amended by SB 179 (148 v —), was to become effective 1-1-2002.

The effective date is set by section 5 and section 205 of HB 94.

[§ 2151.65.3] § 2151.653 Education of youths.

The board of county commissioners of a county or the board of trustees of a district maintaining a school, forestry camp, or other facility established under section 2151.65 of the Revised Code, shall provide a program of education for the youths admitted to such school, forestry camp, or other facility. Either of such boards and the board of education of any school district may enter into an agreement whereby such board of education provides teachers for such school, forestry camp, or other facility, or permits youths admitted to such school, forestry camp, or other facility to attend a school or schools within such school district, or both. Either of such boards may enter into an agreement with the appropriate authority of any university, college, or vocational institution to assist in providing a program of education for the youths admitted to such school, forestry camp, or other facility.

HISTORY: 131 v 634. Eff 8-10-65.

[§ 2151.65.4] § 2151.654 Nonresident admission.

The board of county commissioners of a county or the board of trustees of a district maintaining a school, forestry camp, or other facility established under section 2151.65 of the Revised Code, may enter into an agreement with the board of county commissioners of a county which does not maintain such a school, forestry camp, or other facility, to admit to such school, forestry camp, or other facility a child from the county not maintaining such a school, forestry camp, or other facility.

HISTORY: 131 v 634. Eff 8-10-65.

[§ 2151.65.5] § 2151.655 Taxing authority of county may issue general obligation securities to pay cost of acquiring or acquiring sites for schools, detention facilities, forestry camps, or other facilities; agreements for financing of permanent improvements.

(A) The taxing authority of a county may issue general obligation securities of the county under Chapter 133, of the Revised Code to pay such county's share, either separately or as a part of a district, of the cost of acquiring schools, detention facilities, forestry camps, or other facilities, or any combination thereof, under section 2152.41 or 2151.65 of the Revised Code, or of acquiring sites for and constructing, enlarging, or otherwise improving such schools, detention facilities, forestry camps, other facilities, or combinations thereof.

(B) The joint board of county commissioners, as the taxing authority of a detention facility district, or a district organized under section 2151.65 of the Revised Code, or of a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, may submit to the electors of the district the question of issuing general obligation bonds of the district to pay the cost of acquiring, constructing, enlarging, or otherwise improving sites, buildings, and facilities for any purposes for which the district was organized. The election on such question shall be submitted and held under section 133.18 of the Revised Code.

(C)(1) To pay the cost of permanent improvements of the district, the board of trustees of a detention facility district, of a district organized under section 2151.65 of the Revised Code, or of a combined district organized under sections 2152.41 and 2151.65 of the Revised Code may enter into an agreement with the several boards of county commissioners constituting the joint board of county commissioners. The agreement shall provide for each such board of county commissioners to pay the district a share of such costs for a stated term from the proceeds of a tax levied by the board under division (F) or (R) of section 5705.19 of the Revised Code or from funds of the county otherwise lawfully available to pay the county's share of the costs of the district's permanent improvements. County shares shall be allocated on the basis prescribed in the agreement, which may include an allocation in proportion to the taxable value of each county or in proportion to the number of children from each county who are maintained in district facilities.

More than one agreement may be entered into under this division with respect to a district, and more than one agreement may exist at the same time with respect to a district. An agreement entered into under this division may be amended if the amendment is mutually agreed to by the board of trustees of the district and the several boards of county commissioners constituting the joint board of county commissioners.

If a board of county commissioners withdraws from the district before the end of the term of the agreement, the board shall be required to make payments as required in the agreement until all debt charges or loan repayments for which such payments are pledged are paid in full, unless the board of trustees agrees otherwise.

(2) In any such district where the board of trustees has entered into an agreement under division (C)(1) of this section, the joint board of county commissioners, as the taxing authority of a district, may issue self-supporting securities of the district under section 133.152 [133.15.2] of the Revised Code for the purpose of paying the cost of permanent improvements of the district. If such securities are issued, the term of an agreement shall be for no fewer years than the maximum maturity of securities secured by a pledge of payments made under the agreement.

(3) In any such district where the board of trustees has entered into an agreement under division (C)(1) of this section, the joint board of county commissioners, as the taxing authority of a district, may obtain loans from a financial institution to be repaid from amounts to be paid to the district under the agreement by the boards of county commissioners constituting the joint board of county commissioners.

HISTORY: RC § 133.15.1, 131 v 74 (Eff 8-10-65); 133 v H 1135 (Eff 9-16-70); 134 v H 258 (Eff 1-27-72); RC § 2151.65.5, 143 v H 230 (Eff 10-30-89); 148 v S 179, § 3. Eff 1-1-2002; 151 v S 125, § 1, eff. 7-20-06.

The effective date is set by section 5 of SB 179.

Effect of Amendments

151 v S 125, effective July 20, 2006, in (B), inserted "the joint board of county commissioners, as the"; and added (C).

Cross-References to Related Sections

Definitions for uniform bond law, RC § 133.01.

§ 2151.66 District tax levies.

The joint boards of county commissioners of district schools, forestry camps, or other facility or facilities created under section 2151.65 of the Revised Code, shall make annual assessments of taxes sufficient to support and defray all necessary expenses of such school, forestry camp, or other facility or facilities.

HISTORY: 130 v 627. Eff 10-14-63.

§ 2151.67 Gifts and bequests.

The board of county commissioners of a county or the board of trustees of a district maintaining a school, forestry camp, or other facility established or to be established under section 2151.65 of the Revised Code may receive gifts, grants, devises, and bequests, either absolutely or in trust, and may receive any public moneys made available to it. Each of such boards shall use such gifts, grants, devises, bequests, and public moneys in whatever manner it determines is most likely to carry out the purposes for which such school, forestry camp, or other facility was or is to be established.

HISTORY: 131 v 635 (Eff 8-10-65); 132 v H 1. Eff 2-21-67.

Analogous to former RC § 2151.67 (130 v 627), repealed in 131 v 2019, § 2, eff 8-10-65.

§ 2151.68 Appointment of district boards of trustees.

Immediately upon the organization of the joint board of county commissioners as provided by section 2151.65 of the Revised Code, or so soon thereafter as practicable, such joint board of county commissioners shall appoint a board of not less than five trustees, which shall hold office and perform its duties until the first annual meeting after the choice of an established site and buildings, or after the selection and purchase of a building site, at which time such joint board of county commissioners shall appoint a board of not less than five trustees, one of whom shall hold office for a term of one year, one for the term of two years, one for the term of three years, half of the remaining number for the term of four years, and the remainder for the term of five years. Annually thereafter, the joint board of county commissioners shall appoint one or more trustees, each of whom shall hold office for the term of five years, to succeed any trustee whose term of office expires. A trustee may be appointed to succeed himself upon such board of trustees, and all appointments to such board of trustees shall be made from persons who are recommended and approved by the juvenile court judge or judges of the county of which such person is a resident. The annual meeting of the board of trustees shall be held on the first Tuesday in May in each year.

HISTORY: 130 v 627. Eff 10-14-63.

Cross-References to Related Sections

Authority for choice, construction, and furnishing of district facility, RC § 2151.76.
Interim duties, RC § 2151.75.
Procedures, RC § 2151.69.
Removal of trustees, RC § 2151.74.
Selection of site for district facility, RC § 2151.72.
Withdrawal of county from district; continuity of district tax levy, RC § 2151.78.

§ 2151.69 Procedures of district boards of trustees.

A majority of the trustees appointed under section 2151.68 of the Revised Code constitutes a quorum. Board meetings shall be held at least quarterly. The presiding juvenile court judge of each of the counties of the district organized pursuant to section 2151.65 of the Revised Code shall attend such meetings, or shall designate a member of his staff to do so. The members of the board shall receive no compensation for their services, except their actual traveling expenses, which, when properly certified, shall be allowed and paid by the treasurer.

HISTORY: 130 v 628. Eff 10-14-63.

§ 2151.70 Employees of juvenile facilities.

The judge, in a county maintaining a school, forestry camp, or other facility or facilities created under section 2151.65 of the Revised Code, shall appoint the superintendent of any such facility. In the case of a district facility created under such section, the board of trustees shall appoint the superintendent. A superintendent, before entering upon his duties, shall give bond with sufficient surety to the judge or to the board, as the case may be, in such amount as may be fixed by the judge or the board, such bond being conditioned upon the full and faithful accounting of the funds and properties coming into his hands.

Compensation of the superintendent and other necessary employees of a school, forestry camp, or other facility or facilities shall be fixed by the judge in the case of a county facility, or by the board of trustees in the case of a district facility. Such compensation and other expenses of maintaining the facility shall be paid in the manner prescribed in section 2151.13 of the Revised Code in the case of a county facility, or in accordance with rules and regulations provided for in section 2151.77 of the Revised Code in the case of a district facility.

The superintendent of a facility shall appoint all employees of such facility. All such employees, except the superintendent, shall be in the classified civil service.

The superintendent of a school, forestry camp, or other facility shall have entire executive charge of such facility, under supervision of the judge, in the case of a county facility, or under supervision of the board of trustees, in the case of a district facility. The superintendent shall control, manage, and operate the facility, and shall have custody of its property, files, and records.

HISTORY: 130 v 628. Eff 10-14-63.

§ 2151.71 Manner of operating facilities.

District schools, forestry camps, or other facilities created under section 2151.65 of the Revised Code shall be established, operated, maintained, and managed in the

same manner, so far as applicable, as county schools, forestry camps, or other facilities.

HISTORY: 130 v 629. Eff 10-14-63.

§ 2151.72 Selection of site for district facility.

When the board of trustees appointed under section 2151.68 of the Revised Code does not choose an established institution in one of the counties of the district, it may select a suitable site for the erection of a district school, forestry camp, or other facility or facilities created under section 2151.65 of the Revised Code.

HISTORY: 130 v 629. Eff 10-14-63.

§ 2151.73 Apportionment of board of trustees posts; executive committee.

Each county in the district, organized under section 2151.65 of the Revised Code, shall be entitled to one trustee, and in districts composed of but two counties, each county shall be entitled to not less than two trustees. In districts composed of more than four counties, the number of trustees shall be sufficiently increased so that there shall always be an uneven number of trustees constituting such board. The county in which a district school, forestry camp, or other facility created under section 2151.65 of the Revised Code is located shall have not less than two trustees, who, in the interim period between the regular meetings of the board of trustees, shall act as an executive committee in the discharge of all business pertaining to the school, forestry camp, or other facility.

HISTORY: 130 v 629. Eff 10-14-63.

§ 2151.74 Removal of trustees.

The joint board of county commissioners organized under section 2151.65 of the Revised Code may remove any trustee appointed under section 2151.68 of the Revised Code, but no such removal shall be made on account of the religious or political convictions of such trustee. The trustee appointed to fill any vacancy shall hold his office for the unexpired term of his predecessor.

HISTORY: 130 v 630. Eff 10-14-63.

Cross-References to Related Sections

Members who are residents of county withdrawing from district are deemed to have resigned their positions, RC § 2151.78.

§ 2151.75 Interim duties of trustees; trustees' fund; reports.

In the interim, between the selection and purchase of a site, and the erection and occupancy of a district school, forestry camp, or other facility or facilities created under section 2151.65 of the Revised Code, the joint board of county commissioners provided by section 2151.65 of the Revised Code may delegate to a board of trustees appointed under section 2151.68 of the Revised Code, such powers and duties as, in its judgment, will be of general interest or aid to the institution. Such joint board of county commissioners may appropriate a trustees' fund, to be expended by the board of trustees in payment

of such contracts, purchases, or other expenses necessary to the wants or requirements of the school, forestry camp, or other facility or facilities which are not otherwise provided for. The board of trustees shall make a complete settlement with the joint board of county commissioners once each six months, or quarterly if required, and shall make a full report of the condition of the school, forestry camp, or other facility or facilities and inmates, to the board of county commissioners, and to the juvenile court of each of the counties.

HISTORY: 130 v 630. Eff 10-14-63.

§ 2151.76 Authority for choice, construction, and furnishing of district facility.

The choice of an established site and buildings, or the purchase of a site, stock, implements, and general farm equipment, should there be a farm, the erection of buildings, and the completion and furnishing of the district school, forestry camp, or other facility or facilities for occupancy, shall be in the hands of the joint board of county commissioners organized under section 2151.65 of the Revised Code. Such joint board of county commissioners may delegate all or a portion of these duties to the board of trustees provided for under section 2151.68 of the Revised Code, under such restrictions and regulations as the joint board of county commissioners imposes.

HISTORY: 130 v 630. Eff 10-14-63.

§ 2151.77 Capital and current expenses of district.

When an established site and buildings are used for a district school, forestry camp, or other facility or facilities created under section 2151.65 of the Revised Code the joint board of county commissioners organized under section 2151.65 of the Revised Code shall cause the value of such site and buildings to be properly appraised. This appraisal value, or in case of the purchase of a site, the purchase price and the cost of all betterments and additions thereto, shall be paid by the counties comprising the district, in proportion to the taxable property of each county, as shown by its tax duplicate. The current expenses of maintaining the school, forestry camp, or other facility or facilities and the cost of ordinary repairs thereto shall be paid by each such county in accordance with one of the following methods as approved by the joint board of county commissioners:

(A) In proportion to the number of children from such county who are maintained in the school, forestry camp, or other facility or facilities during the year;

(B) By a levy submitted by the joint board of county commissioners under division (A) of section 5705.19 of the Revised Code and approved by the electors of the district;

(C) In proportion to the taxable property of each county, as shown by its tax duplicate;

(D) In any combination of the methods for payment described in division (A), (B), or (C) of this section.

The board of trustees shall, with the approval of the joint board of county commissioners, adopt rules for the management of funds used for the current expenses of maintaining the school, forestry camp, or other facility or facilities.

HISTORY: 130 v 631 (Eff 10-14-63); 134 v H 258 (Eff 1-27-72); 142 v H 365. Eff 6-14-88.

Cross-References to Related Sections

Employees of juvenile facilities, RC § 2151.70.

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County commissioners

A board of county commissioners has the authority pursuant to RC § 305.26 to compound or release, in whole or in part, or otherwise settle payments due the county as a result of an erroneous apportionment of the costs of operating and maintaining district juvenile detention or rehabilitation facilities: OAG No. 84-052 (1984).

Revised Code §§ 2151.34.12 and 2151.77 require that the costs of operating and maintaining district juvenile detention and rehabilitation facilities be apportioned among the counties participating in the district on the basis of the counties' actual use of such facilities where no levy has been approved pursuant to RC § 5705.19(A). Neither a joint board of county commissioners formed pursuant to RC §§ 2151.34 and 2151.65 nor a district board of trustees appointed pursuant to RC §§ 2151.34.3 and 2151.68 has the authority to direct or permit the apportionment of such costs in any other manner: OAG No. 84-052 (1984).

§ 2151.78 Withdrawal of county from district; continuity of district tax levy.

The board of county commissioners of any county within a school, forestry camp, or other facility or facilities district may, upon the recommendation of the juvenile court of such county, withdraw from such district and dispose of its interest in such school, forestry camp, or other facility or facilities selling or leasing its right, title, and interest in the site, buildings, furniture, and equipment to any counties in the district, at such price and upon such terms as are agreed upon among the boards of county commissioners of the counties concerned. Section 307.10 of the Revised Code does not apply to this section. The net proceeds of any such sale or lease shall be paid into the treasury of the withdrawing county.

Any county withdrawing from such district or from a combined district organized under sections 2152.41 and 2151.65 of the Revised Code shall continue to have levied against its tax duplicate any tax levied by the district during the period in which the county was a member of the district for current operating expenses, permanent improvements, or the retirement of bonded indebtedness. Such levy shall continue to be a levy against such duplicate of the county until such time that it expires or is renewed.

Members of the board of trustees of a district school, forestry camp, or other facility or facilities who are residents of a county withdrawing from such district are deemed to have resigned their positions upon the completion of the withdrawal procedure provided by this section. Vacancies then created shall be filled according to sections 2151.68 and 2151.74 of the Revised Code.

HISTORY: 130 v 631 (Eff 10-14-63); 134 v H 258 (Eff 1-27-72); 145 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.79 Designation of fiscal officer of district; duties of county auditors in district.

The county auditor of the county having the greatest population, or, with the unanimous concurrence of the county auditors of the counties composing a facilities district, the auditor of the county wherein the facility is located, shall be the fiscal officer of a district organized

under section 2151.65 of the Revised Code or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code. The county auditors of the several counties composing a school, forestry camp, or other facility or facilities district, shall meet at the district school, forestry camp, or other facility or facilities not less than once in each six months, to review accounts and to transact such other duties in connection with the institution as pertain to the business of their office.

HISTORY: 130 v 631 (Eff 10-14-63); 134 v H 258 (Eff 1-27-72); 135 v H 1033 (Eff 10-2-74); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2151.80 Expenses of members of boards of county commissioners.

Each member of the board of county commissioners who meets by appointment to consider the organization of a district school, forestry camp, or other facility or facilities shall, upon presentation of properly certified accounts, be paid his necessary expenses upon a warrant drawn by the county auditor of his county.

HISTORY: 130 v 632. Eff 10-14-63.

[INDEPENDENT LIVING SERVICES]

§ 2151.81 Definitions.

As used in sections 2151.82 to 2151.84 of the Revised Code:

(A) "Independent living services" means services and other forms of support designed to aid children and young adults to successfully make the transition to independent adult living and to achieve emotional and economic self-sufficiency. "Independent living services" may include the following:

- (1) Providing housing;
- (2) Teaching decision-making skills;
- (3) Teaching daily living skills such as securing and maintaining a residence, money management, utilization of community services and systems, personal health care, hygiene and safety, and time management;
- (4) Assisting in obtaining education, training, and employment skills;
- (5) Assisting in developing positive adult relationships and community supports.

(B) "Young adult" means a person eighteen years of age or older but under twenty-one years of age who was in the temporary or permanent custody of, or was provided care in a planned permanent living arrangement by, a public children services agency or private child placing agency on the date the person attained age eighteen.

HISTORY: 149 v H 38. Eff 11-1-2002.

§ 2151.82 Agency duty to provide independent living services.

A public children services agency or private child placing agency, that has temporary or permanent custody of, or is providing care in a planned permanent living arrangement to, a child who is sixteen or seventeen years of age, shall provide independent living services to the

child. The services to be provided shall be determined based on an evaluation of the strengths and weaknesses of the child, completed or obtained by the agency. If housing is provided as part of the services, the child shall be placed in housing that is supervised or semi-supervised by an adult.

The services shall be included as part of the case plan established for the child pursuant to section 2151.412 [2151.41.2] of the Revised Code.

HISTORY: 149 v H 38. Eff 11-1-2002.

§ 2151.83 Agreement with young adult to provide independent living services; addendum.

(A) A public children services agency or private child placing agency, on the request of a young adult, shall enter into a jointly prepared written agreement with the young adult that obligates the agency to ensure that independent living services are provided to the young adult and sets forth the responsibilities of the young adult regarding the services. The agreement shall be developed based on the young adult's strengths, needs, and circumstances. The agreement shall be designed to promote the young adult's successful transition to independent adult living and emotional and economic self-sufficiency.

(B) If the young adult appears to be eligible for services from one or more of the following entities, the agency must contact the appropriate entity to determine eligibility:

(1) An entity, other than the agency, that is represented on a county family and children first council established pursuant to section 121.37 of the Revised Code. If the entity is a board of alcohol, drug addiction, and mental health services, an alcohol and drug addiction services board, or a community mental health board, the agency shall contact the provider of alcohol, drug addiction, or mental health services that has been designated by the board to determine the young adult's eligibility for services.

(2) The rehabilitation services commission;

(3) A metropolitan housing authority established pursuant to section 3735.27 of the Revised Code.

If an entity described in this division determines that the young adult qualifies for services from the entity, that entity, the young adult, and the agency to which the young adult made the request for independent living services shall enter into a written addendum to the jointly prepared agreement entered into under division (A) of this section. The addendum shall indicate how services under the agreement and addendum are to be coordinated and allocate the service responsibilities among the entities and agency that signed the addendum.

HISTORY: 149 v H 38. Eff 11-1-2002; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

Effect of Amendments

H.B. 95, Acts 2003, effective September 26, 2003, deleted "and the availability of funds provided pursuant to section 2151.84 of the Revised Code" from the end of the second sentence in (A).

§ 2151.84 Model agreements.

The department of job and family services shall establish model agreements that may be used by public children services agencies and private child placing agencies required to provide services under an agreement

with a young adult pursuant to section 2151.83 of the Revised Code. The model agreements shall include provisions describing the specific independent living services to be provided, the duration of the services and the agreement, the duties and responsibilities of each party under the agreement, and grievance procedures regarding disputes that arise regarding the agreement or services provided under it.

HISTORY: 149 v H 38. Eff 11-1-2002; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

Effect of Amendments

H.B. 95, Acts 2003, effective September 26, 2003, deleted "to the extent funds are provided pursuant to this section" following "living services to be provided" in the introductory paragraph, and "To facilitate the provision of independent living services, the department shall provide funds to meet the requirement of state matching funds needed to qualify for federal funds under the 'Foster Care Independence Act of 1999,' 113 Stat. 1822 (1999), 42 U.S.C. 677, as amended. The department shall seek controlling board approval of any funds transfers necessary to meet this requirement" from the final paragraph following the introductory paragraph.

§ 2151.85 Unmarried minor may seek abortion without notice to parent, guardian or custodian.

(A) A woman who is pregnant, unmarried, under eighteen years of age, and unemancipated and who wishes to have an abortion without the notification of her parents, guardian, or custodian may file a complaint in the juvenile court of the county in which she has a residence or legal settlement, in the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, or in the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be performed or induced is located, requesting the issuance of an order authorizing her to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian.

The complaint shall be made under oath and shall include all of the following:

- (1) A statement that the complainant is pregnant;
- (2) A statement that the complainant is unmarried, under eighteen years of age, and unemancipated;
- (3) A statement that the complainant wishes to have an abortion without the notification of her parents, guardian, or custodian;
- (4) An allegation of either or both of the following:
 - (a) That the complainant is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the notification of her parents, guardian, or custodian;
 - (b) That one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents, guardian, or custodian otherwise is not in her best interest.
- (5) A statement as to whether the complainant has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney.

(B)(1) The court shall fix a time for a hearing on any complaint filed pursuant to division (A) of this section and shall keep a record of all testimony and other oral

proceedings in the action. The court shall hear and determine the action and shall not refer any portion of it to a referee. The hearing shall be held at the earliest possible time, but not later than the fifth business day after the day that the complaint is filed. The court shall enter judgment on the complaint immediately after the hearing is concluded. If the hearing required by this division is not held by the fifth business day after the complaint is filed, the failure to hold the hearing shall be considered to be a constructive order of the court authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parent, guardian, or custodian, and the complainant and any other person may rely on the constructive order to the same extent as if the court actually had issued an order under this section authorizing the complainant to consent to the performance or inducement of an abortion without such notification.

(2) The court shall appoint a guardian ad litem to protect the interests of the complainant at the hearing that is held pursuant to this section. If the complainant has not retained an attorney, the court shall appoint an attorney to represent her. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court also may appoint him to serve as the complainant's attorney.

(C)(1) If the complainant makes only the allegation set forth in division (A)(4)(a) of this section and if the court finds, by clear and convincing evidence, that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(2) If the complainant makes only the allegation set forth in division (A)(4)(b) of this section and if the court finds, by clear and convincing evidence, that there is evidence of a pattern of physical, sexual, or emotional abuse of the complainant by one or both of her parents, her guardian, or her custodian, or that the notification of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(3) If the complainant makes both of the allegations set forth in divisions (A)(4)(a) and (b) of this section, the court shall proceed as follows:

(a) The court first shall determine whether it can make the finding specified in division (C)(1) of this section and, if so, shall issue an order pursuant to that division. If the court issues such an order, it shall not proceed pursuant to division (C)(3)(b) of this section. If the court does not make the finding specified in division (C)(1) of this section, it shall proceed pursuant to division (C)(3)(b) of this section.

(b) If the court pursuant to division (C)(3)(a) of this section does not make the finding specified in division (C)(1) of this section, it shall proceed to determine whether it can make the finding specified in division (C)(2) of this section and, if so, shall issue an order pursuant to that division. If the court does not make the

finding specified in division (C)(2) of this section, it shall dismiss the complaint.

(D) The court shall not notify the parents, guardian, or custodian of the complainant that she is pregnant or that she wants to have an abortion.

(E) If the court dismisses the complaint, it immediately shall notify the complainant that she has a right to appeal under section 2505.073 [2505.07.3] of the Revised Code.

(F) Each hearing under this section shall be conducted in a manner that will preserve the anonymity of the complainant. The complaint and all other papers and records that pertain to an action commenced under this section shall be kept confidential and are not public records under section 149.43 of the Revised Code.

(G) The clerk of the supreme court shall prescribe complaint and notice of appeal forms that shall be used by a complainant filing a complaint under this section and by an appellant filing an appeal under section 2505.073 [2505.07.3] of the Revised Code. The clerk of each juvenile court shall furnish blank copies of the forms, without charge, to any person who requests them.

(H) No filing fee shall be required of, and no court costs shall be assessed against, a complainant filing a complaint under this section or an appellant filing an appeal under section 2505.073 [2505.07.3] of the Revised Code.

(I) As used in this section, "unemancipated" means that a woman who is unmarried and under eighteen years of age has not entered the armed services of the United States, has not become employed and self-subsisting, or has not otherwise become independent from the care and control of her parent, guardian, or custodian.

HISTORY: 141 v H 319. EFF 3-24-86.

Cross-References to Related Sections

Appeal of juvenile court decision on abortion involving a minor, RC § 2505.07.3.

Provisions requiring report of suspected child abuse inapplicable where client/patient is seeking abortion without notification of parents, RC § 2151.42.1.

Public record defined, RC § 149.43.

Unlawful abortion, RC § 2919.12.

Ohio Rules

Applicability of Juvenile Rules, JuvR 1.

Complaint for abortion without parental notification, SupR 23.

Expedited appeals, abortion-related appeals from juvenile courts, AppR 11.2.

Ohio Administrative Code

Department of health—

Abortion regulations. OAC ch. 3701-47.

Certain funds prohibited for abortion purposes. OAC ch. 3701-68.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.30 Abortion Rights of Minors

Ohio Transaction Guide: Family Law & Forms § 6.50 Abortion
Anderson's Ohio Civil Practice with Forms § 305.14 Abortion-related Appeals (New Section)

Practice Checklists

Report of Child Abuse or Neglect, Ohio Transaction Guide: Family Law & Forms § 4.112

Discretion of court

Dismissal of complaint

Disqualification of judge

Constitutionality

Plaintiffs lacked standing to bring action which basically asserted that certain judges are making wrong decisions under a constitutional judicial bypass statute because there is no constitutional or statutory authority that permits a federal court to review the decisions of state courts: *Cleveland Surgi-Center v. Jones*, 2 F.3d 686 (1993).

Since the notice provisions of RC § 2151.85(D) and CPSupR 76(H) violate the rulemaking authority of the Ohio Supreme Court as contained in OConst art IV, § 5(B), RC § 2151.85(D) and CPSupR 76(H) are of no force and effect. Further, since the defective notice provisions of RC § 2151.85(D) cannot be reconciled with the remaining sections of the statute, RC § 2151.85 is, in its entirety, of no force or effect: *In re Doe*, 57 Ohio Misc. 2d 20, 565 N.E.2d 891 (1990).

An Ohio statute that with certain exceptions, prohibits any person from performing an abortion on an unmarried, unemancipated, minor woman absent notice to one of woman's parents or a court order of approval held constitutional: *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 111 L. Ed. 2d 405, 110 S. Ct. 2972 (1990).

The pleading requirements of RC § 2151.85(C)(1) and (2) are unconstitutional: *Akron Center for Reproductive Health v. Rosen*, 633 F. Supp. 1123 (N.D. Ohio 1986).

Generally

Where a court fails to hold a timely hearing on a complaint under RC § 2151.85, the court, in effect, issues a constructive order authorizing proceeding without parental notification: *In re Doe*, 135 Ohio App. 3d 719, 735 N.E.2d 504 (1999).

The court properly found that the petitioner was not sufficiently mature to make a decision respecting abortion without obtaining parental advice where she was not responsible enough to obtain her own birth control pills, she continued to engage in sexual activity after her birth control pill prescription ran out, and she waited until she was in the second trimester of her pregnancy to decide to have abortion; the court was not obliged to find her indefinite focus on a future career, a desire to work in computers, such indicia of maturity as to invoke RC §§ 2919.12 and 2151.85(A): *In re Complaint of Doe*, 1998 Ohio App. LEXIS 3330 (1998).

The court erred by failing to consider the physical abuse of the complainant and the threats of future abuse: *In re Complaint of Doe*, 96 Ohio App. 3d 435, 645 N.E.2d 134 (1994).

Although an unemancipated minor is pregnant, she may be sufficiently mature enough to make the decision to terminate the pregnancy, especially where the evidence establishes such maturity: *In re Complaint of Doe*, 83 Ohio App. 3d 98, 613 N.E.2d 1112 (1993).

Discretion of court

Denial of an abortion without parental notification was not an abuse of discretion: *In re Jane Doe*, 141 Ohio App. 3d 20, 749 N.E.2d 807 (2001).

Denial of a complaint for authorization of an abortion without parental notification was an abuse of discretion where the minor was sufficiently mature and well-informed and feared that her tenuous relationship with her parents would be harmed by notification: *In re Doe*, 134 Ohio App. 3d 569, 731 N.E.2d 751 (1999).

The juvenile court abused its discretion by finding that the juvenile was not sufficiently mature for purposes of RC § 2151.85 where there was overwhelming evidence that she was: *In re Complaint of Doe*, 83 Ohio App. 3d 98, 613 N.E.2d 1112 (1993).

A court abuses its discretion by refusing permission for an abortion pursuant to RC § 2151.85 where the applicant clearly meets the statutory criteria: *In re Complaint of Jane Doe*, 83 Ohio App. 3d 904, 615 N.E.2d 1142 (1992).

Absent an abuse of discretion by the juvenile court, the dismissal of a complaint brought by an unemancipated pregnant minor seeking authorization to have an abortion pursuant to RC

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§ 2151.85 shall not be disturbed: In re Jane Doe 1, 57 Ohio St. 3d 135, 566 N.E.2d 1181 (1991).

Dismissal of complaint

Minor's complaint under Ohio Rev. Code Ann. § 2151.85 requesting that the trial court authorize her consent to an abortion without notifying her parents, guardian, or custodian was properly dismissed since the minor failed to demonstrate by clear and convincing evidence any statutory ground under § 2151.85(A)(4)(a), (b), and (C)(1) for bypassing notification to the minor's parents, guardian, or custodian. In re Doe, 2006 Ohio App. LEXIS 2118, 2006 Ohio 2259, (2006).

Where a minor, *inter alia*, would have been able to have an abortion without notifying her parents within the next month and had obtained medical counseling, the minor satisfied the requirements of RC § 2151.85(A)(4)(a), (B); as a result, the trial court erred in denying the minor's RC § 2151.85(C) petition to obtain an abortion without parental consent. In re Doe, 2003 Ohio App. LEXIS 5812, 2003 Ohio 6509, (2003).

Disqualification of judge

The propriety of a judge who is a trustee of a crisis pregnancy center ruling on future RC § 2151.85 proceedings is not appropriate for disqualification proceedings where there is no pending RC § 2151.85 proceeding: In re Disqualification of Grossmann, 74 Ohio St. 3d 1254, 657 N.E.2d 1356 (1994).

§ 2151.86 Criminal records check and fingerprinting of employees responsible for out-of-home child care and prospective adoptive or foster caregivers or adults residing with them.

(A)(1) The appointing or hiring officer of any entity that appoints or employs any person responsible for a child's care in out-of-home care shall request the superintendent of BCII to conduct a criminal records check with respect to any person who is under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care, except that section 3319.39 of the Revised Code shall apply instead of this section if the out-of-home care entity is a public school, educational service center, or chartered nonpublic school.

(2) The administrative director of an agency, or attorney, who arranges an adoption for a prospective adoptive parent shall request the superintendent of BCII to conduct a criminal records check with respect to that prospective adoptive parent and all persons eighteen years of age or older who reside with the prospective adoptive parent.

(3) Before a recommending agency submits a recommendation to the department of job and family services on whether the department should issue a certificate to a foster home under section 5103.03 of the Revised Code, the administrative director of the agency shall request that the superintendent of BCII conduct a criminal records check with respect to the prospective foster caregiver and all other persons eighteen years of age or older who reside with the foster caregiver.

(B) If a person subject to a criminal records check does not present proof that the person has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period the superintendent of BCII has requested information about the person from the federal bureau of investigation in a criminal records check, the appointing or hiring officer, administrative director, or attorney shall request that the superintendent of BCII obtain information from the federal bureau of investiga-

tion as a part of the criminal records check. If the person subject to the criminal records check presents proof that the person has been a resident of this state for that five-year period, the officer, director, or attorney may request that the superintendent of BCII include information from the federal bureau of investigation in the criminal records check.

An appointing or hiring officer, administrative director, or attorney required by division (A) of this section to request a criminal records check shall provide to each person subject to a criminal records check a copy of the form prescribed pursuant to division (C)(1) of section 109.572 [109.57.2] of the Revised Code and a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 [109.57.2] of the Revised Code, obtain the completed form and impression sheet from the person, and forward the completed form and impression sheet to the superintendent of BCII at the time the criminal records check is requested.

Any person subject to a criminal records check who receives pursuant to this division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 [109.57.2] of the Revised Code and a copy of an impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the impression sheet with the impressions of the person's fingerprints. If a person subject to a criminal records check, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the person's fingerprints, the appointing or hiring officer shall not appoint or employ the person as a person responsible for a child's care in out-of-home care, a probate court may not issue a final decree of adoption or an interlocutory order of adoption making the person an adoptive parent, and the department of job and family services shall not issue a certificate authorizing the prospective foster caregiver to operate a foster home.

(C)(1) No appointing or hiring officer shall appoint or employ a person as a person responsible for a child's care in out-of-home care, the department of job and family services shall not issue a certificate under section 5103.03 of the Revised Code authorizing a prospective foster caregiver to operate a foster home, and no probate court shall issue a final decree of adoption or an interlocutory order of adoption making a person an adoptive parent if the person or, in the case of a prospective foster caregiver or prospective adoptive parent, any person eighteen years of age or older who resides with the prospective foster caregiver or prospective adoptive parent previously has been convicted of or pleaded guilty to any of the following, unless the person meets rehabilitation standards established in rules adopted under division (F) of this section:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161 [2923.16.1], 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised

Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses described in division (C)(1)(a) of this section.

(2) The appointing or hiring officer may appoint or employ a person as a person responsible for a child's care in out-of-home care conditionally until the criminal records check required by this section is completed and the officer receives the results of the criminal records check. If the results of the criminal records check indicate that, pursuant to division (C)(1) of this section, the person subject to the criminal records check does not qualify for appointment or employment, the officer shall release the person from appointment or employment.

(D) The appointing or hiring officer, administrative director, or attorney shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 [109.57.2] of the Revised Code for each criminal records check conducted in accordance with that section upon a request pursuant to division (A) of this section. The officer, director, or attorney may charge the person subject to the criminal records check a fee for the costs the officer, director, or attorney incurs in obtaining the criminal records check. A fee charged under this division shall not exceed the amount of fees the officer, director, or attorney pays for the criminal records check. If a fee is charged under this division, the officer, director, or attorney shall notify the person who is the applicant at the time of the person's initial application for appointment or employment, an adoption to be arranged, or a certificate to operate a foster home of the amount of the fee and that, unless the fee is paid, the person who is the applicant will not be considered for appointment or employment or as an adoptive parent or foster caregiver.

(E) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 [109.57.2] of the Revised Code and pursuant to a request made under division (A) of this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the person who is the subject of the criminal records check or the person's representative; the appointing or hiring officer, administrative director, or attorney requesting the criminal records check or the officer's, director's, or attorney's representative; the department of job and family services or a county department of job and family services; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, a final decree of adoption or interlocutory order of adoption, or a foster home certificate.

(F) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules shall include rehabilitation standards a person who has been convicted of or pleaded guilty to an offense listed in division (C)(1) of this section must meet for an appointing or hiring

officer to appoint or employ the person as a person responsible for a child's care in out-of-home care, a probate court to issue a final decree of adoption or interlocutory order of adoption making the person an adoptive parent, or the department to issue a certificate authorizing the prospective foster caregiver to operate a foster home.

(G) An appointing or hiring officer, administrative director, or attorney required by division (A) of this section to request a criminal records check shall inform each person who is the applicant, at the time of the person's initial application for appointment or employment, an adoption to be arranged, or a foster home certificate, that the person subject to the criminal records check is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 [109.57.2] of the Revised Code.

(H) The department of job and family services may waive the requirement that a criminal records check based on fingerprints be conducted for an adult resident of a prospective adoptive or foster home or the home of a foster caregiver if the recommending agency documents to the department's satisfaction that the adult resident is physically unable to comply with the fingerprinting requirement and poses no danger to foster children or adoptive children who may be placed in the home. In such cases, the recommending or approving agency shall request that the bureau of criminal identification and investigation conduct a criminal records check using the person's name and social security number.

(I) As used in this section:

(1) "Children's hospital" means any of the following:

(a) A hospital registered under section 3701.07 of the Revised Code that provides general pediatric medical and surgical care, and in which at least seventy-five per cent of annual inpatient discharges for the preceding two calendar years were individuals less than eighteen years of age;

(b) A distinct portion of a hospital registered under section 3701.07 of the Revised Code that provides general pediatric medical and surgical care, has a total of at least one hundred fifty registered pediatric special care and pediatric acute care beds, and in which at least seventy-five per cent of annual inpatient discharges for the preceding two calendar years were individuals less than eighteen years of age;

(c) A distinct portion of a hospital, if the hospital is registered under section 3701.07 of the Revised Code as a children's hospital and the children's hospital meets all the requirements of division (1)(3)(a) of this section.

(2) "Criminal records check" has the same meaning as in section 109.572 [109.57.2] of the Revised Code.

(3) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(4) "Person responsible for a child's care in out-of-home care" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code, except that it does not include a prospective employee of the department of youth services or a person responsible for a child's care in a hospital or medical clinic other than a children's hospital.

(5) "Person subject to a criminal records check" means the following:

(a) A person who is under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care;

(b) A prospective adoptive parent;
 (c) A prospective foster caregiver;
 (d) A person eighteen years old or older who resides with a prospective foster caregiver or a prospective adoptive parent.

(6) "Recommending agency" means a public children services agency, private child placing agency, or private noncustodial agency to which the department of job and family services has delegated a duty to inspect and approve foster homes.

(7) "Superintendent of BCII" means the superintendent of the bureau of criminal identification and investigation.

HISTORY: 145 v S 35 (Eff 10-29-93); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 147 v H 446 (Eff 8-5-98); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 150 v H 117, § 1, eff. 9-3-04; 150 v H 106, § 1, eff. 9-16-04.

The provisions of § 3 of SB 38 (145 v —) read as follows:
 SECTION 3. Sections 3301.54, 5104.09, and 5126.28 of the Revised Code, as amended by this act, and sections 109.572, 2151.86, 3301.32, 3301.541, 3319.311 [now 3319.39], 3701.881, 5104.012, 5104.013, and 5153.111 of the Revised Code, as enacted by this act, apply only to persons who apply for employment for a position on or after the effective date of this act.

Effect of Amendments

150 v H 106, effective September 16, 2004, added the exception to the end of (A)(1).

150 v H 117, effective September 3, 2004, added "and all persons eighteen years of age or older who reside with the prospective adoptive parent" to the end of (A)(2); rewrote (C); inserted (H) and redesignated former (H) as (I); and corrected internal references.

Comment, Legislative Service Commission

Section 2151.86 of the Revised Code is amended by Am. Sub. H.B. 106 and Am. Sub. H.B. 117 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Application for adoption by foster caregiver, criminal records check, RC § 3107.01.2.

Criminal records check and fingerprinting of certain persons having frequent contact with children, RC § 109.57.2.

Duties of the superintendent of the bureau, RC § 109.57.

Hearing on petition for adoption; final decree or dismissal of petition, RC § 3107.14.

Ohio Administrative Code

Criminal records check for prospective employees and licensees; offenses which disqualify—

Department of job and family services, division of social services—

Adoption: prospective adoptive parents. OAC 5101:2-48-10.
 Foster caregivers—

Certification requirements, generally. OAC 5101:2-7-02.

Child care agencies. OAC 5101:2-5-09 et seq.

Type B family child care homes. OAC 5101:2-14-11.

Department of youth services personnel—

Community residential centers. OAC 5139-35-05.

Detention centers. OAC 5139-37-05.

Comparative Legislation

Criminal records check:

CA—Cal Fam Code § 8712; Cal Wel & Inst Code § 362.8

FL—Fla. Stat. §§ 39.001, 119.011, 454.026, 790.065, 943.045, 943.0585, 943.059, 985.407

IL—20 ILCS §§ 2605/55a, 2630/0.01 et seq

KY—KRS §§ 17.151-17.153

MI—MCL § 28.241 et seq

NY—NY CLS Exec § 837

PA—18 P.S. § 9101 et seq

[§ 2151.86.1] § 2151.861 Compliance by child day camps with criminal background check provisions†.

(A) The department of job and family services may periodically conduct a random sampling of registered child day camps to determine compliance with section 2151.86 of the Revised Code.

(B)(1) No child day camp shall fail to comply with section 2151.86 of the Revised Code in regards to a person it appoints or employs.

(2) If the department determines that a child day camp has violated division (B)(1) of this section, the department shall do both of the following:

(a) Consider imposing a civil penalty on the child day camp in an amount that shall not exceed ten per cent of the camp's gross revenues for the full month immediately preceding the month in which the violation occurred. If the camp was not operating for the entire calendar month preceding the month in which the violation occurred, the penalty shall be five hundred dollars.

(b) Order the child day camp to initiate a criminal records check of the person who is the subject of the violation within a specified period of time.

(3) If, within the specified period of time, the child day camp fails to comply with an order to initiate a criminal records check of the person who is the subject of the violation or to release the person from the appointment or employment, the department shall do both of the following:

(a) Impose a civil penalty in an amount not less than the amount previously imposed and that shall not exceed twice the amount permitted by division (B)(2)(a) of this section;

(b) Order the child day camp to initiate a criminal records check of the person who is the subject of the violation within a specified period of time.

(C) If the department determines that a child day camp has violated division (B)(1) of this section, the department may post a notice at a prominent place at the camp that states that the camp has failed to conduct criminal records checks of its appointees or employees as required by section 2151.86 of the Revised Code. Once the camp demonstrates to the department that the camp is in compliance with that section, the department shall permit the camp to remove the notice.

(D) The department shall include on the department's web site a list of child day camps that the department has determined from a random sample to be not in compliance with the criminal records check requirements of section 2151.86 of the Revised Code. The department shall remove a camp's name from the list when the camp demonstrates to the department that the camp is in compliance with that section.

(E) For the purposes of divisions (C) and (D) of this section, a child day camp will be considered to be in compliance with section 2151.86 of the Revised Code by doing any of the following:

(1) Requesting that the bureau of criminal identification and investigation conduct a criminal records check regarding the person who is the subject of the violation of division (B)(1) of this section and, if the person does not

qualify for the appointment or employment, releasing the person from the appointment or employment;

(2) Releasing the person who is the subject of the violation from the appointment or employment.

(F) The attorney general shall commence and prosecute to judgment a civil action in a court of competent jurisdiction to collect any civil penalty imposed under this section that remains unpaid.

(G) A child day camp may appeal any action the department takes under divisions (B) to (D) of this section to the court of common pleas of the county in which the camp is located.

HISTORY: 150 v H 11, § 1, eff. 5-15-05.

† This section was inadvertently repealed by § 2, 150 v H 11.

§ 2151.87 Child prohibited from possessing, using, purchasing or receiving cigarettes or other tobacco products.

(A) As used in this section:

(1) "Cigarette" and "tobacco product" have the same meanings as in section 2927.02 of the Revised Code.

(2) "Youth smoking education program" means a private or public agency program that is related to tobacco use, prevention, and cessation, that is carried out or funded by the tobacco use prevention and control foundation pursuant to section 183.07 of the Revised Code, that utilizes educational methods focusing on the negative health effects of smoking and using tobacco products, and that is not more than twelve hours in duration.

(B) No child shall do any of the following unless accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child:

(1) Use, consume, or possess cigarettes, other tobacco products, or papers used to roll cigarettes;

(2) Purchase or attempt to purchase cigarettes, other tobacco products, or papers used to roll cigarettes;

(3) Order, pay for, or share the cost of cigarettes, other tobacco products, or papers used to roll cigarettes;

(4) Except as provided in division (E) of this section, accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes.

(C) No child shall knowingly furnish false information concerning that child's name, age, or other identification for the purpose of obtaining cigarettes, other tobacco products, or papers used to roll cigarettes.

(D) A juvenile court shall not adjudicate a child a delinquent or unruly child for a violation of division (B)(1), (2), (3), or (4) or (C) of this section.

(E)(1) It is not a violation of division (B)(4) of this section for a child to accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes if the child is required to do so in the performance of the child's duties as an employee of that child's employer and the child's acceptance or receipt of cigarettes, other tobacco products, or papers used to roll cigarettes occurs exclusively within the scope of the child's employment.

(2) It is not a violation of division (B)(1), (2), (3), or (4) of this section if the child possesses, purchases or attempts to purchase, orders, pays for, shares the cost of, or accepts or receives cigarettes, other tobacco products, or papers used to roll cigarettes while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which cigarettes, other tobacco products, or papers used to roll cigarettes are sold or distributed.

(3) It is not a violation of division (B)(1) or (4) of this section for a child to accept, receive, use, consume, or possess cigarettes, other tobacco products, or papers used to roll cigarettes while participating in a research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.

(b) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

(c) The child is participating in the research protocol at the facility or location specified in the research protocol.

(F) If a juvenile court finds that a child violated division (B)(1), (2), (3), or (4) or (C) of this section, the court may do either or both of the following:

(1) Require the child to attend a youth smoking education program or other smoking treatment program approved by the court, if one is available;

(2) Impose a fine of not more than one hundred dollars.

(G) If a child disobeys a juvenile court order issued pursuant to division (F) of this section, the court may do any or all of the following:

(1) Increase the fine imposed upon the child under division (F)(2) of this section;

(2) Require the child to perform not more than twenty hours of community service;

(3) Suspend for a period of thirty days the temporary instruction permit, probationary driver's license, or driver's license issued to the child.

(H) A child alleged or found to have violated division (B) or (C) of this section shall not be detained under any provision of this chapter or any other provision of the Revised Code.

HISTORY: 148 v S 215 (Eff 3-15-2001); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Adjudicatory hearing, RC § 2151.28.

Hearing procedure, RC § 2151.35.

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Generally

RC § 2151.87(E)(2) allows a child to purchase cigarettes or other tobacco products while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which cigarettes or other tobacco products are sold or distributed; the use of a minor to attempt to buy cigarettes is specifically permitted by that statute; such an inspection or compliance check by the appropriate authorities is not against public policy and there is no plain error in admitting the testimony of a confidential informant on this basis. *State v. Stackhouse*, 2003 Ohio App. LEXIS 1888, 2003 Ohio 1980, (2003).

§ 2151.99 Penalties.

(A)(1) Except as otherwise provided in division (A)(2) of this section, whoever violates division (D)(2) or (3) of section 2151.313 [2151.31.3] or division (A)(4),† or (H)(2) of section 2151.421 [2151.42.1] of the Revised Code is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (A)(4) of section 2151.421 [2151.42.1] of the Revised Code knowing that a child has been abused or neglected and knowing that the person who committed the abuse or neglect was a cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader,

official, or delegate on behalf of the church, religious society, or faith, is guilty of a misdemeanor of the first degree if the person who violates division (A)(4) of this section and the person who committed the abuse or neglect belong to the same church, religious society, or faith.

(B) Whoever violates division (D)(1) of section 2151.313 [2151.31.3] of the Revised Code is guilty of a minor misdemeanor.

(C) Whoever violates division (A)(1) of section 2151.421 [2151.42.1] of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree.

(2) The offender is guilty of a misdemeanor of the first degree if the child who is the subject of the required report that the offender fails to make suffers or faces the threat of suffering the physical or mental wound, injury, disability, or condition that would be the basis of the required report when the child is under the direct care or supervision of the offender who is then acting in the offender's official or professional capacity or when the child is under the direct care or supervision of another person over whom the offender while acting in the offender's official or professional capacity has supervisory control.

HISTORY: Bureau of Code Revision, 10-1-53; 130 v 632 (Eff 10-10-63); 133 v H 320 (Eff 11-19-69); 134 v H 511 (Eff 1-1-74); 140 v H 258 (Eff 9-26-84); 141 v H 349 (Eff 3-6-86); 141 v H 529 (Eff 3-11-87); 143 v H 257 (Eff 8-3-89); 147 v H 173 (Eff 7-29-98); 148 v S 179, § 3. Eff 1-1-2002; 151 v S 17, § 1, eff. 8-3-06; 151 v S 137, § 1, eff. 3-30-07.

† As amended by 151 v S 137.
The effective date is set by section 5 of SB 179

Effect of Amendments

151 v S 137, effective March 30, 2007, added (C); and corrected internal references.

151 v S 17, effective August 3, 2006, rewrote (A).

Comment, Legislative Service Commission

Section 2151.99 of the Revised Code is amended by Sub. S.B. 137 and Am. Sub. S.B. 17 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Penalty for misdemeanor, RC § 2929.21.

Ohio Administrative Code

Department of job and family services, division of social services—

Reports of alleged child abuse and neglect: unauthorized dissemination of information. OAC 5101:2-34-38.

Substitute care: information to be provided to caregivers, etc., and to be included in individual child care agreement. OAC 5101:2-42-90.

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Constitutionality

Only that class of persons capable of paying support money, but failing to do so, may be prosecuted under RC §§ 2151.42 and 2151.99; these sections are not violative of the equal protection clause of USConst amend XIV: State v. Ducey, 25 Ohio App. 2d 50, 54 Ohio Op. 2d 80, 266 N.E.2d 233 (1970).

Imprisonment imposed for a violation of RC § 2151.42, making it an offense for a person charged with the care, support, maintenance, or education of a child to fail to do so, is not imprisonment for debt and, therefore, RC §§ 2151.42 and 2151.99 are not in violation of OConst art I, § 15, prohibiting imprisonment for debt: State v. Ducey, 25 Ohio App. 2d 50, 54 Ohio Op. 2d 80, 266 N.E.2d 233 (1970).

Generally

Different statutes providing different penalties for offenses against minors will not be deemed inconsistent or in conflict with each other where the principal elements thereof are similar but are accompanied by varying circumstances aggravating or affecting the degree of such offenses: In re Cooper, 134 Ohio St. 40, 11 Ohio Op. 416, 15 N.E.2d 634 (1938), [affirming 58 Ohio App. 519.]

Sentencing

By the express terms of RC § 2151.49 the juvenile court is authorized to “suspend sentence” either before or after commitment, which is construed to mean suspension of the execution of the sentence rather than postponement of imposition of sentence: In re Keagy, 76 Ohio App. 95, 31 Ohio Op. 405, 63 N.E.2d 216 (1945).

CHAPTER 2152: DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

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§ 2152.01 Purposes of dispositions under chapter; application of Chapter 2151.

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These

purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151. of the Revised Code apply to the proceedings under this chapter.

HISTORY: 148 v S 179. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

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Polygraph

Generally

Juvenile court did not abuse its discretion when it committed defendant to the Ohio Department of Youth Services until his twenty-first birthday and in ordering a serious youthful offender dispositional sentence of concurrent sentences of 15 years to life for murder and two years for child endangering as: (1) the statutory sentencing procedure was followed, (2) the required finding under RC § 2152.13(D)(2)(a)(i) was made and was supported by the record, and (3) while there was testimony that defendant would benefit from the rehabilitation program, given the brutality of the crime committed against a defenseless young child, the concerns about holding defendant accountable and protecting the public were well-founded and reflected the overriding purposes for juvenile dispositions. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Juvenile court did not commit plain error in using the adult standard applied in light of juvenile norms to defendant juvenile's motion to determine competency where defendant had been charged as a serious youthful offender; while the serious youthful offender statutes treated juveniles as adults in many respects, the primary purposes for juvenile dispositions under RC § 2152.01(A) still applied. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Juvenile court did not err when it imposed a blended juvenile/adult sentence on a juvenile upon making the RC § 2152.13(D)(2)(a) findings. The Ohio Constitution does not provide a right to a jury trial in juvenile delinquency proceedings: State v. D.H., 169 Ohio App. 3d 798, 865 N.E.2d 90, 2006 Ohio 6953, (2006).

Due process

Ohio's serious youthful offender law does not violate due process as, while the scheme subjects certain juveniles to adult punishment, the statute has been crafted to take into account juvenile-adult distinctions, as: (1) the most severe adult punishments are prohibited, (2) the juvenile court can order adult punishment only after the juvenile court determines that the

juvenile system alone cannot adequately fulfill the purposes for disposition outlined in RC § 2152.01(A), (3) while a juvenile as young as 10 can receive a serious youthful offender disposition, the juvenile court can only invoke the adult punishment if the juvenile is at least 14 years old, and if the juvenile has engaged in further serious wrongdoing, and (4) the court must also determine, after a hearing, that the juvenile offender is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Equal protection

Differences in the manner in which consecutive penalties are imposed in the juvenile and adult systems do not violate equal protection guarantees: In re Chappell, 164 Ohio App. 3d 628, 843 N.E.2d 823, 2005 Ohio 6451, (2005).

RC § 2152.17(F) did not violate the Equal Protection Clause or Ohio Const. art. I, § 2, even though it contained no requirement that the juvenile court provide any findings on the record to impose a consecutive term for the disposition of juveniles and trial courts were required to make certain findings before imposing consecutive prison sentences in the context of adult offenders, as RC § 2152.17(F) did not impinge a fundamental right. A rational basis existed for sentencing juveniles in a "different fashion" than adults because the purposes of felony sentencing and juvenile sentencing were different, and juvenile courts were given wider discretion in the early release of offenders. The 2002 Ohio Revised Code changes might have provided some shift of emphasis to elements of responsibility and accountability, but the primary focus remained on the development of the child. In re Z.S., 2005 Ohio App. LEXIS 6346, 2005 Ohio 7033, (2005).

RC § 2152.17(F) did not violate defendant's equal protection rights, even though findings similar to those required by RC § 2929.14(E)(4) when sentencing adult offenders to consecutive sentences were not required. The purposes behind the juvenile justice system and the adult justice system were different and juveniles adjudicated delinquent and adults convicted of a crime were not similarly situated groups. In re Joshua R. C., 2005 Ohio App. LEXIS 5610, 2005 Ohio 6248, (2005).

Polygraph

Evidence must support the use of a polygraph for a particular juvenile before it is a reasonable community control condition: In re D.S., 111 Ohio St. 3d 361, 856 N.E.2d 921, 2006 Ohio 5851, (2006).

§ 2152.02 Definitions.

Effective until 1-1-08.

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C)(1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or

apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division (C) of section 2907.39 or division (A) of section 2923.211 [2923.21.1] or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in section 2925.01 of the Revised Code.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in section 2929.01 of the Revised Code.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(N) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code.

(P) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(Q) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under section 2152.13 of the Revised Code.

(R) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of section 2152.12 of the Revised Code.

(S) "Mental illness" has the same meaning as in section 5122.01 of the Revised Code.

(T) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(U) "Monitored time" and "repeat violent offender" have the same meanings as in section 2929.01 of the Revised Code.

(V) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(W) "Public record" has the same meaning as in section 149.43 of the Revised Code.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) "Sexually oriented offense," "habitual sex offender," "juvenile offender registrant," "sexual predator," "presumptive registration-exempt sexually oriented offense," "registration-exempt sexually oriented offense," "child-victim oriented offense," "habitual child-victim offender," and "child-victim predator" have the same meanings as in section 2950.01 of the Revised Code.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the

Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

(1) A violation of section 2903.01 or 2903.02 of the Revised Code;

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 400, Eff 4-3-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v H 23, § 1, eff. 8-17-06.

§ 2152.02 Definitions.

Effective 1-1-08.

As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C)(1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211 [2923.21.1], or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

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(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

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(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in section 2929.01 of the Revised Code.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic

offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

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(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code.

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(U) "Monitored time" and "repeat violent offender" have the same meanings as in section 2929.01 of the Revised Code.

(V) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(W) "Public record" has the same meaning as in section 149.43 of the Revised Code.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) "Sexually oriented offense," "juvenile offender registrant," "child-victim oriented offense," "tier I sex offender/child-victim offender," "tier II sex offender/child-victim offender," "tier III sex offender/child-victim offender," and "public registry-qualified juvenile offender registrant" have the same meanings as in section 2950.01 of the Revised Code.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

(1) A violation of section 2903.01 or 2903.02 of the Revised Code;

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 400, Eff 4-3-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v H 23, § 1, eff. 8-17-06; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The effective date is set by section 5 of S.B. 5.

The provisions of section 7 of S.B. 5 (150 v —) read as follows:

SECTION 7. * * * (B) Section 2152.02 of the Revised Code, effective January 1, 2004, is presented in Section 3 of this act as a composite of the section as amended by both Am. Sub. H.B. 400 and Am. Sub. H.B. 490 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 3 of this act.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote (Y); and made minor stylistic changes.

151 v H 23, effective August 17, 2006, in (F)(3), inserted "division (C) of section 2907.39 or".

151 v S 53, effective May 17, 2006, in (F)(3), inserted "or division (C)(1) or (D) of section 2925.55".

150 v H 52, effective June 1, 2004, in (L), inserted "or juvenile traffic offense" three times and "direct and proximate" once, and added the last sentence; and added (DD).

Section 1, S.B. 5, Acts 2003, effective July 31, 2003, and section 3 of S.B. 5, effective January 1, 2004, made identical changes. Each rewrote (Y).

H.B. 490, Acts 2002, effective January 1, 2004, rewrote (K).

Comment, Legislative Service Commission

Section 2152.02 of the Revised Code is amended by Am. Sub. H.B. 23 and Am. Sub. S.B. 53 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Contributing to delinquency of a child, RC § 2919.24.

Juvenile court definitions, RC § 2151.01.1.

Juvenile court proceedings on truancy, RC § 3321.22.

Transfer of case; prosecution of child nullity in absence of transfer; juvenile court loses jurisdiction if child is not taken

into custody or apprehended prior to attaining age twenty-one, RC § 2152.12.

Ohio Rules

Definitions, JuvR 2.

Procedure on appeals under sections 2151.85, 2919.12.1 and 2505.07.3 of the Revised Code, SupR 25.

Ohio Administrative Code

Department of job and family services, division of social services—

Children services definition of terms: delinquent child. OAC 5101:2-1-01.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

CASE NOTES AND OAG

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Constitutionality

Differing treatment for juveniles and adult offenders does not necessarily violate equal protection: In re Gillespie, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

Appeal

Revised Code § 2501.02 grants the courts of appeals jurisdiction over appeals from juvenile court judgments and final orders rendered in juvenile traffic offender proceedings: (decided under former analogous section) In re Hartman, 2 Ohio St. 3d 154, 2 Ohio B. 699, 443 N.E.2d 516 (1983).

Bindover for prosecution

Where defendant, age 16, was charged in the juvenile division with aggravated robbery involving use of a deadly weapon in violation of RC § 2911.01(A)(1), the juvenile court properly bound defendant over to the general division for trial. Transfer was required pursuant to RC §§ 2152.10(A), .12(A)(1)(b), as aggravated robbery was a category two offense under RC § 2152.02(CC)(1) for which probable cause was properly found. State v. Washington, 2005 Ohio App. LEXIS 5902, 2005 Ohio 6546, (2005).

Delinquent child, generally

Juvenile's adjudication as a delinquent under RC § 2152.02(F)(1), based on a finding that if he was an adult he would have committed the crime of felonious assault, in violation of RC § 2903.11, was supported by the weight and the sufficiency of the evidence, as the juvenile had engaged in a pushing match with the victim which resulted in the victim falling off of a raised deck and sustaining "serious physical harm" pursuant to RC § 2901.01(5) to his back, and the juvenile engaged in the conduct knowingly pursuant to RC § 2901.22(B). Although there were conflicting versions of the incident, there was no "serious provocation" that warranted a finding of the lesser degree offense of aggravated assault in violation of RC § 2903.12, as the juvenile had choices besides continuing the pushing match with the victim and he admitted that he was aware of the risks of injury if one of

the participants fell from the raised deck. In re Shane L. F., 2006 Ohio App. LEXIS 3825, 2006 Ohio 3876, (2006).

Where a 17-year-old juvenile committed an act which, if committed by an adult, would have constituted underage drinking in violation of RC § 4301.69(E), such supported an adjudication that the juvenile was a delinquent pursuant to RC § 2152.02(F)(1); the underage drinking crime was not only applicable to a minor, as it included an adult who was 18, 19, or 20 years old. In re Shane L. F., 2006 Ohio App. LEXIS 3825, 2006 Ohio 3876, (2006).

Trial court's adjudication of defendant as a delinquent child for theft of a gun, under RC § 2913.02(A)(1), with a firearm specification, pursuant to RC § 2941.141, and violation of probation, unmanageable, under RC § 2152.02, were supported by sufficient evidence. The codefendants testified that they, along with defendant, stole items from the victim's house, including a gun, some jewelry, and electronic equipment, with the help of the victim's daughters and defendant stipulated to the fact that he was on probation for purposes of the violation of probation, unmanageable charge. In re R.T., 2006 Ohio App. LEXIS 1199, 2006 Ohio 1311, (2006).

Where a three-year-old victim got on top of her sister and started "pumping" her, and she explained to various adults that defendant had engaged in sexual conduct with her, which she described in detail, there was sufficient evidence to support defendant's adjudication as a delinquent, as that was defined in RC § 2152.02(F), based on rape of a minor child under the age of 13 years, in violation of RC § 2907.02(A)(1)(b). In re D.L., 2005 Ohio App. LEXIS 2215, 2005 Ohio 2320, (2005).

Defendant's adjudication as a delinquent child pursuant to RC § 2952.02(F)(1) for underage consumption of alcohol was upheld where such finding was supported by sufficient evidence; though evidence was contradictory as to defendant's alcohol consumption, the testimony of a witness that defendant had consumed at least two shots of Jack Daniels whiskey at a party and the fact that the blood alcohol test indicated defendant had .016 grams of alcohol per 210 liters of breath supported the delinquency adjudication. In re Vanhesteren, 2004 Ohio App. LEXIS 1969, 2004 Ohio 2220, (2004).

The evidence did not show that the juvenile acted with the required degree of culpability to find a violation of RC § 2909.05 where she slammed a door and a glass panel broke: (decided under former analogous section) In re Hinton, 84 Ohio App. 3d 156, 616 N.E.2d 558 (1992).

A "delinquent child" is a child whose conduct would constitute a violation of any criminal law statute: (decided under former analogous section) In re Burgess, 13 Ohio App. 3d 374, 13 Ohio B. 456, 469 N.E.2d 914 (1984).

The violation of RC § 2903.07, vehicular homicide, when committed by a juvenile is an act of delinquency, not a juvenile traffic offense: (decided under former analogous section) In re Fox, 60 Ohio Misc. 31, 14 Ohio Op. 3d 80, 395 N.E.2d 918 (JC 1979).

A juvenile who aids the police in apprehending a drug seller by purchasing an hallucinogen commits no crime and cannot be adjudged a delinquent, nor does the police officer contribute to the delinquency of a minor: (decided under former analogous section) State v. Suchy, 31 Ohio Misc. 265, 58 Ohio Op. 2d 376, 277 N.E.2d 459 (CP 1971).

Proof of possession, use, or control by a juvenile of an hallucinogen is sufficient evidence upon which a Juvenile Court can find such juvenile a delinquent under Chapter 2151. of the Revised Code: (decided under former analogous section) In re Baker, 18 Ohio App. 2d 276, 47 Ohio Op. 2d 411, 248 N.E.2d 620 (1969).

Delinquency has not been declared a crime in Ohio and the Ohio juvenile act is neither criminal nor penal in its nature, but is an administrative police regulation of a corrective character. Proceedings instituted in a juvenile court are not criminal in nature nor are they conducted with the objective of convicting a minor of a crime and punishing him, therefore; they are informal hearings through a medium of the juvenile court to determine whether the child needs intervention of the state as guardian and protector of his person: (decided under former analogous section) In re L., Jr., 92 Ohio L. Ab. 475 (JC 1963).

Ordinarily, a minor child does not commit any act of delin-

quency so long as he or she acts under and in accordance with instructions of duly constituted law enforcement officers who are acting within the course of their duties as such: (decided under former analogous section) State v. Miclau, 167 Ohio St. 38, 4 Ohio Op. 2d 6, 146 N.E.2d 293 (1957).

No violation of law is involved in the purchase of beer, and a minor by making such a purchase, does not by reason of such purchase become a delinquent child within the meaning of the provisions of subdivision 1 of § 1639-2, General Code: (decided under former analogous section) State v. Zaras, 81 Ohio App. 152, 36 Ohio Op. 460, 78 N.E.2d 74 (1947).

Insurance

Criminal acts exclusion in homeowner's policy barred coverage for wrongful death action where insureds' son was adjudicated delinquent notwithstanding the fact that an adjudication of delinquency is not a criminal conviction: (decided under former analogous section) Allstate Ins. Co. v. Cutcher, 920 F. Supp. 796 (S.D. 1996).

Jurisdiction after age 18

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful: In re Gillespie, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

Under former RC § 2151.01.1, a child could have reached eighteen at the time of disposition, but still be deemed a child: In re Hennessey, 146 Ohio App. 3d 743, 768 N.E.2d 663, 2001 Ohio 2267, (2001).

Jurisdiction generally

Juvenile court's subject matter jurisdiction in a juvenile delinquency case was established under RC §§ 2151.23(A)(1), 2151.011(B)(5), and 2152.02(F)(1) because the complaint alleged appellant was a delinquent child. In re C.W., 2005 Ohio App. LEXIS 3579, 2005 Ohio 3905, (2005).

In the sense that violation of law by a minor constitutes delinquency, as defined in GC § 1644, the juvenile court has jurisdiction of any crime committed by an infant: (decided under former analogous section) State v. Klingenberg, 113 Ohio St. 418, 149 N.E. 395 (1925).

Juvenile traffic offenders

When the complaint charges the child with being "delinquent," the court cannot sua sponte amend the complaint after the adjudicatory hearing and find the child to be a "juvenile traffic offender": (decided under former analogous section) In re Elliott, 87 Ohio App. 3d 816, 623 N.E.2d 217 (1993).

A complaint alleging a child to be a juvenile traffic offender is neither a criminal nor a civil proceeding: (decided under former analogous section) In re C, 43 Ohio Misc. 98, 72 Ohio Op. 2d 421, 334 N.E.2d 545 (CP 1975).

Marriage of minor

Where the parents of a female person under 16 years of age actively participate in enabling such person to enter into a marriage relationship, such participation constitutes acts tending to cause the child to become a "delinquent child" as defined by RC § 2151.02, and the parents "act in a way tending to cause delinquency in such child": (decided under former analogous section) State v. Gans, 168 Ohio St. 174, 5 Ohio Op. 2d 472, 151 N.E.2d 709 (1958).

Runaways

In accordance with RC § 5119.64, et seq., juvenile runaways who are apprehended by law enforcement officials may not be placed in juvenile detention facilities even though suitable shelter is unavailable. However, if such a youth is determined to be a delinquent child as defined in RC § 2151.02, an unruly child as defined in RC § 2151.02.2, or a juvenile traffic offender as defined in RC § 2151.02.1, he may be processed through the juvenile justice system and placed in a juvenile detention facility. A law enforcement official may hold a runaway juvenile against his will, provided his detention or care is required to protect the

person or property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court, or because he has no parents, guardian or custodian or other person able to provide supervision and care for him: (decided under former analogous section) OAG No. 77-063 (1977).

In accordance with RC § 5119.64, et seq., juvenile runaways who are apprehended by law enforcement officials may not be placed in juvenile detention facilities even though suitable shelter is unavailable. However, if such a youth is determined to be a delinquent child as defined in RC § 2151.02, an unruly child as defined in RC § 2151.02.2, or a juvenile traffic offender as defined in RC § 2151.02.1, he may be processed through the juvenile justice system and placed in a juvenile detention facility. A law enforcement official may hold a runaway juvenile against his will, provided his detention or care is required to protect the person or property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court, or because he has no parents, guardian or custodian or other person able to provide supervision and care for him: (decided under former analogous section) OAG No. 77-063 (1977).

Time limits

The time limits of RC § 2945.71 et seq., for the prosecution of criminal offenders do not apply to an adjudicatory hearing on a complaint alleging a child to be a juvenile traffic offender. The only applicable time limit, outside JuvR 29, is the six months limitation for prosecution of a minor misdemeanor stated in RC § 2901.13(A)(3): (decided under former analogous section) In re TLK, 2 Ohio Op. 3d 324 (CP 1976).

Unruly child

Where a juvenile was charged with delinquency, the court did not err by finding that unruliness was a lesser included offense and then amending the complaint accordingly: (decided under former analogous section) In re Felton, 124 Ohio App. 3d 500, 706 N.E.2d 809 (1997).

[§ 2152.02.1] § 2152.021 Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings.

(A)(1) Subject to division (A)(2) of this section, any person having knowledge of a child who appears to be a juvenile traffic offender or to be a delinquent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the traffic offense or delinquent act allegedly occurred. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child is a delinquent child or a juvenile traffic offender, the complaint shall allege the particular facts upon which the allegation that the child is a delinquent child or a juvenile traffic offender is based.

If a child appears to be a delinquent child who is eligible for a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code and if the prosecuting attorney desires to seek a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code in regard to the child, the prosecuting attorney of the county in which the alleged delinquency occurs may initiate a case in the juvenile court of the county by presenting the case to a grand jury for indictment, by charging the child in a bill of information as a serious youthful offender pursuant to section 2152.13 of the Revised Code, by requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child, or

by filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence.

(2) Any person having knowledge of a child who appears to be a delinquent child for being an habitual or chronic truant may file a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend public school. The sworn complaint may be upon information and belief and shall contain the following allegations:

(a) That the child is a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant and, in addition, the particular facts upon which that allegation is based;

(b) That the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code and, in addition, the particular facts upon which that allegation is based.

(B) Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by section 2151.23 of the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found.

(C) Within ten days after the filing of a complaint or the issuance of an indictment, the court shall give written notice of the filing of the complaint or the issuance of an indictment and of the substance of the complaint or indictment to the superintendent of a city, local, exempted village, or joint vocational school district if the complaint or indictment alleges that a child committed an act that would be a criminal offense if committed by an adult, that the child was sixteen years of age or older at the time of the commission of the alleged act, and that the alleged act is any of the following:

(1) A violation of section 2923.122 [2923.12.2] of the Revised Code that relates to property owned or controlled by, or to an activity held under the auspices of, the board of education of that school district;

(2) A violation of section 2923.12 of the Revised Code, of a substantially similar municipal ordinance, or of section 2925.03 of the Revised Code that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district;

(3) A violation of section 2925.11 of the Revised Code that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, other than a violation of that section that would be a minor drug possession offense if committed by an adult;

(4) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2907.02, or 2907.05 of the Revised Code, or a violation of former section 2907.12 of the Revised Code, that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, if the victim at the time of the commission of the alleged act was an employee of the board of education of that school district;

(5) Complicity in any violation described in division (C)(1), (2), (3), or (4) of this section that was alleged to have been committed in the manner described in division

(C)(1), (2), (3), or (4) of this section, regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district.

(D) A public children services agency, acting pursuant to a complaint or an action on a complaint filed under this section, is not subject to the requirements of section 3127.23 of the Revised Code.

(E) For purposes of the record to be maintained by the clerk under division (B) of section 2152.71 of the Revised Code, when a complaint is filed that alleges that a child is a delinquent child, the court shall determine if the victim of the alleged delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the alleged commission of the act.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002; 150 v S 185, § 1, eff. 4-11-05.

The effective date is set by section 5 of SB 179.

Effect of Amendments

150 v S 185, effective April 11, 2005, corrected internal references.

Cross-References to Related Sections

Apprehension, custody, and detention, RC § 2151.31.

Detention or shelter care hearing, RC § 2151.31.4.

Serious youthful offender defined, RC § 2152.02.

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Complaint, generally
Due process
Motion to dismiss indictment

Complaint, generally

A delinquency complaint is sufficient under JuvR 10(B) to state a charge of complicity when it alleges that the juvenile knowingly aided another to commit robbery in violation of RC § 2923.03: (decided under former analogous section) In re Howard, 31 Ohio App. 3d 1, 31 Ohio B. 14, 508 N.E.2d 190 (1987).

Due process

Ohio's serious youthful offender law does not violate due process as, while the scheme subjects certain juveniles to adult punishment, the statute has been crafted to take into account juvenile-adult distinctions, as: (1) the most severe adult punishments are prohibited, (2) the juvenile court can order adult punishment only after the juvenile court determines that the juvenile system alone cannot adequately fulfill the purposes for disposition outlined in RC § 2152.01(A), (3) while a juvenile as young as 10 can receive a serious youthful offender disposition, the juvenile court can only invoke the adult punishment if the juvenile is at least 14 years old, and if the juvenile has engaged in further serious wrongdoing, and (4) the court must also determine, after a hearing, that the juvenile offender is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Motion to dismiss indictment

Juvenile court did not violate RC §§ 2152.021 and 2152.13 when it denied defendant's motion to dismiss an indictment charging defendant with child endangering and murder because the prosecutor obtained an indictment under RC § 2152.13(A)(1) and § 2142.13(A)(3) and (4) were not applicable. Nothing in RC

§§ 2152.021 or 2152.13 prohibits a prosecutor from initiating serious youthful offender proceedings via an indictment when a complaint has previously been filed. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

§ 2152.03 Case to be initiated in or transferred to juvenile court.

When a child is arrested under any charge, complaint, affidavit, or indictment for a felony or a misdemeanor, proceedings regarding the child initially shall be in the juvenile court in accordance with this chapter. If the child is taken before a judge of a county court, a mayor, a judge of a municipal court, or a judge of a court of common pleas other than a juvenile court, the judge of the county court, mayor, judge of the municipal court, or judge of the court of common pleas shall transfer the case to the juvenile court, and, upon the transfer, the proceedings shall be in accordance with this chapter. Upon the transfer, all further proceedings under the charge, complaint, information, or indictment shall be discontinued in the court of the judge of the county court, mayor, municipal judge, or judge of the court of common pleas other than a juvenile court subject to section 2152.12 of the Revised Code. The case relating to the child then shall be within the exclusive jurisdiction of the juvenile court, subject to section 2152.12 of the Revised Code.

HISTORY: GC § 1639-29; 117 v 520; 121 v 557; Bureau of Code Revision, RC § 2151.25, 10-1-53; 129 v 582(738) (Eff 1-10-61); 133 v H 320 (Eff 11-19-69); 136 v H 205 (Eff 1-1-76); 146 v H 1 (Eff 1-1-96); RC § 2152.03, 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Ohio Rules

Definitions, JuvR 2.

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Appeal
Applicability
Arrest out-of-state
Confession
Extradition
Jurisdiction

Appeal

A common pleas court order transferring proceedings involving an unruly minor to a juvenile court of another county is not a final appealable order where the transferee court has not yet accepted or rejected jurisdiction. A temporary custody order is not a final order: (decided under former analogous section) In re Devlin, 78 Ohio App. 3d 543, 605 N.E.2d 467 (1992).

Applicability

The provisions of this section contemplate only a situation where a juvenile is actually charged with a crime. It does not apply nor would it be practicable to apply it to every juvenile picked up for interrogation by the authorities: (decided under former analogous section) State v. Carder, 9 Ohio St. 2d 1, 38 Ohio Op. 2d 1, 222 N.E.2d 620 (1966).

Arrest out-of-state

A minor who went to California to avoid arrest, after committing a murder in Ohio, was arrested in California, brought back to Ohio by Ohio officers pursuant to instructions from the juvenile court judge of Los Angeles county, and taken to the juvenile detention home, cannot complain that he was not taken directly before the juvenile court upon arrest, as required by RC § 2151.25 and not taken immediately to the place of detention upon being taken into custody, as required by RC § 2151.31: (decided under former analogous section) *State v. Stewart*, 176 Ohio St. 156, 158, 27 Ohio Op. 2d 42, 198 N.E.2d 439 (1964).

Confession

A voluntary confession to the perpetration of murder obtained from a 16-3/4 year old high school junior, which confession was made before indictment, and while the accused was detained for investigation, is admissible in evidence (1) where the accused had been allowed to consult with an attorney prior to being questioned; (2) where the accused first was advised that he did not have to talk; (3) where the accused when told that his parents and another attorney were there and waiting to see him stated that he did not want to see them; and (4) where there is no showing that the confession was obtained by inquisitorial processes: (decided under former analogous section) *State v. Carder*, 3 Ohio App. 2d 381, 32 Ohio Op. 2d 524, 210 N.E.2d 714 (1965).

A voluntary confession to the perpetration of murder, obtained from a seventeen-year-old high school senior, which confession was made before indictment on said charge and while the accused was under arrest for a misdemeanor, is admissible in evidence (1) where the accused was first advised that "he would not be compelled to give a statement... if he wanted to give a statement it would be by his own free will and that statement would be used for or against him in court"; (2) where the accused was further advised that "he could secure the services of an attorney"; and (3) where there is no showing that the confession was obtained by inquisitorial processes, without the procedural safeguards of due process, and by such compulsion that the confession is irreconcilable with the possession of mental freedom: (decided under former analogous section) *State v. Stewart*, 120 Ohio App. 199, 29 Ohio Op. 2d 4, 201 N.E.2d 793 (1963).

Extradition

A person, who may be a child under eighteen years of age, charged with a crime in this state and who fled to another state, may be returned to this state upon requisition of the governor, as provided in GC §§ 109-1 to 109-31 (RC §§ 2963.01 to 2963.27). Upon the return of such person, if he was a child at the time the crime was committed, he should be taken before the juvenile judge or, if taken before any other court, such other court is required to transfer the case to the juvenile judge: (decided under former analogous section) 1945 OAG No. 395 (1945).

Jurisdiction

Absent a proper bindover procedure pursuant to RC § 2151.26, the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent. The exclusive subject matter jurisdiction of the juvenile court cannot be waived: (decided under former analogous section) *State v. Wilson*, 73 Ohio St. 3d 40, 652 N.E.2d 196, 1995 Ohio 217, (1995).

Unless a child has been transferred from the juvenile court, a court of common pleas does not have jurisdiction over a person under 18. A court of common pleas has jurisdiction to determine defendant's age at a hearing. The state has the burden of proving beyond a reasonable doubt that defendant was an adult at the time of the offense: (decided under former analogous section) *State v. Neguse*, 71 Ohio App. 3d 596, 594 N.E.2d 1116 (1991).

A 22-year-old can waive jurisdiction of the juvenile court over an offense committed when he was 17: (decided under former analogous section) *State v. Tillman*, 66 Ohio App. 3d 464, 585 N.E.2d 550 (1990).

The juvenile and general divisions of a court of common pleas possess concurrent jurisdiction over a juvenile accused of a crime, and the juvenile division has not been divested of personal jurisdiction over one whose disposition is returned to it after the accused initially waived his right to be judged in that tribunal:

(decided under former analogous section) *State ex rel. Leis v. Black*, 45 Ohio App. 2d 191, 74 Ohio Op. 2d 270 (1975).

A juvenile who submits without challenge to the jurisdiction of a municipal court cannot thereafter secure release in a habeas corpus action on the ground that the judgment and sentence of the municipal court is void for want of jurisdiction: (decided under former analogous section) *Hemphill v. Johnson*, 31 Ohio App. 2d 241, 60 Ohio Op. 2d 404, 287 N.E.2d 828 (1972).

The procedure required by this section applies to fact situations in which the minority is discovered or disclosed prior to the hearing or trial: (decided under former analogous section) *State v. Peterson*, 9 Ohio Misc. 154, 38 Ohio Op. 2d 220, 223 N.E.2d 838 (MC 1966).

A juvenile like other individuals can waive his rights and where the minor charged with a felony does not object to the jurisdiction of the court of common pleas on the ground of his minority by raising that question before the trial court, he has lost his right to object after sentence by that court: (decided under former analogous section) *Mellott v. Alvis*, 109 Ohio App. 486, 12 Ohio Op. 2d 23, 162 N.E.2d 623 (1959).

The juvenile court does not have exclusive jurisdiction over a criminal matter involving a minor until the case is transferred to such court: (decided under former analogous section) *Harris v. Alvis*, 61 Ohio L. Ab. 311, 104 N.E.2d 182 (App 1950).

§ 2152.04 Confinement of delinquent child for purposes of preparing social history.

A child who is alleged to be, or who is adjudicated, a delinquent child may be confined in a place of juvenile detention provided under section 2152.41 of the Revised Code for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that alleged or adjudicated delinquent child.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Apprehension, custody, and detention, RC § 2151.31.
County or district detention facility, RC § 2152.41.

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Length of detention

The fact that the maximum sentence under the criminal law for negligent assault was sixty days did not mean that a juvenile could be placed in detention for only sixty days: In re Tiber, 154 Ohio App. 3d 360, 797 N.E.2d 161, 2003 Ohio 5155, (2003).

§ 2152.10 Children eligible for mandatory or discretionary transfer; order of disposition when child not transferred.

(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section 2152.12 of the Revised Code in any of the following circumstances:

(1) The child is charged with a category one offense and either of the following apply:

(a) The child was sixteen years of age or older at the time of the act charged.

(b) The child was fourteen or fifteen years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category one or category two offense and was committed to the legal custody of the department of youth services upon the basis of that adjudication.

(2) The child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age or older at the time of the commission of the act charged, and either or both of the following apply:

(a) The child previously was adjudicated a delinquent child for committing an act that is a category one or a category two offense and was committed to the legal custody of the department of youth services on the basis of that adjudication.

(b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) Division (A)(2) of section 2152.12 of the Revised Code applies.

(B) Unless the child is subject to mandatory transfer, if a child is fourteen years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for discretionary transfer to the appropriate court for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court shall follow the procedures in section 2152.12 of the Revised Code. If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court shall issue an order of disposition in accordance with section 2152.11 of the Revised Code.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Transfer of case, RC § 2152.12.

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Discretionary transfer
Mandatory transfer

Discretionary transfer

Juvenile court abused its discretion by overruling the state's motions to relinquish jurisdiction without considering whether a discretionary transfer was warranted: In re Stanley, 165 Ohio App. 3d 726, 848 N.E.2d 540, 2006 Ohio 1279, (2006).

Mandatory transfer

Where defendant, age 16, was charged in the juvenile division with aggravated robbery involving use of a deadly weapon in violation of RC § 2911.01(A)(1), the juvenile court properly bound defendant over to the general division for trial. Transfer was required pursuant to RC §§ 2152.10(A), .12(A)(1)(b), as aggravated robbery was a category two offense under RC § 2152.02(CC)(1) for which probable cause was properly found. State v. Washington, 2005 Ohio App. LEXIS 5902, 2005 Ohio 6546, (2005).

§ 2152.11 Range of dispositions of child adjudicated to be delinquent.

(A) A child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under this section if the child was not transferred under section 2152.12 of the Revised Code. If the complaint, indictment, or information charging the act includes one or more of the following factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition under this section:

(1) The act charged against the child would be an offense of violence if committed by an adult.

(2) During the commission of the act charged, the child used a firearm, displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm.

(3) The child previously was admitted to a department of youth services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult.

(B) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (B)(1) and (2) of this section do not apply.

(C) If a child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (C)(1) and (2) of this section do not apply.

(D) If a child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was sixteen or seventeen years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section;

(2) Discretionary SYO, if any of the following applies:

(a) The act was committed when the child was sixteen or seventeen years of age, and division (D)(1) of this section does not apply.

(b) The act was committed when the child was fourteen or fifteen years of age.

(c) The act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section.

(d) The act was committed when the child was ten or eleven years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section.

(3) Traditional juvenile, if divisions (D)(1) and (2) of this section do not apply.

(E) If a child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was fourteen, fifteen, sixteen, or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (E)(1) and (2) of this section do not apply.

(F) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was fourteen or fifteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (F)(1) and (2) of this section do not apply.

(G) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for whichever of the following dispositions is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(2) Traditional juvenile, if division (G)(1) of this section does not apply.

(H) The following table describes the dispositions that a juvenile court may impose on a delinquent child:

OFFENSE CATEGORY (Enhancement Factors)	AGE 16 & 17	AGE 14 & 15	AGE 12 & 13	AGE 10 & 11
Murder/Aggravated Murder	N/A	MSYO,	DSYO,	DSYO,
Attempted Murder/Attempted Aggravated Murder	N/A	MSYO,	DSYO,	DSYO,
F1 (Enhanced by Offense of Violence Factor and Either Disposition Firearm Factor or Previous DYS Admission Factor)	MSYO,	DSYO,	DSYO,	DSYO,
F1 (Enhanced by Any Single or Other Combination of Enhancement Factors)	DSYO,	DSYO,	DSYO,	TJ
F1 (Not Enhanced)	DSYO,	DSYO,	TJ	TJ
F2 (Enhanced by Any Enhancement Factor)	DSYO,	DSYO,	DSYO,	TJ
F2 (Not Enhanced)	TJ	DSYO,	TJ	TJ
F3 (Enhanced by Any Enhancement Factor)	DSYO,	DSYO,	TJ	TJ
F3 (Not Enhanced)	TJ	TJ	TJ	TJ
F4 (Enhanced by Any Enhancement Factor)	DSYO,	TJ	TJ	TJ
F4 (Not Enhanced)	TJ	TJ	TJ	TJ
F5 (Enhanced by Any Enhancement Factor)	DSYO,	TJ	TJ	TJ

OFFENSE CATEGORY (Enhancement Factors)	AGE 16 & 17	AGE 14 & 15	AGE 12 & 13	AGE 10 & 11
F5 (Not Enhanced)	TJ	TJ	TJ	TJ

(I) The table in division (H) of this section is for illustrative purposes only. If the table conflicts with any provision of divisions (A) to (G) of this section, divisions (A) to (G) of this section shall control.

(J) Key for table in division (H) of this section:

(1) "Any enhancement factor" applies when the criteria described in division (A)(1), (2), or (3) of this section apply.

(2) The "disposition firearm factor" applies when the criteria described in division (A)(2) of this section apply.

(3) "DSYO" refers to discretionary serious youthful offender disposition.

(4) "F1" refers to an act that would be a felony of the first degree if committed by an adult.

(5) "F2" refers to an act that would be a felony of the second degree if committed by an adult.

(6) "F3" refers to an act that would be a felony of the third degree if committed by an adult.

(7) "F4" refers to an act that would be a felony of the fourth degree if committed by an adult.

(8) "F5" refers to an act that would be a felony of the fifth degree if committed by an adult.

(9) "MSYO" refers to mandatory serious youthful offender disposition.

(10) The "offense of violence factor" applies when the criteria described in division (A)(1) of this section apply.

(11) The "previous DYS admission factor" applies when the criteria described in division (A)(3) of this section apply.

(12) "TJ" refers to traditional juvenile.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Commitment for specification, RC § 2152.17.

Initiation of serious youthful offender proceedings, RC § 2152.02.1.

Order of disposition when child not transferred, RC § 2152.10.

Serious youthful offender defined, RC § 2152.02.

Serious youth offender dispositional sentence, RC § 2152.13.

Ohio Rules

Definitions, JuvR 2.

CASE NOTES AND OAG

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Constitutionality

Ohio's serious youthful offender sentencing scheme does not violate the prohibition against cruel and unusual punishment under the Eighth Amendment and Ohio Const. art. I, § 9 as: (1) the scheme does not provide for penalties against juveniles so greatly disproportionate to the offenses committed that those penalties shock the sense of justice in the community, (2) the scheme prohibits the imposition of the most severe adult punishment, (3) the scheme reserves adult punishment only for serious juvenile offenders not capable of being rehabilitated within the juvenile system, and (4) among juveniles who receive an adult sentence, only those who commit further serious wrongdoing and who are at least 14 years old can be ordered to serve the adult sentence. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Generally

Defendant's right to a jury trial under *Blakely v. Washington*, 542 U.S. 296 (2004), was not violated where the juvenile court and not the jury made a serious youthful offender finding under RC § 2152.13(D)(2)(a)(i) as the sentence defendant received was derived from the jury's verdict on the murder and child endangering counts, and pursuant to RC § 2152.11(B)(2) and (E)(2), defendant was subject to a serious youthful offender disposition at the discretion of the juvenile court simply by virtue of the delinquency finding for murder and child endangerment; the range of defendant's potential punishment by virtue of the jury verdict alone included the applicable adult punishment set forth in RC ch. 2929 and in making the finding in RC § 2152.13(D)(2)(a)(i), the juvenile court was determining defendant's punishment within the statutorily-prescribed range, taking into account the nature and circumstances of the offense, and the security, programming, and resources available in the juvenile system. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Advisement of rights

Where it is apparent on appeal that a youth who was adjudicated delinquent knew of his right of appeal and of his right to expungement and the statutory time for expungement had not been met, a claim of error on the part of the lower court in not advising the youth of these rights will be regarded as frivolous and not prejudicial: (decided under former analogous section) In re Haas, 45 Ohio App. 2d 187, 74 Ohio Op. 2d 231 (1975).

Appeal

Juvenile court lacks jurisdiction to proceed with an adjudication of a child after a notice of appeal has been filed from an order of that court. During the pendency of an appeal, any adjudication of a child made by a juvenile court is void. Therefore, the double jeopardy clause of the United States Constitution does not apply, and the court of appeals may review the merits of the appeal: In re S.J., 106 Ohio St. 3d 11, 829 N.E.2d 1207, 2005 Ohio 3215, (2005).

Under RC § 2945.67, the prosecution cannot appeal a final verdict in a delinquency case: In re Lee, 145 Ohio App. 3d 167, 762 N.E.2d 396 (2001).

Case plan

If a juvenile court, in making disposition of an unruly or delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3, the juvenile court is required to hold periodic reviews pursuant to RC § 2151.41.7 and JuvR 36(A): (decided under former analogous section) OAG No. 99-041 (1999).

If a juvenile court, in making disposition of an unruly or

delinquent child pursuant to RC §§ 2151.35.4 or 2151.35.5, places the child into the temporary custody of the county department of human services in accordance with RC § 2151.35.3 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to RC § 2151.41.2 and to hold semiannual reviews of the case plan pursuant to RC § 2151.41.6: (decided under former analogous section) OAG No. 99-041 (1999).

Double jeopardy

A second dispositional hearing and order did not violate double jeopardy where the first disposition was void due to noncompliance with statutory provisions: In re Futrell, 153 Ohio App. 3d 20, 790 N.E.2d 810, 2003 Ohio 2685, (2003).

Driver's license

The juvenile court has the authority to suspend a juvenile's driver license until the juvenile's twenty-first birthday: (decided under former analogous section) In re Mason, 1997 Ohio App. LEXIS 5757 (9th Dist. 1997).

A juvenile court lacks authority to permanently revoke a juvenile's driver's license: (decided under former analogous section) In re Finlaw, 69 Ohio App. 3d 474, 590 N.E.2d 1340 (1990).

The juvenile court has the authority to impose probation with conditions such as the revocation of a juvenile's driver's license to age 21, but may not revoke a driver's license for life: (decided under former analogous section) In re Weber, 61 Ohio App. 3d 636, 573 N.E.2d 730 (1989).

Early release

A juvenile court has no authority pursuant to RC § 2151.38(B) or (C) to release a child committed to the Department of Youth Services under RC § 2151.35.5(A)(4)-(6) for institutional care after expiration of the applicable minimum period of institutionalization. The effect of RC § 2151.38(A), therefore, is that the juvenile court's jurisdiction to release a child terminates when the child has completed the minimum period of institutionalization: (decided under former analogous section) OAG No. 93-079 (1993).

If a request for early release is made pursuant to one of the procedures specified in RC § 2151.38(B) prior to expiration of the minimum period of institutionalization imposed under RC § 2151.35.5(A)(4)-(6), and the hearing is rescheduled or continued beyond the expiration of the minimum period of institutionalization, the juvenile court does not acquire or retain jurisdiction to grant an early release after that date. The court's jurisdiction over releases after the minimum period of confinement is limited to that set out in RC § 2151.38(C): (decided under former analogous section) OAG No. 93-079 (1993).

If a juvenile court schedules an early release hearing pursuant to RC § 2151.38(B) after expiration of the applicable minimum period of institutionalization imposed under RC § 2151.35.5(A)(4)-(6) and orders the Department of Youth Services (DYS) to deliver the child for the hearing and to present a treatment plan for post-institutional care as described in RC § 2151.38(B)(2)(c), DHS should raise the issue of lack of jurisdiction by motion in that proceeding: (decided under former analogous section) OAG No. 93-079 (1993).

Escape

Revised Code § 2921.34(C)(3), providing that a term of confinement for escape be served consecutive to any other sentence of confinement, applies to juvenile escapees: (decided under former analogous section) In re Woodson, 98 Ohio App. 3d 678, 649 N.E.2d 320 (1994).

When an offender on electronically monitored house arrest leaves or otherwise interferes with the monitoring device for the purpose of breaking his detention, he has committed the offense of escape: (decided under former analogous section) *State v. Long*, 82 Ohio App. 3d 168, 611 N.E.2d 504 (1992).

Expense of private facility

A juvenile court lacks jurisdiction to order that a delinquent child be cared for in a private mental health facility at the expense of the department of mental health and of an organization of community mental health boards: (decided under former analo-

gous section) In re Hoodlet, 72 Ohio App. 3d 115, 593 N.E.2d 478 (1991).

When, pursuant to RC § 2151.35.5, a juvenile court commits a delinquent child to an out-of-state private residential facility, the cost of educating the child is paid with funds from the state subsidy provided in RC § 2151.35.7; if such subsidy is insufficient, any remaining educational expense is to be paid by the court as provided in RC § 2151.36: (decided under former analogous section) OAG No. 89-006 (1989).

Fees and costs

The juvenile court has discretion under RC § 2151.35.5(A)(11) to make an alternative disposition that is not specifically enumerated in RC § 2151.35.5(A)(1)-(10) but does not have discretion to assess the costs associated with the disposition: (decided under former analogous section) In re Chinkin, 1992 Ohio App. LEXIS 2167 (1992).

Forfeiture

Forfeiture proceedings apply to juveniles found to be delinquent, and juvenile courts have jurisdiction over such proceedings: (decided under former analogous section) In re Harman, 63 Ohio Misc. 2d 529, 635 N.E.2d 96 (CP 1994).

Furloughs

Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility under RC § 2151.35.5(A)(4) or (5), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the expiration of the minimum period prescribed by the statutory provision under which he was committed, unless the court which committed the child approves of such early release in accordance with RC § 2151.38(B); once such a child has been institutionalized or institutionalized in a secure facility for the minimum period prescribed by the statutory provision under which he was committed, the Department may, in accordance with RC §§ 2151.38(C) and 5139.06, allow the child to leave the institution in which he was placed and return home, without prior approval of the court which committed the child: (decided under former analogous section) OAG No. 88-062 (1988).

Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization in a secure facility under RC § 2151.35.5(A)(6), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the child's attainment of the age of twenty-one years, unless the court which committed the child approves of such early release in accordance with RC § 2151.38(B): (decided under former analogous section) OAG No. 88-062 (1988).

Insanity

In delinquency proceedings, a juvenile may not raise the defense of insanity: (decided under former analogous section) In re Chambers, 116 Ohio App. 3d 312, 688 N.E.2d 25 (1996).

Jurisdiction

The juvenile court had jurisdiction to revoke the suspension of permanent commitment even though the juvenile had been released from official probation: (decided under former analogous section) In re Bracewell, 126 Ohio App. 3d 133, 709 N.E.2d 938 (1998).

A juvenile court does not have jurisdiction over a delinquency complaint where the alleged offender has reached the age of 21 before the charge was brought and the acts occurred before the offender reached 15: (decided under former analogous section) In re C., 61 Ohio Misc. 2d 610, 580 N.E.2d 1182 (CP 1991).

Where a child, as defined in RC § 2151.01.1(B)(1), who has been adjudicated a delinquent beyond a reasonable doubt, leaves the jurisdiction of the juvenile court so that such court cannot dispose of his case, the juvenile court has authority to treat such person as an adult and to impose upon such person the penalty prescribed in the statute he violated and which constituted the basis for the adjudication of delinquency: (decided under former

analogous section) In re Cox, 36 Ohio App. 2d 65, 65 Ohio Op. 2d 51, 301 N.E.2d 907 (1973).

Marriage of child in custody

A minor youth who has been committed to the Department of Youth Services pursuant to RC §§ 2151.35.5, and 5139.05 who wishes to get married must first obtain consent, as required by the applicable provisions of RC § 3101.01 and JuvR 42, from one or both parents, from one of the alternative authorities named in RC § 3101.01, or from the juvenile court as provided in JuvR 42(A). Pursuant to RC § 3101.01 and JuvR 42(A), the Department of Youth Services has no authority to either consent or withhold consent to the marriage of a minor committed to the legal custody of the Department: (decided under former analogous section) OAG No. 89-046 (1989).

Out-of-state school

The court cannot place a child in a specific school when it commits a child to the department of youth services pursuant to RC § 2151.35.5. The same prohibition applies to the disposition of parole violators. Thus an order requiring the department to pay the child's expenses at an out-of-state school is unlawful: (decided under former analogous section) In re Sanders, 72 Ohio App. 3d 655, 595 N.E.2d 974 (1991).

Place of detention

According to RC § 2151.35.5, the court was not empowered to order a delinquent child to serve any time in an adult correctional facility even though he was chronologically an adult when "sentenced": (decided under former analogous section) In re Campbell, 1997 Ohio App. LEXIS 2809 (11th Dist. 1997).

The trial court had authority to grant temporary custody of the delinquent child to the children services board and to order placement in a residential treatment facility: (decided under former analogous section) In re Lawson, 98 Ohio App. 3d 456, 648 N.E.2d 889 (1994).

There is no authority for a juvenile court to commit a delinquent juvenile to a jail for adult offenders, absent a finding that housing in an appropriate juvenile facility is unavailable or that the public safety and protection so require: (decided under former analogous section) State v. Grady, 3 Ohio App. 3d 174, 3 Ohio B. 199, 444 N.E.2d 51 (1981).

A final order of disposition of a child found to be delinquent, as prescribed by RC § 2151.35.5, may not include, as punishment or otherwise, confinement (or detention) in a juvenile detention home: (decided under former analogous section) In re Bolden, 37 Ohio App. 2d 7, 66 Ohio Op. 2d 26, 306 N.E.2d 166 (1973).

Prior adjudication of delinquency

A prior adjudication of delinquency based on a theft offense constitutes a previous conviction of a theft offense under RC § 2913.02 for purposes of disposition: (decided under former analogous section) In re Russell, 12 Ohio St. 3d 304, 12 Ohio B. 377, 466 N.E.2d 553 (1984).

Probation

While a court may impose a previously suspended commitment under RC § 2151.35.5, it must comply with JuvR 35 concerning probation before doing so: (decided under former analogous section) In re Royal, 132 Ohio App. 3d 496, 725 N.E.2d 685 (1999).

Court could properly commit a delinquent minor for a probation violation even though a suspended commitment was not imposed at the time of the initial disposition: (decided under former analogous section) In re Cunningham, 1996 Ohio App. LEXIS 573 (10th Dist. 1996).

Juvenile Rule 35(B), not 29(D), governs probation revocation proceedings: (decided under former analogous section) In re Motley, 110 Ohio App. 3d 641, 674 N.E.2d 1268 (1996).

When placing a juvenile on probation, the court need not first impose and suspend a commitment to DYS [Department of Youth Services] in order to later make a DYS disposition after the juvenile violates probation: (decided under former analogous section) In re Kelly, 1995 Ohio App. LEXIS 4961 (10th Dist. 1995).

Although juvenile courts may prescribe unique probation conditions, the conditions must relate to the offense involved and

must not unduly infringe on the minor's constitutional rights: (decided under former analogous section) In re Miller, 82 Ohio App. 3d 81, 611 N.E.2d 451 (1992).

Restitution

A delinquent juvenile may be ordered to make restitution for medical bills incurred by the victim of an assault: (decided under former analogous section) In re Lambert, 63 Ohio App. 3d 121, 577 N.E.2d 1184 (1989).

A juvenile court's order requiring restitution but leaving the amount and method of payment to a later hearing is not an appealable order: (decided under former analogous section) In re Holmes, 70 Ohio App. 2d 75, 24 Ohio Op. 3d 93, 434 N.E.2d 747 (1980).

When a minor is employed pursuant to a juvenile court restitution order, the arrangement is subject to RC Chapter 4109., except to the extent that it comes within the exceptions set forth in RC § 4109.06: (decided under former analogous section) OAG No. 87-104 (1987).

Searches

A warrantless search performed pursuant to a condition of parole requiring a parolee to submit to random searches of his or her person, motor vehicle, or place of residence by a parole officer at any time is constitutional: (decided under former analogous section) State v. Benton, 82 Ohio St. 3d 316, 695 N.E.2d 757, 1998 Ohio 386, (1998).

Sentencing

A juvenile court is authorized to impose consecutive terms of commitment upon a delinquent minor for separate delinquent acts whether or not they arise from the same set of operative facts: (decided under former analogous section) In re Caldwell, 76 Ohio St. 3d 156, 666 N.E.2d 1367, 1996 Ohio 410, (1996).

Revised Code §§ 2151.35.5 and 2151.01 read together, grant the trial court the discretion in a delinquency proceeding to order that its commitment orders be carried out consecutively: (decided under former analogous section) In re Quanzell W., 1995 Ohio App. LEXIS 4535 (6th Dist. 1995).

Where the juvenile refused to participate in the treatment program, the court did not violate JuvR 35(B) by rescinding its stay and committing the juvenile for a minimum period of six months: (decided under former analogous section) In re William H., 105 Ohio App. 3d 761, 664 N.E.2d 1361 (1995).

A court may properly find that indefinite commitment is in a juvenile's best interest where the parents seem unwilling to ensure that the juvenile gets necessary counseling if left in their custody. A disposition of intensive probation on one count and indefinite commitment on another count is not inconsistent: (decided under former analogous section) State v. Matha, 107 Ohio App. 3d 756, 669 N.E.2d 504 (1995).

When a minor is twice adjudicated delinquent and displays behavior from which the public needs protection, and which indicates that the delinquent is in need of a program of supervision, care and rehabilitation, a consecutive commitment order is an appropriate disposition under RC § 2151.35.5(A)(11): (decided under former analogous section) In re Bremner, 1993 Ohio App. LEXIS 1796 (8th Dist. 1993).

Ordering a juvenile who has twice been adjudicated delinquent to serve a second indefinite term of commitment consecutive to a prior commitment order arising from distinct and unrelated offenses during a different time frame is within the discretion of the juvenile court under RC § 2151.35.5(A)(10): (decided under former analogous section) In re Samkas, 80 Ohio App. 3d 240, 608 N.E.2d 1172 (1992).

Revised Code § 2151.35.5(A)(9) which allows the juvenile court to "make any further disposition that the court finds proper" does not authorize the court to exercise unlimited discretion in sentencing a delinquent child: (decided under former analogous section) State v. Grady, 3 Ohio App. 3d 174, 3 Ohio B. 199, 444 N.E.2d 51 (1981).

Transportation costs

Where the State of Ohio is responsible for the payment of transportation costs under RC § 2151.56, art. IV(b) or RC § 2151.56, art. V(b), the person or entity with legal custody of such juvenile is the party within the state which is responsible for

the transportation costs of the juvenile's return, unless the juvenile court, in its disposition of a delinquent juvenile under RC § 2151.35.5(A), transferred the responsibility for the physical care and custody of the delinquent juvenile to another person or entity, which is then responsible for the payment of such costs: (decided under former analogous section) OAG No. 89-107 (1989).

§ 2152.12 Transfer of case; prosecution of child nullity in absence of transfer; juvenile court loses jurisdiction if child is not taken into custody or apprehended prior to attaining age twenty-one.

(A)(1)(a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged. The juvenile court also shall transfer the case at a hearing if the child was fourteen or fifteen years of age at the time of the act charged, if section 2152.10 of the Revised Code provides that the child is eligible for mandatory transfer, and if there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if section 2152.10 of the Revised Code requires the mandatory transfer of the case and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of section 2152.02 of the Revised Code or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under section 2152.10 of the Revised Code and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(B) Except as provided in division (A) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

(1) The child was fourteen years of age or older at the time of the act charged.

(2) There is probable cause to believe that the child committed the act charged.

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under

division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for †, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with the †† that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with

respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

HISTORY: RC § 2151.26, 133 v H 320 (Eff 11-19-69); 134 v S 325 (Eff 1-14-72); 137 v S 119 (Eff 8-30-78); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 141 v H 499 (Eff 3-11-87); 144 v H 27 (Eff 10-10-91); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 124 (Eff 3-31-97); RC § 2152.12, 148 v S 179, § 3, Eff 1-1-2002.

† Division (F), so in enrolled bill.

†† Division (F)(2), so in enrolled bill.

Analogous in part to former RC § 2151.26 (GC § 1639-32; 117 v 520; Bureau of Code Revision, 10-1-53; 132 v H 343), repealed 133 v H 320, eff 11-19-69.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Cases to be initiated in or transferred to juvenile court, RC § 2152.03.
Children eligible for mandatory or discretionary transfer, RC § 2152.10.
Commitment for specification, RC § 2152.17.
Commitment order by department of youth services, RC § 5139.05.
Definitions, RC § 2151.01.1.
Delinquent child, RC § 2152.02.
Dependent child, RC § 2151.04.
Juvenile traffic offender, RC § 2152.02.
Unruly child, RC § 2151.02.2.
Examination, observation, classification and assignment of delinquent child by department of rehabilitation and correction, RC § 5120.16.
Fingerprints and photographs, RC § 2151.31.3.
Jurisdiction of juvenile court, RC § 2151.23.
Medical treatment of minor prosecuted as adult, RC § 5120.17.2.
Place of detention, RC § 2152.26.
Places where neglected, abused, dependent or unruly child may or may not be held, RC § 2151.31.2.
Range of dispositions of child adjudicated to be delinquent, RC § 2152.11.
Records, RC § 2152.71.
Request for copies of records concerning child alleged to be abused, neglected or dependent, RC § 2151.14.1.
Serious youthful offender dispositional sentence, RC § 2152.13.
Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.

Ohio Rules

Nonwaiver of representation, JuvR 3.
Relinquishment of jurisdiction, JuvR 30.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Practice Guides

Anderson's Ohio Criminal Practice and Procedure § 4.108
Bindover for Juveniles

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Constitutionality

Because RC § 2151.26 does not affect a suspect class or a fundamental right and reflects the state's interest in protecting its citizens from potentially violent youths and reducing violent crime by juveniles, it is constitutional: (decided under former analogous section) State v. Lee, 1998 Ohio App. LEXIS 4250 (11th Dist. 1998).

Revised Code § 2151.26 and JuvR 30 are constitutional in that they impose a burden on the state, do not use the terms "reasonable grounds" in a constitutionally vague way, and do not violate due process in the way they determine the needs of the safety of the community: (decided under former analogous section) State v. Parsons, 1991 Ohio App. LEXIS 1008 (9th Dist. 1991).

A minor criminal defendant, by entering a plea of guilty, does not waive his objections to constitutional deficiencies in the hearing wherein the Juvenile Court relinquished jurisdiction to the Court of Common Pleas: (decided under former analogous section) State v. Riggins, 68 Ohio App. 2d 1, 22 Ohio Op. 3d 1, 426 N.E.2d 504 (1980).

The transfer of a case by the juvenile court to the common pleas court, pursuant to RC § 2151.26, permitting a child to be tried as an adult, does not violate any constitutional rights of such child: (decided under former analogous section) State v. Anderson, 28 Ohio App. 2d 234, 57 Ohio Op. 2d 345, 277 N.E.2d 64 (1971).

The provision of the juvenile court act of the District of Columbia, that in order to waive its exclusive jurisdiction over a juvenile, the court must make a "full investigation" and that its

records be available to persons having a legitimate interest in the protection of the child, when read in the context of the constitutional principles relating to due process and the assistance of counsel, entitle the juvenile to a hearing on the question of such waiver, to access by his counsel to records which presumably are considered by the court, and to a statement of the reasons for the court's decision sufficient to enable meaningful appellate review thereof: (decided under former analogous section) *Kent v. United States*, 40 Ohio Op. 2d 270, 383 U.S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045 (1966).

Generally

Trial court was not required to find that the juvenile was guilty of the charged offense, only that the evidence presented supported a finding of probable cause. Juvenile court's acceptance of the juvenile's stipulations to his psychological evaluation and his family records during the amenability hearing did not take the place of the required hearing. The stipulations did not constitute "admissions" under JuvR 29: *State v. Goodwin*, 166 Ohio App. 3d 709, 852 N.E.2d 1282, 2006 Ohio 2311, (2006).

Since a bindover proceeding is not adjudicative of guilt or innocence, statutory and constitutional questions as to admissibility of evidence are premature and need not be addressed. A juvenile is not entitled to appointment of an independent psychologist to assist in determining whether the juvenile should submit to or waive a mental examination: (decided under former analogous section) *State v. Whisenant*, 127 Ohio App. 3d 75, 711 N.E.2d 1016 (1998).

The mandatory bindover provisions of RC § 2151.26(B) are substantive and control over JuvR 30: (decided under former analogous section) *In re Langston*, 119 Ohio App. 3d 1, 694 N.E.2d 468 (1997).

In a bindover proceeding, the court may consider the violent nature of the offense: (decided under former analogous section) *State v. Lopez*, 112 Ohio App. 3d 659, 679 N.E.2d 1155 (1996).

For purposes of honesty and appellate review, a juvenile court deciding whether or not to transfer jurisdiction should articulate its findings and rationale. The violent nature of an offense may compel transfer: (decided under former analogous section) *In re Snitzky*, 73 Ohio Misc. 2d 52, 657 N.E.2d 1379 (CP 1995).

In determining a juvenile's amenability to rehabilitation, a juvenile court may consider the nature and seriousness of the alleged act: (decided under former analogous section) *State v. Campbell*, 74 Ohio App. 3d 352, 598 N.E.2d 1244 (1991).

In ordering a bind-over, a juvenile court is not required to make written findings as to the factors listed in JuvR 30 (E): (decided under former analogous section) *State v. Douglas*, 20 Ohio St. 3d 34, 20 Ohio B. 282, 485 N.E.2d 711 (1985).

Once a juvenile is bound over in any county in Ohio pursuant to RC § 2151.26 and JuvR 30, that juvenile is bound over for all felonies committed in other counties of this state, as well as for future felonies he may commit: (decided under former analogous section) *State v. Adams*, 69 Ohio St. 2d 120, 23 Ohio Op. 3d 164, 431 N.E.2d 326 (1982).

The duty upon the juvenile court before ordering a relinquishment of jurisdiction for purposes of criminal prosecution is, after investigation, to find there are reasonable grounds to believe that the child is one who will not be readily brought to yield, submit and respond to care, supervision and rehabilitation in any facility designed for such care of delinquent children and that the requirement as to legal restraint exists: (decided under former analogous section) *State v. Whiteside*, 6 Ohio App. 3d 30, 6 Ohio B. 140, 452 N.E.2d 332 (1982).

The latitude a juvenile court possesses within which to determine whether it should retain or waive jurisdiction "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation'": (decided under former analogous section) *Kent v. United States*, 40 Ohio Op. 2d 270, 383 U.S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045 (1966).

The determination of the juvenile court whether to waive its exclusive jurisdiction over a juvenile charged with what will be serious criminal offenses if he permits the minor to be tried as though an adult is a critically important action determining vitally important statutory rights of the juvenile: (decided under former

analogous section) *Kent v. United States*, 40 Ohio Op. 2d 270, 383 U.S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045 (1966).

Revised Code §§ 2151.25 and 2151.26 provide the procedure to be followed where a juvenile is charged with an act which could be a felony if committed by an adult: (decided under former analogous section) *Mellott v. Alvis*, 109 Ohio App. 486, 12 Ohio Op. 2d 23, 162 N.E.2d 623 (1959).

Access of media, public

The public does not have a qualified constitutional right of access to juvenile delinquency proceedings. Such proceedings are not presumed open or presumed closed. The burden of proof is on a party seeking closure: (decided under former analogous section) *State ex rel. Plain Dealer Publ'g Co. v. Geauga County Court of Common Pleas*, 90 Ohio St. 3d 79, 734 N.E.2d 1214, 2000 Ohio 35, (2000).

A two-stage proceeding is required where a motion to transfer a child for prosecution as an adult is filed. The preliminary hearing is presumptively open to the public, while the amenability hearing is presumptively closed: (decided under former analogous section) *In re D.R.*, 63 Ohio Misc. 2d 273, 624 N.E.2d 1120 (CP 1993).

Appeal

If the denial of appellant's motion for a competency evaluation in his juvenile case was a final, appealable order, then the appeal should have been dismissed as untimely since notice of appeal was not filed within 30 days of service of notice of the judgment. If, on the other hand, the order was interlocutory, then there still was no appellate jurisdiction because the subsequent bindover judgment, too, was not a final, appealable order. There was no obvious error in the earlier dismissal of the appeal, and appellant's motion for reconsideration was not well-taken. *In re Thompson*, 2006 Ohio App. LEXIS 2284, 2006 Ohio 2437, (2006).

When a juvenile court relinquished jurisdiction of defendant's case, its weighing of factors for and against relinquishment was to be done at the bindover hearing and that weighing could appear anywhere in the record, rather than only in the court's journal entry, so, when defendant did not file a transcript of his RC § 2152.12(B) hearing, an appellate court had to presume the validity of the juvenile court's proceedings and find that the juvenile court did not abuse its discretion in transferring the case to adult court or fail to weigh required factors. *State v. Luna*, 2006 Ohio App. LEXIS 5867, 2006 Ohio 5907, (2006).

In cases involving challenges to certification of juveniles to adult courts, counsel is required to include specific language in the text of the praecipe to the clerk of courts requesting all pertinent documents from both the juvenile division and the general division of the court of common pleas to establish that the case is a final appealable order: (decided under former analogous section) *State v. Houston*, 70 Ohio App. 3d 152, 590 N.E.2d 839 (1990).

The court of common pleas may not review the factual findings of the juvenile court, under RC § 2151.26(A), on the issue of the child's amenability to care or rehabilitation; such issue must be presented after trial on appeal to the court of appeals: (decided under former analogous section) *State v. Whiteside*, 6 Ohio App. 3d 30, 6 Ohio B. 140, 452 N.E.2d 332 (1982).

An order by a juvenile court, pursuant to RC § 2151.26, transferring a child to the court of common pleas for criminal prosecution, is not a final appealable order: (decided under former analogous section) *In re Becker*, 39 Ohio St. 2d 84, 68 Ohio Op. 2d 50, 314 N.E.2d 158 (1974).

The order of a juvenile court pursuant to this section for a child charged with a felony to appear before the common pleas court, is a final order under RC § 2505.02: (decided under former analogous section) *State v. Yoss*, 10 Ohio App. 2d 47, 39 Ohio Op. 2d 81, 225 N.E.2d 275 (1967).

Bail

A juvenile court may admit a juvenile to bail in a case where the state has moved for a bindover. RC § 2151.31 and JuvR 7, taken together, amount to a presumption against detention: (decided under former analogous section) *In re K.G.*, 89 Ohio Misc. 2d 16, 693 N.E.2d 1186 (CP 1997).

Complicity

State v. Hanning (2000), 89 OS3d 86, 728 NE2d 1059, does not apply to mandatory bindover cases under RC § 2151.26(B)(3): (decided under former analogous section) Agee v. Russell, 92 Ohio St. 3d 540, 751 N.E.2d 1043, 2001 Ohio 1279, (2001).

The mandatory bindover provision of RC § 2151.26(B)(4)(b) does not apply unless the child, himself or herself, had a firearm on or about the child's person or under the child's control while committing the act charged and the child displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged. The complicity statute, RC § 2923.03, does not apply to the juvenile bindover criteria set forth in RC § 2151.26: (decided under former analogous section) State v. Hanning, 89 Ohio St. 3d 86, 728 N.E.2d 1059, 2000 Ohio 436, (2000).

Complicity to aggravated murder constitutes a category one offense for purposes of mandatory bindover even though it was a co-defendant who possessed and used a firearm: (decided under former analogous section) State v. Agee, 133 Ohio App. 3d 441, 728 N.E.2d 442 (1999).

If the charge of a particular offense would invoke the mandatory bindover provisions of RC § 2151.26, then the charge of complicity in that offense, pursuant to RC § 2923.03, would also invoke those mandatory bindover provisions: (decided under former analogous section) OAG No. 97-014 (1997).

Discovery

In a case involving, as a preliminary matter, the question of the transfer of a juvenile proceeding to a common pleas court for the purpose of trying a juvenile as an adult for an alleged criminal offense, a juvenile court may limit discovery in the juvenile court to evidence relevant to the probable cause hearing. State v. Gilbert, 2005 Ohio App. LEXIS 2239, 2005 Ohio 2350, (2005).

During a probable cause hearing held in juvenile court to determine, under Ohio R. Juv. P. 30(A), if there was probable cause to believe defendant committed an alleged crime, before determining if, under Ohio R. Juv. P. 30(C), defendant was amenable to rehabilitation in the juvenile system, defendant moved for discovery, pursuant to Ohio R. Juv. P. 24. While the probable cause hearing was not an adjudicatory hearing, under Ohio R. Juv. P. 2(B), in the sense that evidence was put to the trier of fact or that jeopardy attached, it was "critically important," and had to measure up to the essentials of due process and fair treatment. Defendant had the right to discover evidence the prosecutor would offer to establish probable cause. As the juvenile court had discretion to limit discovery, under Ohio R. Juv. P. 24(B), when the juvenile court merely deleted discovery of evidentiary materials the prosecution intended to use at trial, this was not an abuse of discretion. State v. Gilbert, 2005 Ohio App. LEXIS 2239, 2005 Ohio 2350, (2005).

In the absence of an order limiting discovery pursuant to JuvR 24(B), a juvenile facing a bindover hearing is entitled to discovery coextensive with the issues to be determined at that hearing: (decided under former analogous section) In re A.M., 139 Ohio App. 3d 303, 743 N.E.2d 937 (2000).

Motions for discovery are to be filed in accord with JuvR 22 prior to the adjudicatory hearing. A probable cause hearing pursuant to RC § 2151.26 and JuvR 30 is not an adjudicatory hearing as defined in JuvR 2: (decided under former analogous section) In re Hunter, 99 Ohio Misc. 2d 107, 716 N.E.2d 802 (CP 1999).

The discovery provisions of JuvR 24 apply to bindover proceedings: (decided under former analogous section) In re A.M., 92 Ohio Misc. 2d 4, 699 N.E.2d 574 (CP 1998).

Discretionary transfer

Trial court did not abuse its discretion by transferring jurisdiction to the adult court. The court-appointed psychologists did not provide a specific diagnosis of the juvenile's mental condition. There would be no course of medication or treatment without a diagnosis, and the juvenile could not be forced to participate in treatment. Due to the 14-year-old's resistance to treatment and the brutality of the murder, the court reasonably found that there was insufficient time for rehabilitation in the juvenile system: State v. West, 167 Ohio App. 3d 598, 856 N.E.2d 285, 2006 Ohio 3518, (2006).

Juvenile court abused its discretion by overruling the state's motions to relinquish jurisdiction without considering whether a discretionary transfer was warranted: In re Stanley, 165 Ohio App. 3d 726, 848 N.E.2d 540, 2006 Ohio 1279, (2006).

RC § 2152.12(B) does not specifically require a juvenile judge to list the factors set forth in RC § 2152.12(D) and (E) in its judgment relinquishing jurisdiction of a case, and the statute reveals that the factors should be weighed at the bindover hearing and can appear anywhere in the record, rather than in only the court's journal entry. State v. Luna, 2006 Ohio App. LEXIS 5867, 2006 Ohio 5907, (2006).

Juvenile court did not err in transferring jurisdiction over a 14-year-old defendant's murder case to the adult court. The juvenile court's findings that defendant was not amenable to rehabilitation in the juvenile system in light of the gruesome nature of offense, which involved the brutal stabbing of defendant's aunt while she was sleeping, and that it was likely that defendant would not participate in the optional treatment were supported by evidence. State v. West, 167 Ohio App. 3d 598, 856 N.E.2d 285, 2006 Ohio 3518, (2006).

Juvenile court enjoys wide latitude in determining whether to relinquish jurisdiction of a juvenile, and its ultimate decision will not be reversed absent an abuse of discretion. State v. E.C., 2005 Ohio App. LEXIS 2769, 2005 Ohio 2967, (2005).

Juvenile court's decision to waive its jurisdiction over appellant, who was charged with aggravated burglary, escape, disrupting public service, felonious assault, kidnapping, receiving stolen property, and aggravated robbery, was not an abuse of discretion because it followed the proper procedural requirements of Ohio R. Juv. P. 30 and RC § 2151.26(F) (repealed) and gave its reasons, which were that (1) she had been adjudicated a delinquent and was awaiting disposition; (2) her relationship with the victims facilitated her alleged acts; (3) the victims suffered physical and psychological harm; (4) the results of her prior juvenile sanctions showed rehabilitations would not occur in the juvenile system; (5) she was emotionally, physically, and psychologically mature enough for transfer; and (6) there was insufficient time for her rehabilitation in the juvenile system. State v. E.C., 2005 Ohio App. LEXIS 2769, 2005 Ohio 2967, (2005).

Where defendant committed, *inter alia*, aggravated murder and aggravated robbery one month short of his 16th birthday, the R.C. § 2152.12(D) factors favoring transfer to the general division of the court for trial as an adult were obvious, overwhelming, and outweighed the R.C. § 2152.12(E) factors against transfer. In re Lynch, 789 N.E.2d 1206, 2003 Ohio 2690, (2003).

Any evidence that reasonably supports a juvenile court's decision to relinquish jurisdiction will suffice to sustain the judgment: (decided under former analogous section) State v. Hopfer, 112 Ohio App. 3d 521, 679 N.E.2d 321 (1996).

In deciding whether to relinquish jurisdiction over a child, a juvenile court may consider the seriousness of the alleged offense when determining, pursuant to JuvR 30(C)(1), if the juvenile is "not amenable to care or rehabilitation" in the juvenile justice system: (decided under former analogous section) State v. Watson, 47 Ohio St. 3d 93, 547 N.E.2d 1181 (1989).

A hearing under RC § 2151.26 is a preliminary stage of the juvenile judicial process and contemplates that the court should have considerable latitude within which to determine whether it should retain jurisdiction: (decided under former analogous section) State v. Carmichael, 35 Ohio St. 2d 1, 64 Ohio Op. 2d 1, 298 N.E.2d 568 (1973).

Domicile

For purposes of former RC § 2151.26(B)(2), there was clear and convincing evidence that the juvenile was domiciled in another state: (decided under former analogous section) State v. Simpson, 148 Ohio App. 3d 221, 772 N.E.2d 707, 2002 Ohio 3077, (2002).

Double jeopardy

A juvenile court judge's opinion as to whether a juvenile committed the alleged offense is not related to whether the juvenile is amenable to rehabilitation. Jeopardy does not attach to a probable cause determination at a JuvR 30 preliminary hearing: (decided under former analogous section) State v. Payne, 118 Ohio App. 3d 699, 693 N.E.2d 1159 (1997).

Where a juvenile court adjudicatory hearing had already begun and the juvenile admitted the allegations, double jeopardy protections prevented a bindover for prosecution: (decided under former analogous section) *State v. Reddick*, 113 Ohio App. 3d 788, 682 N.E.2d 38 (1996).

A plea of no contest to the charges of assault and aggravated robbery when defendant was tried as an adult does not constitute waiver of his right to assert that his conviction was obtained in violation of the fifth-fourteenth amendments prohibition of double jeopardy: (decided under former analogous section) *Sellers v. Morris*, 840 F.2d 352 (6th Cir. 1988).

The probable cause hearing required by RC § 2151.26 prior to bind-over of a juvenile for prosecution as an adult is not an adjudicatory proceeding to which jeopardy attaches. Thus the juvenile's subsequent trial as an adult does not place him in double jeopardy: (decided under former analogous section) *Keener v. Taylor*, 22 Ohio Op. 3d 248, 640 F.2d 839 (6th Cir. 1981).

A bindover decision must be made prior to an adjudication of delinquency in order to avoid double jeopardy problems: (decided under former analogous section) *Breed v. Jones*, 421 U.S. 519, 44 L. Ed. 2d 346, 95 S. Ct. 1779 (1975).

Due process

A prosecutor is under a duty imposed by the due process clauses of the Ohio and United States Constitutions and JuvR 24 to disclose to a juvenile respondent all evidence in the state's possession favorable to the juvenile respondent and material either to guilt or punishment that is known at the time of a mandatory bindover hearing held pursuant to RC § 2151.26 and that may become known to the prosecuting attorney after the bindover. In determining whether reversible error is committed where the state fails to disclose evidence in its possession that is favorable to a juvenile respondent for use by the defense at a mandatory bindover proceeding, the defense has the burden to prove that the violation was material, i.e., that there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the mandatory bindover hearing would have been different. The state must provide credible evidence of every element of an offense to support a finding that probable cause exists to believe that the juvenile committed the offense before ordering mandatory waiver of juvenile court jurisdiction pursuant to RC § 2151.26(B): (decided under former analogous section) *State v. Iacona*, 93 Ohio St. 3d 83, 752 N.E.2d 937, 2001 Ohio 1292, (2001).

Evidence sufficient

Binding over of juvenile for trial as an adult was proper where the court considered all relevant factors, including the seriousness of his shooting of two people and then following one to a back room to kill him; as well, abundant and competent evidence including juvenile's long-term behavior problems and escalating inability to control his actions demonstrated that he was not amenable to rehabilitation. *State v. Moorers*, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 5081, 2003 Ohio 5698, (Oct. 24, 2003), appeal denied by 101 Ohio St. 3d 1489, 2004 Ohio 1293, 805 N.E.2d 539, 2004 Ohio LEXIS 581 (2004).

Evidence supported the trial court's decision that defendant was not amenable to care or rehabilitation in the juvenile system and should be bound over for trial for murder as an adult, with neither of two expert witnesses explaining how defendant's Attention Deficit Hyperactivity Disorder led to his conduct. *State v. Lallathin*, 2003 Ohio App. LEXIS 3142, 2003 Ohio 3478, (2003), appeal denied by 100 Ohio St. 3d 1433, 2003 Ohio 5396, 797 N.E.2d 513, 2003 Ohio LEXIS 2749 (2003).

False imprisonment

Where the court of common pleas had some jurisdiction at the time of the bindover order, the entry of sentence did not give rise to an action for false imprisonment where the charges, although erroneous, appeared valid on the face of the commitment order: *Fryerson v. Ohio Dep't of Rehab. & Corr.*, 120 Ohio Misc. 2d 50, 778 N.E.2d 153, 2002 Ohio 5757, (2002), affirmed by 2003 Ohio 2730, 2003 Ohio App. LEXIS 2464 (Ohio Ct. App., Franklin County May 29, 2003).

Firearm

Juvenile defendant in robbery case who possessed no firearm during the robbery but merely aided and abetted co-defendant who did possess a firearm was not subject to transfer under RC § 2951.26: (decided under former analogous section) *State v. Hanning*, 1999 Ohio App. LEXIS 400 (10th Dist. 1999).

Because the definition of "firearm" in RC § 2923.11 is not void for vagueness, its use in RC § 2151.26(B) is constitutional: (decided under former analogous section) *State v. Kelly*, 1998 Ohio App. LEXIS 5630 (3rd Dist. 1998).

Revised Code § 2151.26(B)(4)(b) requires the state to establish probable cause to believe that the juvenile somehow employed a firearm to facilitate commission of the act charged: (decided under former analogous section) *In re B.S.*, 103 Ohio Misc. 2d 34, 725 N.E.2d 362 (CP 1998).

Grand jury

When a minor is transferred from the Juvenile Court to the Court of Common Pleas on a charge which would constitute a felony if committed by an adult, the grand jury is empowered to return an indictment under the facts submitted to it and is not confined to returning indictments only on charges originally filed in the Juvenile Court: (decided under former analogous section) *State v. Adams*, 69 Ohio St. 2d 120, 23 Ohio Op. 3d 164, 431 N.E.2d 326 (1982).

Habeas corpus

Habeas corpus was not available on a claim of improper bindover of a juvenile where the petitioner had an adequate remedy at law by appeal: *Smith v. Bradshaw*, 109 Ohio St. 3d 50, 845 N.E.2d 516, 2006 Ohio 1829, (2006).

Trial court erred in denying an inmate's motion to supplement his writ of habeas corpus petition and amend the same under Ohio R. Civ. P. 15(A) to include an allegation of jurisdictional error based on an improper bindover, where absent a proper bindover procedure under former RC § 2151.26 (now RC § 2152.12) due to a juvenile court's purported failure to administer a physical examination as required thereunder and by former Ohio R. Juv. P. 30, the jurisdiction of a juvenile court was exclusive and could not be waived. Moreover, when a court's judgment was void because the court lacked subject-matter jurisdiction, habeas corpus was generally an appropriate remedy despite the availability of appeal. *Snitzky v. Wilson*, 2004 Ohio App. LEXIS 6744, 2004 Ohio 7229, (2004), appeal dismissed by 2005 Ohio 5869, 2005 Ohio App. LEXIS 5288 (Ohio Ct. App., Trumbull County Nov. 4, 2005).

An allegation of improper bindover of a juvenile raises a viable habeas corpus claim: *Johnson v. Timmerman-Cooper*, 93 Ohio St. 3d 614, 757 N.E.2d 1153, 2001 Ohio 1803, (2001).

Once the juvenile was properly bound over, the common pleas court had jurisdiction to proceed. The fact that the juvenile was then prosecuted on different charges did not merit habeas corpus relief: (decided under former analogous section) *State ex rel. Fryerson v. Tate*, 84 Ohio St. 3d 481, 705 N.E.2d 353, 1999 Ohio 465, (1999).

Habeas corpus is not available to challenge the constitutionality of mandatory bindover provisions: (decided under former analogous section) *In re Petition for Writ of Habeas Corpus of Baker*, 116 Ohio App. 3d 580, 688 N.E.2d 1068 (1996).

A petition alleging that the court lacked jurisdiction over the petitioner due to an improper bindover states a potentially good cause of action in habeas corpus: (decided under former analogous section) *State ex rel. Harris v. Anderson*, 76 Ohio St. 3d 193, 667 N.E.2d 1, 1996 Ohio 412, (1996).

Habeas corpus is not available to contest bindover proceedings where there is an adequate remedy at law: (decided under former analogous section) *Gaskins v. Shiplevy*, 76 Ohio St. 3d 380, 667 N.E.2d 1194, 1996 Ohio 387, (1996).

Without a proper bindover procedure under RC § 2151.26, a juvenile court's jurisdiction is exclusive and cannot be waived. When a court's judgment is void because it lacked jurisdiction, habeas is still an appropriate remedy despite the availability of appeal: (decided under former analogous section) *Gaskins v. Shiplevy*, 74 Ohio St. 3d 149, 656 N.E.2d 1282, 1995 Ohio 262, (1995).

Hearings

Where there was no indication in a juvenile court bindover order that a juvenile's waiver of a probable cause and amenability hearing was knowingly, competently, and intelligently made, a later delinquency charge against him on a new criminal matter required an appropriate bindover proceeding under RC § 2152.12 and Ohio R. Juv. P. 3. The hearing on the bindover issue was a critical phase that was mandatory under RC ch. 2152 and Ohio R. Juv. P. 30. *State v. Brown*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 4330, 2006 Ohio 4393, (Aug. 25, 2006).

Under JuvR 30, a preliminary probable cause hearing is mandatory if the juvenile court believes that it might want to relinquish its jurisdiction over the child: (decided under former analogous section) *State v. Smith*, 29 Ohio App. 3d 194, 29 Ohio B. 237, 504 N.E.2d 1121 (1985).

Indigence

An indigent juvenile offender is entitled to a record in a hearing conducted for the purpose of determining whether the juvenile court may waive jurisdiction and bind the offender over to the court of common pleas for criminal prosecution: (decided under former analogous section) *State v. Ross*, 23 Ohio App. 2d 215, 52 Ohio Op. 2d 332, 262 N.E.2d 427 (1970).

Jurisdiction

Common pleas court did not have subject matter jurisdiction to convict defendant of rape because it was undisputed that defendant was under the age of 18 during a period of time listed in the indictment, that he was indicted in the common pleas court, that he was not bound over from juvenile court, and that he never appeared in juvenile court. *State v. Spannahake*, 2006 Ohio App. LEXIS 1361, 2006 Ohio 1489, (2006).

Trial court did not err in failing to treat defendant as a serious youthful offender who, if convicted, would have been subject to a blended juvenile-adult sentence as there was no statutory mechanism for the trial court to return a case to a juvenile court once the juvenile court had relinquished jurisdiction. Under RC § 2152.12(I) and 2151.23(H), once a juvenile court has transferred a case to the Ohio Common Pleas Court, it has no further jurisdiction to hear or to determine a child's case, and the courts have held that when a juvenile has been bound over to the Ohio Common Pleas Court, the Ohio Common Pleas Court has no jurisdiction to review the bindover order for error. *State v. Harris*, 2006 Ohio App. LEXIS 653, 2006 Ohio 716, (2006).

Where defendant, age 16, was charged in the juvenile court with carrying concealed weapons in violation of RC § 2923.12 and aggravated robbery involving use of a deadly weapon in violation of RC § 2911.01(A)(1) and where defendant was bound over to the general division of the common pleas court on both offenses based on the aggravated robbery offense of which defendant was later acquitted, all further proceedings in the juvenile division on the carrying concealed weapons charge were discontinued under RC § 2152.12(I), thus terminating the juvenile division's jurisdiction under RC § 2151.23(H). *State v. Washington*, 2005 Ohio App. LEXIS 5902, 2005 Ohio 6546, (2005).

Pursuant to Ohio's statutory scheme, a juvenile adjudicated delinquent prior to age 18 remains a child in the eyes of the juvenile court until age 21. The juvenile court's exercise of its continuing jurisdiction regarding the parole violation was lawful: *In re Gillespie*, 150 Ohio App. 3d 502, 782 N.E.2d 140, 2002 Ohio 7025, (2002), appeal denied by 98 Ohio St. 3d 1513, 2003 Ohio 1572, 786 N.E.2d 63, 2003 Ohio LEXIS 842 (2003).

Absent a proper bindover procedure pursuant to RC § 2151.26, the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent. The exclusive subject matter jurisdiction of the juvenile court cannot be waived: (decided under former analogous section) *State v. Wilson*, 73 Ohio St. 3d 40, 652 N.E.2d 196, 1995 Ohio 217, (1995).

A juvenile court does not have jurisdiction over a delinquency complaint where the alleged offender has reached the age of 21 before the charge was brought and the acts occurred before the offender reached 15: (decided under former analogous section) *In re C.*, 61 Ohio Misc. 2d 610, 580 N.E.2d 1182 (CP 1991).

Unless a child has been transferred from the juvenile court, a court of common pleas does not have jurisdiction over a person under 18. A court of common pleas has jurisdiction to determine defendant's age at a hearing. The state has the burden of proving beyond a reasonable doubt that defendant was an adult at the time of the offense: (decided under former analogous section) *State v. Neguse*, 71 Ohio App. 3d 596, 594 N.E.2d 1116 (1991).

Transfer of a charge amounting to a felony in an adult from Juvenile Court to Common Pleas Court under RC § 2151.26 and JuvR 30 does not discharge jurisdiction in Juvenile Court over a pending charge amounting to a misdemeanor in an adult unless the misdemeanor stems from the same act constituting the felony and is an offense included in it: (decided under former analogous section) *State ex rel. Duganitz v. Court*, 23 Ohio Op. 3d 572 (App. 1981).

Where the defendant was charged with receiving stolen property which initially came into his possession as a juvenile but was retained by him six months into his majority, the defendant was properly charged as an adult: (decided under former analogous section) *State v. Stevens*, 65 Ohio Misc. 4, 19 Ohio Op. 3d 29, 413 N.E.2d 862 (MC 1979).

The juvenile court having once waived jurisdiction to handle a case under the juvenile code must order further proceedings under the regular procedural provisions of the criminal law: (decided under former analogous section) *In re Davis*, 87 Ohio L. Ab. 222, 22 Ohio Op. 2d 108, 179 N.E.2d 198 (JC 1961).

The juvenile code vests jurisdiction of the juvenile court over the infant, not the crime: (decided under former analogous section) *In re Evans*, 67 Ohio App. 66, 21 Ohio Op. 93, 35 N.E.2d 887 (1941).

Mandatory transfer

Where a juvenile court treated the offenses of carrying concealed weapons and aggravated robbery, in violation of RC §§ 2923.12(A) and 2911.01(A)(1) respectively, as mandatory bind-over offenses per RC §§ 2152.01(A) and 2152.12(A), although the weapons charge was a non-mandatory bind-over offense that required that findings be made pursuant to RC § 2152.12(B)(3) and Ohio R. Juv. P. 30(C), a meritorious issue on appeal was raised as to whether the error deprived the trial court of jurisdiction to convict defendant of the weapons charge; accordingly, the court set aside defendant's counsel's Anders brief, which had pointed out that potential issue, and indicated that new counsel would be appointed for purposes of pursuing the appeal. *State v. Washington*, 2005 Ohio App. LEXIS 41, 2005 Ohio 58, (2005).

Where defendant, age 16, was charged in the juvenile division with aggravated robbery involving use of a deadly weapon in violation of RC § 2911.01(A)(1), the juvenile court properly bound defendant over to the general division for trial. Transfer was required pursuant to RC §§ 2152.10(A), 12(A)(1)(b), as aggravated robbery was a category two offense under RC § 2152.02(CC)(1) for which probable cause was properly found. *State v. Washington*, 2005 Ohio App. LEXIS 5902, 2005 Ohio 6546, (2005).

In a case where bindover is mandatory, the juvenile court lacks subject matter jurisdiction to accept the juvenile's admission to delinquency charges: *In re Graham*, 147 Ohio App. 3d 452, 770 N.E.2d 1123, 2002 Ohio 2407, (2002).

Mental and physical examination

The juvenile court failed to accomplish a legal transfer of jurisdiction where there was no evidence in the record that the physical examination of the juvenile required by former RC § 2151.26 and JuvR 30 was performed: (decided under former analogous section) *State v. Golphin*, 81 Ohio St. 3d 543, 692 N.E.2d 608, 1998 Ohio 336, (1998).

In relinquishment proceedings in the juvenile court pursuant to Juv. R. 30, a juvenile is not entitled to the appointment of a private psychiatric examiner of the court's choosing and at the state's expense, instead of the court's psychologist: (decided under former analogous section) *State ex rel. a Juvenile v. Hoose*, 43 Ohio App. 3d 109, 539 N.E.2d 704 (1988).

According to RC § 2151.26(C), the decision to submit to or waive the mental and physical examination authorized by RC § 2151.26(A)(1)(c) rests ultimately with the child. The only

requirement is that any waiver must be competently and intelligently made: (decided under former analogous section) State ex rel. Doe v. Tracy, 51 Ohio App. 3d 198, 555 N.E.2d 674 (1988).

The commitment of a fifteen year old to a state institution pursuant to RC § 2151.26 for the purpose of examination is not an act for which a writ of prohibition will issue: (decided under former analogous section) State ex rel. Harris v. Common Pleas Court, 25 Ohio App. 2d 78, 54 Ohio Op. 2d 115, 266 N.E.2d 589 (1970).

Under the provision of this section a child who is charged with committing a felony is entitled to a hearing at which he may present evidence as to his mental condition: (decided under former analogous section) State v. Yoss, 10 Ohio App. 2d 47, 39 Ohio Op. 2d 81, 225 N.E.2d 275 (1967).

Motion for reconsideration

Until the juvenile court either begins to hear evidence in an adjudicatory hearing or divests itself of jurisdiction by transferring the child for prosecution as an adult, the determination of the child's amenability is subject to reconsideration upon motion filed by a party: (decided under former analogous section) In re K.W., 73 Ohio Misc. 2d 20, 657 N.E.2d 611 (CP 1995).

Notice

The notice requirements of RC § 2151.26(D) are satisfied when the notice described therein is given to the child's counsel and to the child's "custodian." The juvenile court does not err in finding that the child's grandmother is the child's "custodian" where the record contains evidence that the grandmother stated to police that she had legal custody of the child: (decided under former analogous section) State v. Parks, 51 Ohio App. 3d 194, 555 N.E.2d 671 (1988).

Under the bind-over procedure set out in RC Chapter 2151., the notice of hearing requirement of RC § 2151.26(C) is mandatory and cannot be waived by the juvenile by his failure to object to non-compliance: (decided under former analogous section) State v. Taylor, 26 Ohio App. 3d 69, 26 Ohio B. 243, 498 N.E.2d 211 (1985).

Prior law

Pursuant to this section, as it existed immediately prior to November 19, 1969, where the evidence before a juvenile court was sufficient to support a finding that there was probable cause to believe a delinquent child had committed an act which could be a felony if committed by an adult, that court could properly bind the child over to the court of common pleas: (decided under former analogous section) In re Jackson, 21 Ohio St. 2d 215, 50 Ohio Op. 2d 447, 257 N.E.2d 74 (1970).

Probable cause

Juvenile court did not err in finding that there were sufficient facts to establish probable cause that defendant, a juvenile, committed offenses charged against him, arising from a car-jacking incident and a subsequent attempt to escape from the police, such that the bind-over to the trial court was proper pursuant to RC § 2151.26(B) and Ohio R. Juv. P. 30; the juvenile court did not have to find that defendant was guilty of the charged offenses to support its bind-over determination. State v. Goodwin, 166 Ohio App. 3d 709, 852 N.E.2d 1282, 2006 Ohio 2311, (2006).

Juvenile court's relinquishment of jurisdiction over a 17-year-old charged with murder and aggravated arson pursuant to the mandatory bindover provisions of RC § 2152.12(A) was proper as a juvenile court at a bindover hearing needed to find only the existence of probable cause; the juvenile court had to evaluate the quality of the State's evidence and any evidence presented by the juvenile attacking probable cause. State v. Kitchen, 2003 Ohio App. LEXIS 4519, 2003 Ohio 5017, (2003), appeal denied by 101 Ohio St. 3d 1423, 2004 Ohio 123, 802 N.E.2d 154, 2004 Ohio LEXIS 148 (2004).

Prohibition

Prohibition will not issue to prevent a common pleas court from trying a juvenile who has been transferred for prosecution as an adult. Any error complained of in a transfer order must be raised in an appeal from the judgment of the court of common pleas: (decided under former analogous section) State ex rel. Torres v.

Simmons, 68 Ohio St. 2d 118, 22 Ohio Op. 3d 340, 428 N.E.2d 862 (1981).

Recording of proceedings

Where the juvenile court complied with RC § 2152.12 and JuvR 30 in transferring a juvenile for criminal prosecution, the trial court had subject matter jurisdiction to hear the case despite the juvenile court's failure to record the proceeding pursuant to JuvR 37(A): State v. Mock, 136 Ohio Misc. 2d 21, 846 N.E.2d 108, 2005 Ohio 7142, (2005).

Sentencing

In appropriate circumstances, a juvenile offender whose case has been transferred to the court of common pleas for prosecution as an adult pursuant to RC § 2151.26 may, upon conviction, be ordered or committed to a community-based correctional facility established pursuant to RC §§ 2301.51-2301.58: (decided under former analogous section) OAG No. 97-013 (1997).

Time limits

The separate and different treatment of juveniles under the speedy trial requirements of Ohio law has a reasonable and valid basis and is neither arbitrary nor capricious: (decided under former analogous section) State v. Trapp, 52 Ohio App. 2d 189, 6 Ohio Op. 3d 175, 368 N.E.2d 1278 (1977).

When a minor is held by the juvenile court for acts which would be a felony, and the juvenile court relinquishes jurisdiction over the minor, the 90-day time limit of RC § 2945.71 for bringing him to trial as an adult felon starts to run at the time the juvenile court relinquishes jurisdiction: (decided under former analogous section) State ex rel. Williams v. Court of Common Pleas of Lucas County, 42 Ohio St. 2d 433, 71 Ohio Op. 2d 410, 329 N.E.2d 680 (1975).

Vacation of judgment

A juvenile court lacks jurisdiction to consider a CivR 60(B) motion where it has transferred a case for criminal prosecution, even where an indictment has not yet issued: (decided under former analogous section) In re Williams, 111 Ohio App. 3d 120, 675 N.E.2d 1254 (1996).

§ 2152.13 Serious youthful offender dispositional sentence.

(A) A juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in accordance with this division, and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process in any of the following ways:

(1) Obtaining an indictment of the child as a serious youthful offender;

(2) The child waives the right to indictment, charging the child in a bill of information as a serious youthful offender;

(3) Until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child;

(4) Until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within twenty days after the later of the following, unless the time is extended by the juvenile court for good cause shown:

(a) The date of the child's first juvenile court hearing regarding the complaint;

(b) The date the juvenile court determines not to transfer the case under section 2152.12 of the Revised Code.

After a written notice is filed under division (A)(4) of this section, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case.

(B) If an alleged delinquent child is not indicted or charged by information as described in division (A)(1) or (2) of this section and if a notice or complaint as described in division (A)(3) or (4) of this section indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court shall hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

(C)(1) A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence. The grand jury may be impaneled by the court of common pleas or the juvenile court.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held under Title XXIX [29] of the Revised Code commences on whichever of the following dates is applicable:

(a) If the child is indicted or charged by information, on the date of the filing of the indictment or information.

(b) If the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint.

(c) If the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

(2) If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except as provided in division (D) of section 2152.14 of the Revised Code, all provisions of Title XXIX [29] of the Revised Code and the Criminal Rules shall apply in the case and to the child. The juvenile court shall afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

(D)(1) If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

(a) The juvenile court shall impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(b) The juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20, and, if applicable, section 2152.17 of the Revised Code.

(c) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(2)(a) If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

(i) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in section 2152.01 of the Revised Code will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

(ii) If a sentence is imposed under division (D)(2)(a)(i) of this section, the juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20 and, if applicable, section 2152.17 of the Revised Code.

(iii) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(b) If the juvenile court does not find that a sentence should be imposed under division (D)(2)(a)(i) of this section, the juvenile court may impose one or more traditional juvenile dispositions under sections 2152.16, 2152.19, 2152.20, and, if applicable, section 2152.17 of the Revised Code.

(3) A child upon whom a serious youthful offender dispositional sentence is imposed under division (D)(1) or (2) of this section has a right to appeal under division (A)(1), (3), (4), (5), or (6) of section 2953.08 of the Revised Code the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court shall consider the appeal as if the adult portion were not stayed.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Adjudatory hearing, RC § 2151.28.

Apprehension, custody, and detention, RC § 2151.31.

Commitment for specification, RC § 2152.17.

Commitment order by department of youth services, RC § 5139.05.

Court control of child following commitment to department; judicial release, RC § 2152.22.

Detention or shelter care hearing, RC § 2151.31.4.

Hearing procedure, RC § 2151.35.

Initiation of serious youthful offender proceedings, RC § 2152.02.1.

Judicial release, RC § 2152.22.

Requirement of separate room for hearings, RC § 2151.24.

Serious youthful offender defined, RC § 2152.02.

Transfer to juvenile court of another county, RC § 2151.27.1.

Ohio Rules

Definitions, JuvR 2.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Constitutionality

Ohio's serious youthful offender sentencing scheme does not violate the prohibition against cruel and unusual punishment under the Eighth Amendment and Ohio Const. art. I, § 9 as: (1) the scheme does not provide for penalties against juveniles so greatly disproportionate to the offenses committed that those penalties shock the sense of justice in the community, (2) the scheme prohibits the imposition of the most severe adult punishment, (3) the scheme reserves adult punishment only for serious juvenile offenders not capable of being rehabilitated within the juvenile system, and (4) among juveniles who receive an adult sentence, only those who commit further serious wrongdoing and who are at least 14 years old can be ordered to serve the adult sentence. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Ohio's serious youthful offender law does not violate due process as, while the scheme subjects certain juveniles to adult punishment, the statute has been crafted to take into account juvenile-adult distinctions, as: (1) the most severe adult punishments are prohibited, (2) the juvenile court can order adult punishment only after the juvenile court determines that the juvenile system alone cannot adequately fulfill the purposes for disposition outlined in RC § 2152.01(A), (3) while a juvenile as young as 10 can receive a serious youthful offender disposition, the juvenile court can only invoke the adult punishment if the juvenile is at least 14 years old, and if the juvenile has engaged in further serious wrongdoing, and (4) the court must also determine, after a hearing, that the juvenile offender is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

When, in sentencing a serious youthful offender, a juvenile court made findings under RC § 2929.14(B), the fact that the statute was subsequently found unconstitutional did not render the sentence imposed invalid, under the Sixth Amendment or Ohio Const. art. I, §§ 5 or 10, because the trial court's authority to impose the sentence was derived from RC § 2152.13(D)(2)(a), which only referred the court to the unconstitutional statute. State v. D.H., 169 Ohio App. 3d 798, 865 N.E.2d 92, 2006 Ohio 6953, (2006).

Generally

Pursuant to the clear and convincing standard of review, pursuant to RC § 2953.08(C)(2), the non-minimum sentence imposed on defendant, a juvenile, met the requirements of RC § 2929.14(B) and it complied with the statutory mandates of RC ch. 2929, based on consideration of the adult portion of defendant's serious youthful offender disposition sentence under RC § 2152.13(D)(3), which was reviewed as if it were not stayed for purposes of appeal. The trial court stated that it did not impose the shortest prison term authorized for the offenses because the shortest prison term would have demeaned the seriousness of defendant's conduct and would not have adequately protected the public from future crime. In re J.R., 2005 Ohio App. LEXIS 3727, 2005 Ohio 4090, (2005).

When appellant was properly classified as a serious youthful offender, upon his guilty plea to rape, and a blended sentence was

imposed, consisting of a commitment to the Department of Youth Services, followed by a sentence in an adult facility, and the adult part of appellant's sentence was more than the statutory minimum for his crime, the trial court had to make the findings required by RC § 2929.14(B) to impose a greater than minimum sentence, and its failure to do so required reversal of the sentence. In re Wells, 2005 Ohio App. LEXIS 6189, 2005 Ohio 6861, (2005).

Under RC § 2152.13(D)(1), a juvenile court has the authority to sentence a serious juvenile offender under RC ch. 2929, which provides the criminal penalties and sentencing procedures in adult criminal cases, and the section's structure requires that a trial court make certain findings under RC §§ 2929.03, 2929.04, 2929.11, 2929.12, 2929.13, and 2929.14 to determine a particular sentence. Compliance with those sentencing statutes is required, so the trial court must set forth the statutorily mandated findings and, when necessary, articulate on the record the particular reasons for making those findings, under RC § 2929.19(B)(2). In re Wells, 2005 Ohio App. LEXIS 6189, 2005 Ohio 6861, (2005).

Admissions

Juvenile did not make his admission to charges knowingly, voluntarily, and intelligently pursuant to Ohio R. Juv. P. 29(D) because the juvenile court failed to inform him, on the record, why he was required to enter new admissions and pleas under Ohio R. Crim. P. 11, based on the fact that he had been previously misinformed as to the consequences for the entry of his pleas and admissions pursuant to RC § 2152.13(D)(2). There was no indication given to the juvenile upon his second set of admissions and pleas as to why the first set were considered null and void. In re Smith, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 2625, 2006 Ohio 2788, (June 5, 2006).

Evidence sufficient

Trial court's finding that appellant was a serious youthful offender under RC § 2152.13 was not against the manifest weight of evidence. Appellant struck the victim violently without any provocation causing a fracture of the skull and a brain bleed, he violated his house arrest, he assaulted an individual at school, and he was suspended from school on numerous occasions and for various reasons, including fighting. State v. McGraph, 2006 Ohio App. LEXIS 4634, 2006 Ohio 4696, (2006).

Motion to dismiss indictment

Juvenile court did not violate RC §§ 2152.021 and 2152.13 when it denied defendant's motion to dismiss an indictment charging defendant with child endangering and murder because the prosecutor obtained an indictment under RC § 2152.13(A)(1) and § 2142.13(A)(3) and (4) were not applicable. Nothing in RC §§ 2152.021 or 2152.13 prohibits a prosecutor from initiating serious youthful offender proceedings via an indictment when a complaint has previously been filed. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Right to jury trial

Defendant's right to a jury trial under *Blakely v. Washington*, 542 U.S. 296 (2004), was not violated where the juvenile court and not the jury made a serious youthful offender finding under RC § 2152.13(D)(2)(a)(i) as the sentence defendant received was derived from the jury's verdict on the murder and child endangering counts, and pursuant to RC § 2152.11(B)(2) and (E)(2), defendant was subject to a serious youthful offender disposition at the discretion of the juvenile court simply by virtue of the delinquency finding for murder and child endangerment. The range of defendant's potential punishment by virtue of the jury verdict alone included the applicable adult punishment set forth in RC ch. 2929 and in making the finding in RC § 2152.13(D)(2)(a)(i), the juvenile court was determining defendant's punishment within the statutorily-prescribed range, taking into account the nature and circumstances of the offense, and the security, programming, and resources available in the juvenile system. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

In a juvenile delinquency proceeding, when appellant was sentenced as a serious youthful offender, the findings that the trial

court made in doing so, under RC § 2152.13(D)(2)(a), did not violate the Sixth Amendment, as applied in *Blakely*, or Ohio Const. art. I, §§ 5 or 10, because appellant was tried in juvenile court, where he had no constitutional right to a jury trial. State v. D.H., 169 Ohio App. 3d 798, 865 N.E.2d 92, 2006 Ohio 6953, (2006).

§ 2152.14 Motion to invoke adult portion of dispositional sentence.

(A)(1) The director of youth services may request the prosecuting attorney of the county in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person to file a motion with that juvenile court to invoke the adult portion of the dispositional sentence if all of the following apply to the person:

- (a) The person is at least fourteen years of age.
- (b) The person is in the institutional custody, or an escapee from the custody, of the department of youth services.
- (c) The person is serving the juvenile portion of the serious youthful offender dispositional sentence.
- (2) The motion shall state that there is reasonable cause to believe that either of the following misconduct has occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

(a) The person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(b) The person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

(B) If a person is at least fourteen years of age, is serving the juvenile portion of a serious youthful offender dispositional sentence, and is on parole or aftercare from a department of youth services facility, or on community control, the director of youth services, the juvenile court that imposed the serious youthful offender dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion shall state that there is reasonable cause to believe that either of the following occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

(1) The person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(2) The person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim.

(C) If the prosecuting attorney declines a request to file a motion that was made by the department of youth services or the supervising probation department under division (A) or (B) of this section or fails to act on a request made under either division by the department within a reasonable time, the department of youth services or the supervising probation department may file a

motion of the type described in division (A) or (B) of this section with the juvenile court to invoke the adult portion of the serious youthful offender dispositional sentence. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court under division (B) of this section or fails to act on a request from the court under that division within a reasonable time, the juvenile court may hold the hearing described in division (D) of this section on its own motion.

(D) Upon the filing of a motion described in division (A), (B), or (C) of this section, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's serious juvenile offender dispositional sentence. The juvenile court shall not invoke the adult portion of the dispositional sentence without a hearing. At the hearing the person who is the subject of the serious youthful offender disposition has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be invoked, to be represented by counsel including counsel appointed under Juvenile Rule 4(A), to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf, including evidence that the person has a mental illness or is a mentally retarded person. The person may not waive the right to counsel. The hearing shall be open to the public. If the person presents evidence that the person has a mental illness or is a mentally retarded person, the juvenile court shall consider that evidence in determining whether to invoke the adult portion of the serious youthful offender dispositional sentence.

(E)(1) The juvenile court may invoke the adult portion of a person's serious youthful offender dispositional sentence if the juvenile court finds all of the following on the record by clear and convincing evidence:

(a) The person is serving the juvenile portion of a serious youthful offender dispositional sentence.

(b) The person is at least fourteen years of age and has been admitted to a department of youth services facility, or criminal charges are pending against the person.

(c) The person engaged in the conduct or acts charged under division (A), (B), or (C) of this section, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

(2) The court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

(F) If a juvenile court issues an order invoking the adult portion of a serious youthful offender dispositional sentence under division (E) of this section, the juvenile portion of the dispositional sentence shall terminate, and the department of youth services shall transfer the person to the department of rehabilitation and correction or place the person under another sanction imposed as part of the sentence. The juvenile court shall state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, the department of youth services under the juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult portion of the dispositional sentence shall be reduced by the total number of days specified in the order plus any additional days the person is held in a juvenile facility or

in detention after the order is issued and before the person is transferred to the custody of the department of rehabilitation and correction. In no case shall the total prison term as calculated under this division exceed the maximum prison term available for an adult who is convicted of violating the same sections of the Revised Code.

Any community control imposed as part of the adult sentence or as a condition of a judicial release from prison shall be under the supervision of the entity that provides adult probation services in the county. Any post-release control imposed after the offender otherwise is released from prison shall be supervised by the adult parole authority.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Commitment for specification, RC § 2152.17.

Commitment order by department of youth services, RC § 5139.05.

Judicial release, RC § 2152.22.

Serious youthful offender defined, RC § 2152.02.

Serious youth offender dispositional sentence, RC § 2152.13.

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Constitutionality

Ohio's serious youthful offender sentencing scheme does not violate the prohibition against cruel and unusual punishment under the Eighth Amendment and Ohio Const. art. I, § 9 as: (1) the scheme does not provide for penalties against juveniles so greatly disproportionate to the offenses committed that those penalties shock the sense of justice in the community, (2) the scheme prohibits the imposition of the most severe adult punishment, (3) the scheme reserves adult punishment only for serious juvenile offenders not capable of being rehabilitated within the juvenile system, and (4) among juveniles who receive an adult sentence, only those who commit further serious wrongdoing and who are at least 14 years old can be ordered to serve the adult sentence. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Ohio's serious youthful offender law does not violate due process as, while the scheme subjects certain juveniles to adult punishment, the statute has been crafted to take into account juvenile-adult distinctions, as: (1) the most severe adult punishments are prohibited, (2) the juvenile court can order adult punishment only after the juvenile court determines that the juvenile system alone cannot adequately fulfill the purposes for disposition outlined in RC § 2152.01(A), (3) while a juvenile as young as 10 can receive a serious youthful offender disposition, the juvenile court can only invoke the adult punishment if the juvenile is at least 14 years old, and if the juvenile has engaged in further serious wrongdoing, and (4) the court must also determine, after a hearing, that the juvenile offender is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

Lack of an amenability hearing at the original disposition hearing or at a hearing to determine whether the adult portion of a serious youthful offender's sentence should be invoked does not violate due process as: (1) the juvenile court must consider, at the time it imposes an adult sentence and at the time it invokes the adult sentence, whether the juvenile system can adequately rehabilitate a defendant, and (2) before invoking the adult punishment, the juvenile court must hold a full hearing, at which the defendant can present evidence in favor of remaining within the juvenile system. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

§ 2152.16 Commitment to youth services department for secure confinement; release by department; effect of prior delinquency adjudication.

(A)(1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of the department of youth services for secure confinement as follows:

(a) For an act that would be aggravated murder or murder if committed by an adult, until the offender attains twenty-one years of age;

(b) For a violation of section 2923.02 of the Revised Code that involves an attempt to commit an act that would be aggravated murder or murder if committed by an adult, a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of twenty-one years of age;

(c) For a violation of section 2903.03, 2905.01, 2909.02, or 2911.01 or division (A) of section 2903.04 of the Revised Code or for a violation of any provision of section 2907.02 of the Revised Code other than division (A)(1)(b) of that section when the sexual conduct or insertion involved was consensual and when the victim of the violation of division (A)(1)(b) of that section was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of twenty-one years of age;

(d) If the child is adjudicated a delinquent child for committing an act that is not described in division (A)(1)(b) or (c) of this section and that would be a felony of the first or second degree if committed by an adult, for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of twenty-one years of age.

(e) For committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult or for a violation of division (A) of section 2923.211 [2923.21.1] of the Revised Code, for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of twenty-one years of age.

(2) In each case in which a court makes a disposition under this section, the court retains control over the commitment for the minimum period specified by the court in divisions (A)(1)(a) to (e) of this section. During the minimum period, the department of youth services shall not move the child to a nonsecure setting without the permission of the court that imposed the disposition.

(B)(1) Subject to division (B)(2) of this section, if a delinquent child is committed to the department of youth services under this section, the department may release the child at any time after the minimum period specified by the court in division (A)(1) of this section ends.

(2) A commitment under this section is subject to a supervised release or to a discharge of the child from the custody of the department for medical reasons pursuant to section 5139.54 of the Revised Code, but, during the minimum period specified by the court in division (A)(1) of this section, the department shall obtain court approval of a supervised release or discharge under that section.

(C) If a child is adjudicated a delinquent child, at the dispositional hearing and prior to making any disposition pursuant to this section, the court shall determine

whether the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance. If the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance, the court, for purposes of entering an order of disposition of the delinquent child under this section, shall consider the previous delinquent child adjudication as a conviction of a violation of the law or ordinance in determining the degree of the offense the current act would be had it been committed by an adult. This division also shall apply in relation to the imposition of any financial sanction under section 2152.19 of the Revised Code.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

Cross-References to Related Sections

Adjudication procedure to determine whether to permanently exclude pupil, RC § 3301.12.1.
Commitment for specification, RC § 2152.17.
Commitment order by department of youth services, RC § 5139.05.
Court control of child following commitment to department; judicial release, RC § 2152.22.
Disposition of child committed to department of youth services, RC § 5139.06.
Emergency releases to meet overcrowding conditions, RC § 5139.20.
Judicial release, RC § 2152.22.
Parent killing other parent, custody order defined, RC § 3109.41.
Prior court consent required for placement in less restrictive setting, RC § 5139.35.
Records, RC § 2152.71.
Serious youth offender dispositional sentence, RC § 2152.13.
Supervised release or discharge; requirements for release, RC § 5139.51.

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Generally

Because defendant juvenile committed a felony of the second degree, an act not described in RC § 2152.16(A)(1)(b) or (c), the minimum period for her commitment to the Ohio Department of Youth Services should have been one year, not four. The trial court's disregard of the statutory requirements when imposing the sentence rendered the attempted sentence a nullity and the case was remanded for resentencing. In re T.J., 2006 Ohio App. LEXIS 4329, 2006 Ohio 4406, (2006).

Where defendant, a juvenile, admitted that he committed a series of burglaries, for which he was committed to a juvenile detention facility, and he thereafter admitted that he violated the terms of his probation at the facility, he was deemed a probation violator by a magistrate and he was committed to the custody of the Ohio Department of Youth Services, pursuant to the trial court's authority under RC § 2152.16. Although the juvenile claimed that he was an at-risk youth who came from a chaotic home environment and who had mental health issues, that did not entitle him to a placement at a private residential facility, as he suggested. In re Hayes, 2006 Ohio App. LEXIS 18, 2006 Ohio 32, (2006).

Admissions

Where a juvenile's remorse was questionable and the juvenile was informed of the maximum penalty under RC § 2152.16(A)(1)(e) for gross sexual imposition, the trial court

complied with Ohio R. Juv. P. 29(D); there was no indication that the juvenile was prejudiced by the failure to be informed of the penalties for disorderly conduct. In re Wisdom, 2005 Ohio App. LEXIS 949, 2005 Ohio 930, (2005).

Authority of court

Juvenile court's transfer of a delinquent juvenile's placement from a residential treatment program to the Division of Youth Services was within the court's authority under RC § 2152.16(A)(1), as it had continuing jurisdiction once the juvenile was adjudicated as delinquent pursuant to RC §§ 2151.23 and 2151.38. In re D.B., 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

Child sex abuse

Where the juvenile, who sexually assaulted a five-year-old, was committed to the custody of the Department of Youth Services (DYS) for a minimum period of 36 months and a maximum period not to exceed his 21st birthday, but, the commitment was suspended and the juvenile was placed on probation conditioned upon the successful completion of a rehabilitation program, the trial court's order was within the statutory guidelines of RC § 2152.16(A). In re C.M., 2004 Ohio App. LEXIS 1684, 2004 Ohio 1927, (2004).

Pursuant to RC § 2152.16(A)(1)(c), a delinquency adjudication was proper where a 10-year old juvenile defendant was found to have sexually assaulted a 5-year old victim. In re N.K., 2003 Ohio App. LEXIS 6427, 2003 Ohio 7059, (2003).

Discretion of court

Juvenile court did not err in committing defendant to the Ohio Department of Youth Services until he reached the age of 21 as the juvenile court found that a serious youthful offender disposition was necessary and the sentences were within the ranges authorized by law for juveniles found delinquent for committing those crimes. While there was testimony that defendant was a good candidate for a rehabilitation program, there was also testimony that defendant was benefitting from the structure in juvenile detention and had suffered no detrimental effects from that confinement, and defendant committed a brutal physical assault of a defenseless young child that resulted in that child's death. In re J.B., 2005 Ohio App. LEXIS 6348, 2005 Ohio 7029, (2005), writ of certiorari denied by 127 S. Ct. 1259, 167 L. Ed. 2d 146, 2007 U.S. LEXIS 2649, 75 U.S.L.W. 3438 (U.S. 2007).

In light of the seriousness of the two sexual imposition offenses that the trial court found that appellant had committed, and the fact that the trial court suspended appellant's commitment to the Ohio Department of Youth Services (ODYS) conditioned upon his completion of counseling, and his agreeing to have no contact, direct or indirect, with the victims in this case, the trial court did not abuse its discretion in committing appellant to the ODYS for a minimum period of six months and a maximum period not to extend beyond his 21st birthday. In re A.L., 2006 Ohio App. LEXIS 4255, 2006 Ohio 4329, (2006).

Juvenile court's decision to commit a juvenile who had been adjudicated as a delinquent to the Department of Youth Services pursuant to RC § 2152.16(A)(1)(c) was not an abuse of discretion, as the juvenile's prior placement in a residential treatment program had not proved effectual; the evidence supported a finding that the juvenile was no longer benefitting from that environment, that he was acting out and not complying with the treatment center's rules, and that he had been put on notice of the consequences of his failure to follow the rules. In re D.B., 2006 Ohio App. LEXIS 2738, 2006 Ohio 2891, (2006).

§ 2152.17 Commitment for specification; consecutive periods of commitment.

(A) Subject to division (D) of this section, if a child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 of the Revised Code, that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set

forth in section 2941.141 [2941.14.1], 2941.144 [2941.14.4], 2941.145 [2941.14.5], 2941.146 [2941.14.6], 2941.1412 [2941.14.12], 2941.1413 [2941.14.13], or 2941.1414 [2941.14.14] of the Revised Code, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply:

(1) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.141 [2941.14.1] of the Revised Code, the court may commit the child to the department of youth services for the specification for a definite period of up to one year.

(2) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.145 [2941.14.5] of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1414 [2941.14.14] of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than three years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(3) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.144 [2941.14.4], 2941.146 [2941.14.6], or 2941.1412 [2941.14.12] of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1413 [2941.14.13] of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than five years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(B) Division (A) of this section also applies to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

(C) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.142 [2941.14.2] of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child for the specification to the legal custody of the department of youth services for institutionalization in a secure facility for a definite period of not less than one and not more than three years, subject to division (D)(2) of this section, and the court also shall commit the child to the department for the underlying delinquent act.

(D)(1) If the child is adjudicated a delinquent child for committing an act that would be an offense of violence that is a felony if committed by an adult and is committed to the legal custody of the department of youth services pursuant to division (A)(1) of section 2152.16 of the Revised Code and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.1411 [2941.14.11] of

the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court may commit the child to the custody of the department of youth services for institutionalization in a secure facility for up to two years, subject to division (D)(2) of this section.

(2) A court that imposes a period of commitment under division (A) of this section is not precluded from imposing an additional period of commitment under division (C) or (D)(1) of this section, a court that imposes a period of commitment under division (C) of this section is not precluded from imposing an additional period of commitment under division (A) or (D)(1) of this section, and a court that imposes a period of commitment under division (D)(1) of this section is not precluded from imposing an additional period of commitment under division (A) or (C) of this section.

(E) The court shall not commit a child to the legal custody of the department of youth services for a specification pursuant to this section for a period that exceeds five years for any one delinquent act. Any commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with and prior to, a period of commitment ordered under this chapter for the underlying delinquent act, and each commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with, any other period of commitment imposed under those divisions. If a commitment is imposed under division (A) or (B) of this section and a commitment also is imposed under division (C) of this section, the period imposed under division (A) or (B) of this section shall be served prior to the period imposed under division (C) of this section.

In each case in which a court makes a disposition under this section, the court retains control over the commitment for the entire period of the commitment.

The total of all the periods of commitment imposed for any specification under this section and for the underlying offense shall not exceed the child's attainment of twenty-one years of age.

(F) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to section 2152.13 or 2152.16 of the Revised Code, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services, provided that those periods of commitment shall be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to division (A), (B), (C), or (D)(1) of this section. A court shall not commit a delinquent child to the legal custody of the department of youth services under this division for a period that exceeds the child's attainment of twenty-one years of age.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 130. Eff 4-7-2003.†; 150 v H 52, § 1, eff. 6-1-04; 151 v H 95, § 1, eff. 8-3-06.

† The effective date differs from that specified in section 3 of the Act. See provisions of OConst art II, § 1c.

The provisions of § 3, H.B. 52 (150 v —), read as follows:

SECTION 3. Section 2152.17 of the Revised Code is presented in this act as a composite of the section as amended by both Sub.

H.B. 130 and Sub. H.B. 393 of the 124th General Assembly. Section 4511.01 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 123 and Am. Sub. S.B. 231, both of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of §§ 3, 4, 5 of HB 130 (149 v —) read as follows:

SECTION 3. Section 2152.17 of the Revised Code, as amended by this act, shall take effect January 1, 2002.

SECTION 4. The amendment of section 2151.355 of the Revised Code is not intended to supersede the earlier repeal, with delayed effective date, of that section.

SECTION 5. (A) Section 2151.355 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 181 and Am. Sub. S.B. 222 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

(B) Section 2152.17 of the Revised Code, as presented in this act, includes matter that was amended into former section 2151.355 of the Revised Code by Am. Sub. S.B. 222 of the 123rd General Assembly. Paragraphs of former section 2151.355 of the Revised Code containing Am. Sub. S.B. 222 amendments were transferred to section 2152.17 of the Revised Code by Am. Sub. S.B. 179 of the 123rd General Assembly as part of its general revision of the juvenile sentencing laws. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the version of section 2152.17 of the Revised Code presented in this act is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

151 v H 95, effective August 3, 2006, deleted (G), pertaining to adjudication of a delinquent child.

150 v H 52, effective June 1, 2004, inserted "or if the delinquent ... 2941.1414 of the Revised Code" in (A)(2); inserted "or if the delinquent ... 2941.1413 of the Revised Code" in (A)(3); and corrected internal references.

Cross-References to Related Sections

Commitment order by department of youth services, RC § 5139.05.

Court control of child following commitment to department; judicial release, RC § 2152.22.

Disposition of child committed to department of youth services, RC § 5139.06.

Emergency releases to meet overcrowding conditions, RC § 5139.20.

Judicial release, RC § 2152.22.

Parent killing other parent, custody order defined, RC § 3109.41.

Prior court consent required for placement in less restrictive setting, RC § 5139.35.

Records, RC § 2152.71.

Serious youth offender dispositional sentence, RC § 2152.13.

Specification —

Offender discharged firearm from motor vehicle, RC § 2921.14.6.

Offender displayed, brandished, indicated possession of or used firearm, RC § 2921.41.5.

Offender had a firearm while committing the offense, RC § 2941.14.1.

Offender had an automatic firearm or a firearm equipped with a muffler or silencer, RC § 2941.14.4.

Offender participated in criminal gang, RC § 2941.14.2.

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Constitutionality

Imposition of two consecutive terms of commitment to the Department of Youth Services was not a violation of a juvenile's rights under *Blakely* and U.S. Const. amend. VI and Ohio Const. art. I, § 10, as the sentencing decision in the juvenile delinquency matter was not based on RC § 2929.14, which had been deemed unconstitutional due to judicial fact-finding under *Foster*, but instead, it was based on RC § 2152.17(F), which provided a juvenile court with judicial discretion to impose consecutive terms. There was no disparity between the sentencing in adult criminal matters and juvenile delinquency proceedings with respect to imposition of consecutive terms following *Foster* and the removal of judicial fact-finding, and the juvenile's equal protection argument under U.S. Const. amend. XIV failed. In re C.D.L., 2006 Ohio App. LEXIS 4107, 2006 Ohio 4150, (2006).

RC § 2152.17(F) did not violate the Equal Protection Clause or Ohio Const. art. I, § 2, even though it contained no requirement that the juvenile court provide any findings on the record to impose a consecutive term for the disposition of juveniles and trial courts were required to make certain findings before imposing consecutive prison sentences in the context of adult offenders, as RC § 2152.17(F) did not impinge a fundamental right; a rational basis existed for sentencing juveniles in a "different fashion" than adults because the purposes of felony sentencing and juvenile sentencing were different, and juvenile courts were given wider discretion in the early release of offenders. The 2002 Ohio Revised Code changes might have provided some shift of emphasis to elements of responsibility and accountability, but the primary focus remained on the development of the child. In re Z.S., 2005 Ohio App. LEXIS 6346, 2005 Ohio 7033, (2005).

Where a juvenile claimed that RC § 2152.17(F) violated the equal protection clauses of U.S. Const. amend. XIV and Ohio Const. art. I, § 2, but failed to raise the issue before the trial court, the juvenile waived the issue on appeal. In re S.C., 2005 Ohio App. LEXIS 852, 2005 Ohio 810, (2005).

Differences in the manner in which consecutive penalties are imposed in the juvenile and adult systems do not violate equal protection guarantees. In re Chappel, 164 Ohio App. 3d 628 (2005).

RC § 2152.17(F) did not violate defendant's equal protection rights, even though findings similar to those required by RC § 2929.14(E)(4) when sentencing adult offenders to consecutive sentences were not required. The purposes behind the juvenile justice system and the adult justice system were different and juveniles adjudicated delinquent and adults convicted of a crime were not similarly situated groups. In re Joshua R. C., 2005 Ohio App. LEXIS 5610, 2005 Ohio 6248, (2005).

Sentence proper

Trial court properly imposed a two-year term of incarceration on defendant, a juvenile, based on a gun specification pursuant to RC § 2152.17(A), as defendant committed a felonious assault with a gun which, if committed by an adult, would have been a felony in violation of RC § 2941.145. Although the exact language of § 2941.145 was not used, defendant was on notice that he was charged with using a deadly weapon in facilitating the offense and that he faced up to three years in prison for that specification. In re Wise, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1285, 2007 Ohio 1393, (Mar. 26, 2007).

§ 2152.18 Court not to designate institution; reduction due to days held in detention; documents to be provided to department; notice to school district and principal; notice to victims concerning recovery.

(A) When a juvenile court commits a delinquent child to the custody of the department of youth services

pursuant to this chapter, the court shall not designate the specific institution in which the department is to place the child but instead shall specify that the child is to be institutionalized in a secure facility.

(B) When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been held in detention in connection with the delinquent child complaint upon which the order of commitment is based. The department shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so held in detention as stated by the court in the order of commitment and the total number of any additional days that the child has been held in detention subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

(C)(1) When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall provide the department with the child's medical records, a copy of the report of any mental examination of the child ordered by the court, the Revised Code section or sections the child violated and the degree of each violation, the warrant to convey the child to the department, a copy of the court's journal entry ordering the commitment of the child to the legal custody of the department, a copy of the arrest record pertaining to the act for which the child was adjudicated a delinquent child, a copy of any victim impact statement pertaining to the act, and any other information concerning the child that the department reasonably requests. The court also shall complete the form for the standard predisposition investigation report that the department furnishes pursuant to section 5139.04 of the Revised Code and provide the department with the completed form.

The department may refuse to accept physical custody of a delinquent child who is committed to the legal custody of the department until the court provides to the department the documents specified in this division. No officer or employee of the department who refuses to accept physical custody of a delinquent child who is committed to the legal custody of the department shall be subject to prosecution or contempt of court for the refusal if the court fails to provide the documents specified in this division at the time the court transfers the physical custody of the child to the department.

(2) Within twenty working days after the department of youth services receives physical custody of a delinquent child from a juvenile court, the court shall provide the department with a certified copy of the child's birth certificate and the child's social security number or, if the court made all reasonable efforts to obtain the information but was unsuccessful, with documentation of the efforts it made to obtain the information.

(3) If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the department shall make available to the officer, for use in preparing the report, any records or reports it possesses regarding that person that it received from a juvenile court pursuant to division (C)(1) of this section or that pertain to the treatment of that person after the person was committed to the custody of the department as a delinquent child.

(D)(1) Within ten days after an adjudication that a child is a delinquent child, the court shall give written notice of the adjudication to the superintendent of a city, local, exempted village, or joint vocational school district, and to the principal of the school the child attends, if the basis of the adjudication was the commission of an act that would be a criminal offense if committed by an adult, if the act was committed by the delinquent child when the child was fourteen years of age or older, and if the act is any of the following:

(a) An act that would be a felony or an offense of violence if committed by an adult, an act in the commission of which the child used or brandished a firearm, or an act that is a violation of section 2907.06, 2907.07, 2907.08, 2907.09, 2907.24, or 2907.241 [2907.24.1] of the Revised Code and that would be a misdemeanor if committed by an adult;

(b) A violation of section 2923.12 of the Revised Code or of a substantially similar municipal ordinance that would be a misdemeanor if committed by an adult and that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district;

(c) A violation of division (A) of section 2925.03 or 2925.11 of the Revised Code that would be a misdemeanor if committed by an adult; that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, and that is not a minor drug possession offense;

(d) An act that would be a criminal offense if committed by an adult and that results in serious physical harm to persons or serious physical harm to property while the child is at school, on any other property owned or controlled by the board, or at an interscholastic competition, an extracurricular event, or any other school program or activity;

(e) Complicity in any violation described in division (D)(1)(a), (b), (c), or (d) of this section that was alleged to have been committed in the manner described in division (D)(1)(a), (b), (c), or (d) of this section, regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district.

(2) The notice given pursuant to division (D)(1) of this section shall include the name of the child who was adjudicated to be a delinquent child, the child's age at the time the child committed the act that was the basis of the adjudication, and identification of the violation of the law or ordinance that was the basis of the adjudication.

(3) Within fourteen days after committing a delinquent child to the custody of the department of youth services, the court shall give notice to the school attended by the child of the child's commitment by sending to that school a copy of the court's journal entry ordering the commitment. As soon as possible after receipt of the notice described in this division, the school shall provide the department with the child's school transcript. However, the department shall not refuse to accept a child committed to it, and a child committed to it shall not be held in a county or district detention facility, because of a school's failure to provide the school transcript that it is required to provide under this division.

(4) Within fourteen days after discharging or releasing a child from an institution under its control, the department of youth services shall provide the court and the superintendent of the school district in which the child is

entitled to attend school under section 3313.64 or 3313.65 of the Revised Code with the following:

- (a) An updated copy of the child's school transcript;
- (b) A report outlining the child's behavior in school while in the custody of the department;
- (c) The child's current individualized education program, as defined in section 3323.01 of the Revised Code, if such a program has been developed for the child;
- (d) A summary of the institutional record of the child's behavior.

The department also shall provide the court with a copy of any portion of the child's institutional record that the court specifically requests, within five working days of the request.

(E) At any hearing at which a child is adjudicated a delinquent child or as soon as possible after the hearing, the court shall notify all victims of the delinquent act who may be entitled to a recovery under any of the following sections of the right of the victims to recover, pursuant to section 3109.09 of the Revised Code, compensatory damages from the child's parents; of the right of the victims to recover, pursuant to section 3109.10 of the Revised Code, compensatory damages from the child's parents for willful and malicious assaults committed by the child; and of the right of the victims to recover an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 247 (Eff 5-30-2002); 149 v H 393, Eff 7-5-2002; 150 v H 106, § 1, eff. 9-16-04.

The provisions of § 7, H.B. 106 (150 v —) read as follows:

SECTION 7. Section 2152.18 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 247 and Sub. H.B. 393 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

150 v H 106, effective September 16, 2004, rewrote (D)(4).

Cross-References to Related Sections

General duties of department of youth services, RC § 5139.04.
Notice of acquittal or conviction or of juvenile court dismissal or delinquency adjudication, RC § 2930.12.

Serious youthful offender dispositional sentence, RC § 2152.13.
Victim may make written or oral statement to person preparing impact statement, RC § 2930.13.

CASE NOTES AND OAG

Credit for days held in detention

Although the trial court was correct in not awarding credit for the time that defendant, a juvenile, was at the treatment and rehabilitation facility for treatment, it erred by failing to credit defendant for the time that he served after the guardian ad litem filed a motion for a further dispositional hearing, which was essentially a probation revocation hearing. In re Kiser, 2006 Ohio App. LEXIS 5905, 2006 Ohio 5970, (2006).

Record reflected that defendant's detention from August 9, 2005 to October 24, 2005 was in connection with the complaint for which she was committed to the Ohio Department of Youth Services in October 2005. Therefore, defendant should have been credited with 142 days of pre-adjudication detention, pursuant to RC § 2152.18(B); defendant had only been credited with 63 of the 142 days of detention credit she was entitled to receive. In re T.J., 2006 Ohio App. LEXIS 4329, 2006 Ohio 4406, (2006).

Former RC § 2151.355(F)(6) (now RC § 2152.18(B)) required a juvenile court to grant credit toward a delinquent child's commitment to the department of youth services for time served

by the child in a rehabilitation or treatment facility only if the time was served awaiting the adjudication or disposition of, or execution of a final court order in connection with, the delinquency complaint or a related charge of a probation violation: In re Thomas, 100 Ohio St. 3d 89, 796 N.E.2d 908, 2003 Ohio 5162, (2003).

§ 2152.19 Additional orders of disposition; motor vehicle license suspension; victim restitution, impact statement; truancy warnings; searches.

Effective until 1-1-08.

(A) If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

(1) Any order that is authorized by section 2151.353 [2151.35.3] of the Revised Code for the care and protection of an abused, neglected, or dependent child;

(2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2152.41 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under section 2151.65 of the Revised Code;

(3) Place the child in a detention facility or district detention facility operated under section 2152.41 of the Revised Code, for up to ninety days;

(4) Place the child on community control under any sanctions, services, and conditions that the court prescribes. As a condition of community control in every case and in addition to any other condition that it imposes upon the child, the court shall require the child to abide by the law during the period of community control. As referred to in this division, community control includes, but is not limited to, the following sanctions and conditions:

(a) A period of basic probation supervision in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(b) A period of intensive probation supervision in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment programs as the order of disposition;

(c) A period of day reporting in which the child is required each day to report to and leave a center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center;

(d) A period of community service of up to five hundred hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult, up to two hundred hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult, or up to thirty hours for an act that would be a minor misdemeanor if committed by an adult;

(e) A requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocational training, or employment;

(f) A period of drug and alcohol use monitoring;
(g) A requirement of alcohol or drug assessment or counseling, or a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court;

(h) A period in which the court orders the child to observe a curfew that may involve daytime or evening hours;

(i) A requirement that the child serve monitored time;
(j) A period of house arrest without electronic monitoring or continuous alcohol monitoring;

(k) A period of electronic monitoring or continuous alcohol monitoring without house arrest, or house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act.

A period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, imposed under this division shall not extend beyond the child's twenty-first birthday. If a court imposes a period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, upon a child under this division, it shall require the child: to remain in the child's home or other specified premises for the entire period of house arrest with electronic monitoring or continuous alcohol monitoring or both except when the court permits the child to leave those premises to go to school or to other specified premises. Regarding electronic monitoring, the court also shall require the child to be monitored by a central system that can determine the child's location at designated times; to report periodically to a person designated by the court; and to enter into a written contract with the court agreeing to comply with all requirements imposed by the court, agreeing to pay any fee imposed by the court for the costs of the house arrest with electronic monitoring, and agreeing to waive the right to receive credit for any time served on house arrest with electronic monitoring toward the period of any other dispositional order imposed upon the child if the child violates any of the requirements of the dispositional order of house arrest with electronic monitoring. The court also may impose other reasonable requirements upon the child.

Unless ordered by the court, a child shall not receive credit for any time served on house arrest with electronic monitoring or continuous alcohol monitoring or both toward any other dispositional order imposed upon the child for the act for which was imposed the dispositional order of house arrest with electronic monitoring or continuous alcohol monitoring. As used in this division and division (A)(4)(I) of this section, "continuous alcohol monitoring" has the same meaning as in section 2929.01 of the Revised Code.

(l) A suspension of the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court, or a suspension of the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable

reinstatement fee and complied with all requirements governing license reinstatement.

(5) Commit the child to the custody of the court;

(6) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year;

(7)(a) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant, do either or both of the following:

(i) Require the child to participate in a truancy prevention mediation program;

(ii) Make any order of disposition as authorized by this section, except that the court shall not commit the child to a facility described in division (A)(2) or (3) of this section unless the court determines that the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 [2151.35.4] of the Revised Code or division (A)(6) of this section.

(b) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, do either or both of the following:

(i) Require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program;

(ii) Require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school attended by the child.

(8) Make any further disposition that the court finds proper, except that the child shall not be placed in any of the following:

(a) A state correctional institution, a county, multi-county, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held;

(b) A community corrections facility, if the child would be covered by the definition of public safety beds for purposes of sections 5139.41 to 5139.43 of the Revised Code if the court exercised its authority to commit the child to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to this chapter.

(B) If a child is adjudicated a delinquent child, in addition to any order of disposition made under division (A) of this section, the court, in the following situations and for the specified periods of time, shall suspend the child's temporary instruction permit, restricted license, probationary driver's license, or nonresident operating privilege, or suspend the child's ability to obtain such a permit:

(1) If the child is adjudicated a delinquent child for violating section 2923.122 [2923.12.2] of the Revised Code, impose a class four suspension of the child's license, permit, or privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code or deny the child the issuance of a license or permit in

accordance with division (F)(1) of section 2923.122 [2923.12.2] of the Revised Code.

(2) If the child is adjudicated a delinquent child for committing an act that if committed by an adult would be a drug abuse offense or for violating division (B) of section 2917.11 of the Revised Code, suspend the child's license, permit, or privilege for a period of time prescribed by the court. The court, in its discretion, may terminate the suspension if the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license, and the court shall return the permit or license if it terminates the suspension as described in this division.

(C) The court may establish a victim-offender mediation program in which victims and their offenders meet to discuss the offense and suggest possible restitution. If the court obtains the assent of the victim of the delinquent act committed by the child, the court may require the child to participate in the program.

(D)(1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created a risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition under this section, shall order the preparation of a victim impact statement by the probation department of the county in which the victim of the act resides, by the court's own probation department, or by a victim assistance program that is operated by the state, a county, a municipal corporation, or another governmental entity. The court shall consider the victim impact statement in determining the order of disposition to issue for the child.

(2) Each victim impact statement shall identify the victim of the act for which the child was adjudicated a delinquent child, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information related to the impact of the act upon the victim that the court requires.

(3) A victim impact statement shall be kept confidential and is not a public record. However, the court may furnish copies of the statement to the department of youth services if the delinquent child is committed to the department or to both the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney. The copy of a victim impact statement furnished by the court to the department pursuant to this section shall be kept confidential and is not a public record. If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the court shall make available to the officer, for use in preparing the report, a copy of any victim impact statement regarding that person. The copies of a victim impact statement that are made available to the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecut-

ing attorney pursuant to this division shall be returned to the court by the person to whom they were made available immediately following the imposition of an order of disposition for the child under this chapter.

The copy of a victim impact statement that is made available pursuant to this division to an officer preparing a criminal presentence investigation report shall be returned to the court by the officer immediately following its use in preparing the report.

(4) The department of youth services shall work with local probation departments and victim assistance programs to develop a standard victim impact statement.

(E) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, in addition to any order of disposition it makes under this section, the court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being a habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919.24 of the Revised Code.

(F)(1) During the period of a delinquent child's community control granted under this section, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the delinquent child, the place of residence of the delinquent child, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the delinquent child has a right, title, or interest or for which the delinquent child has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court that places a delinquent child on community control under this section shall provide the delinquent child with a written notice that informs the delinquent child that authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of community control if they have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court also shall provide the written notice described in division (E)(2) of this section to each parent, guardian, or custodian of the delinquent child who is described in that division.

(2) The court that places a child on community control under this section shall provide the child's parent, guardian, or other custodian with a written notice that informs them that authorized probation officers may conduct searches pursuant to division (E)(1) of this section. The notice shall specifically state that a permissible search might extend to a motor vehicle, another item of tangible or intangible personal property, or a place of residence or other real property in which a notified parent, guardian, or custodian has a right, title, or interest and that the

parent, guardian, or custodian expressly or impliedly permits the child to use, occupy, or possess.

(G) If a juvenile court commits a delinquent child to the custody of any person, organization, or entity pursuant to this section and if the delinquent act for which the child is so committed is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense, the court in the order of disposition shall do one of the following:

(1) Require that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code;

(2) Inform the person, organization, or entity that it is the preferred course of action in this state that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code and encourage the person, organization, or entity to provide that treatment.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 247 (Eff 5-30-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 400, § 1, Eff 4-3-2003; 149 v S 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v H 95, § 1, eff. 9-26-03; 150 v H 95, § 3.13, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

§ 2152.19 Additional orders of disposition; motor vehicle license suspension; victim restitution, impact statement; truancy warnings; searches.

Effective 1-1-08.

(A) If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

(1) Any order that is authorized by section 2151.353 [2151.35.3] of the Revised Code for the care and protection of an abused, neglected, or dependent child;

(2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2152.41 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under section 2151.65 of the Revised Code;

(3) Place the child in a detention facility or district detention facility operated under section 2152.41 of the Revised Code, for up to ninety days;

(4) Place the child on community control under any sanctions, services, and conditions that the court prescribes. As a condition of community control in every case and in addition to any other condition that it imposes upon the child, the court shall require the child to abide by the law during the period of community control. As referred to in this division, community control includes, but is not limited to, the following sanctions and conditions:

(a) A period of basic probation supervision in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(b) A period of intensive probation supervision in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employ-

ment and participating in training, education, and treatment programs as the order of disposition;

(c) A period of day reporting in which the child is required each day to report to and leave a center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center;

(d) A period of community service of up to five hundred hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult, up to two hundred hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult, or up to thirty hours for an act that would be a minor misdemeanor if committed by an adult;

(e) A requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocational training, or employment;

(f) A period of drug and alcohol use monitoring;

(g) A requirement of alcohol or drug assessment or counseling, or a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court;

(h) A period in which the court orders the child to observe a curfew that may involve daytime or evening hours;

(i) A requirement that the child serve monitored time;

(j) A period of house arrest without electronic monitoring or continuous alcohol monitoring;

(k) A period of electronic monitoring or continuous alcohol monitoring without house arrest, or house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act.

A period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, imposed under this division shall not extend beyond the child's twenty-first birthday. If a court imposes a period of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, upon a child under this division, it shall require the child: to remain in the child's home or other specified premises for the entire period of house arrest with electronic monitoring or continuous alcohol monitoring or both except when the court permits the child to leave those premises to go to school or to other specified premises. Regarding electronic monitoring, the court also shall require the child to be monitored by a central system that can determine the child's location at designated times; to report periodically to a person designated by the court; and to enter into a written contract with the court agreeing to comply with all requirements imposed by the court, agreeing to pay any fee imposed by the court for the costs of the house arrest with electronic monitoring, and agreeing to waive the right to receive credit for any time served on house arrest with electronic monitoring toward the period of any other dispositional order imposed upon the child if the child violates any of the requirements of the dispositional order of house arrest with electronic monitoring. The court also may impose other reasonable requirements upon the child.

Unless ordered by the court, a child shall not receive credit for any time served on house arrest with electronic monitoring or continuous alcohol monitoring or both toward any other dispositional order imposed upon the child for the act for which was imposed the dispositional order of house arrest with electronic monitoring or continuous alcohol monitoring. As used in this division and division (A)(4)(I) of this section, "continuous alcohol monitoring" has the same meaning as in section 2929.01 of the Revised Code.

(I) A suspension of the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court, or a suspension of the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(5) Commit the child to the custody of the court;

(6) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year;

(7)(a) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant, do either or both of the following:

(i) Require the child to participate in a truancy prevention mediation program;

(ii) Make any order of disposition as authorized by this section, except that the court shall not commit the child to a facility described in division (A)(2) or (3) of this section unless the court determines that the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 [2151.35.4] of the Revised Code or division (A)(6) of this section.

(b) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, do either or both of the following:

(i) Require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program;

(ii) Require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school attended by the child.

(8) Make any further disposition that the court finds proper, except that the child shall not be placed in any of the following:

(a) A state correctional institution, a county, multi-county, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held;

(b) A community corrections facility, if the child would be covered by the definition of public safety beds for

purposes of sections 5139.41 to 5139.43 of the Revised Code if the court exercised its authority to commit the child to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to this chapter.

(B) If a child is adjudicated a delinquent child, in addition to any order of disposition made under division (A) of this section, the court, in the following situations and for the specified periods of time, shall suspend the child's temporary instruction permit, restricted license, probationary driver's license, or nonresident operating privilege, or suspend the child's ability to obtain such a permit:

(1) If the child is adjudicated a delinquent child for violating section 2923.122 [2923.12.2] of the Revised Code, impose a class four suspension of the child's license, permit, or privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code or deny the child the issuance of a license or permit in accordance with division (F)(1) of section 2923.122 [2923.12.2] of the Revised Code.

(2) If the child is adjudicated a delinquent child for committing an act that if committed by an adult would be a drug abuse offense or for violating division (B) of section 2917.11 of the Revised Code, suspend the child's license, permit, or privilege for a period of time prescribed by the court. The court, in its discretion, may terminate the suspension if the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license, and the court shall return the permit or license if it terminates the suspension as described in this division.

(C) The court may establish a victim-offender mediation program in which victims and their offenders meet to discuss the offense and suggest possible restitution. If the court obtains the assent of the victim of the delinquent act committed by the child, the court may require the child to participate in the program.

(D)(1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created a risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition under this section, shall order the preparation of a victim impact statement by the probation department of the county in which the victim of the act resides, by the court's own probation department, or by a victim assistance program that is operated by the state, a county, a municipal corporation, or another governmental entity. The court shall consider the victim impact statement in determining the order of disposition to issue for the child.

(2) Each victim impact statement shall identify the victim of the act for which the child was adjudicated a delinquent child, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information

related to the impact of the act upon the victim that the court requires.

(3) A victim impact statement shall be kept confidential and is not a public record. However, the court may furnish copies of the statement to the department of youth services if the delinquent child is committed to the department or to both the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney. The copy of a victim impact statement furnished by the court to the department pursuant to this section shall be kept confidential and is not a public record. If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the court shall make available to the officer, for use in preparing the report, a copy of any victim impact statement regarding that person. The copies of a victim impact statement that are made available to the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney pursuant to this division shall be returned to the court by the person to whom they were made available immediately following the imposition of an order of disposition for the child under this chapter.

The copy of a victim impact statement that is made available pursuant to this division to an officer preparing a criminal presentence investigation report shall be returned to the court by the officer immediately following its use in preparing the report.

(4) The department of youth services shall work with local probation departments and victim assistance programs to develop a standard victim impact statement.

(E) If a child is adjudicated a delinquent child for being a chronic truant or a habitual truant who previously has been adjudicated an unruly child for being a habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, in addition to any order of disposition it makes under this section, the court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being a habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919.24 of the Revised Code.

(F)(1) During the period of a delinquent child's community control granted under this section, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the delinquent child, the place of residence of the delinquent child, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the delinquent child has a right, title, or interest or for which the delinquent child has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court that places a delinquent child on community control under this section shall provide the delinquent child with a written notice that informs the delinquent child that authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of

searches during the period of community control if they have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's community control. The court also shall provide the written notice described in division (E)(2) of this section to each parent, guardian, or custodian of the delinquent child who is described in that division.

(2) The court that places a child on community control under this section shall provide the child's parent, guardian, or other custodian with a written notice that informs them that authorized probation officers may conduct searches pursuant to division (E)(1) of this section. The notice shall specifically state that a permissible search might extend to a motor vehicle, another item of tangible or intangible personal property, or a place of residence or other real property in which a notified parent, guardian, or custodian has a right, title, or interest and that the parent, guardian, or custodian expressly or impliedly permits the child to use, occupy, or possess.

(G) If a juvenile court commits a delinquent child to the custody of any person, organization, or entity pursuant to this section and if the delinquent act for which the child is so committed is a sexually oriented offense or is a child-victim oriented offense, the court in the order of disposition shall do one of the following:

(1) Require that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code;

(2) Inform the person, organization, or entity that it is the preferred course of action in this state that the child be provided treatment as described in division (A)(2) of section 5139.13 of the Revised Code and encourage the person, organization, or entity to provide that treatment.

HISTORY: 148 v S 179, § 3 (Eff. 1-1-2002); 149 v S 3 (Eff. 1-1-2002); 149 v H 247 (Eff. 5-30-2002); 149 v H 393 (Eff. 7-5-2002); 149 v H 400, § 1, Eff. 4-3-2003; 149 v S 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v H 95, § 1, eff. 9-26-03; 150 v H 95, § 3.13, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 5, H.B. 163 (150 v —), read as follows:

SECTION 5. * * * (B) Section 2152.19 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 400, Am. Sub. H.B. 490, and Am. Sub. S.B. 123, all of the 124th General Assembly, and Am. Sub. H.B. 95 and Am. Sub. S.B. 5, both of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act. * * *

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

Effect of Amendments

152 v S 10, effective January 1, 2008, in the introductory language of (G), deleted "that is not a registration-exempt sexually oriented offense" following "sexually oriented offense".

150 v H 163, effective September 23, 2004, in (A)(4)(j), added "or continuous alcohol monitoring" to the end; rewrote (A)(4)(k); and made minor stylistic changes.

Section 1, S.B. 5, Acts 2003, effective July 31, 2003, and section 3 of S.B. 5, effective January 1, 2004, made identical changes. Each inserted "that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense" in the introductory paragraph of (G).

Section 1, H.B. 95, Acts 2003, effective September 26, 2003, and section 3.13 of H.B. 95, effective January 1, 2004, made identical changes. Each substituted "5139.43" for "5139.45" in (A)(8)(b).

H.B. 490, Acts 2002, effective January 1, 2004, deleted "with or preceding "without" in (A)(3)(j); substituted "house arrest with electronic monitoring" for "electronically monitored house arrest" nine times in (A)(3)(k); and deleted "to wear, otherwise have attached to the child's person, or otherwise be subject to monitoring by a certified electronic monitoring device or to participate in the operation of and monitoring by a certified electronic monitoring system" following "imposes a period" in the second paragraph of (A)(3)(k).

S.B. 123, Acts 2002, effective January 1, 2004, inserted "for a period of time prescribed by the court" twice in (A)(3)(l); and rewrote (B).

Cross-References to Related Sections

Commitment to youth services department for secure confinement, RC § 2152.16.

Control of conduct of parent, guardian, or custodian, RC § 2151.35.9.

Defenses or immunities of subdivision and employee, RC § 2744.03.

Disposition of juvenile traffic offender, RC § 2152.21.

Disposition of unruly child, RC § 2151.35.4.

DNA testing of adjudicated delinquents, RC § 2152.74.

Duties and powers of probation department, RC § 2151.14.

Electronically monitored house arrest, RC § 2929.23.

Fines; costs; restitution, RC § 2152.20.

Hearing procedure, RC § 2151.35.

Information concerning certain delinquent children, RC § 2152.72.

Juvenile court definitions, RC § 2151.01.1.

Notice of acquittal or conviction or of juvenile court dismissal or delinquency adjudication, RC § 2930.12.

Notice of intended commitment order, RC § 2151.35.10.

Parent killing other parent, custody order defined, RC § 3109.41.

Place of detention, RC § 2152.26.

Records, RC § 2152.71.

Reimbursement of court for costs of children in custody of court, RC § 2151.15.2.

Serious youth offender dispositional sentence, RC § 2152.13.

Victim may make written or oral statement to person preparing impact statement, RC § 2930.13.

Ohio Administrative Code

Department of youth services —

Release and discharge procedures: disposition investigation report and transfer of physical custody. OAC 5139-68-02.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

Ohio Transaction Guide: Family Law & Forms § 4.24 Litigation involving Minors

CASE NOTES AND OAG

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Commitment

Defendant's commitment to the Ohio Department of Youth Services was proper and was the result of the commission of two felonies, burglary and aggravated arson. *State v. O'Brien*, 2005 Ohio App. LEXIS 3478, 2005 Ohio 3765, (2005).

Community control conditions

Evidence must support the use of a polygraph for a particular juvenile before it is a reasonable community control condition. A polygraph order does not eliminate a juvenile's right against self-incrimination: In re D.S., 111 Ohio St. 3d 361, 856 N.E.2d 921, 2006 Ohio 5851, (2006).

When appellant was committed to the Department of Youth Services, it was error to suspend his right to obtain a driver's license because (1) he was not sentenced to community control, so his right to obtain a license could not be suspended under RC § 2152.19(A)(4)(l), and (2) he was not convicted of any of the offenses enumerated in RC § 2151.19(B)(2), which was specific, and not a "catch-all" provision. In re Spears, 2006 Ohio App. LEXIS 1761, 2006 Ohio 1920, (2006).

DNA specimens

Pursuant to RC § 2152.74(B)(3), a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to RC § 2152.19(A)(4) on or after May 18, 2005. RC § 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of the Department of Youth Services or an entity described in RC § 2152.19(A)(2) or RC § 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to RC § 2152.74(B)(1) or RC § 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under RC Chapter 2152 before May 18, 2005. A juvenile court may exercise its power to punish for contempt, conduct proceedings under RC Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to RC § 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under RC § 2152.74(B)(3). Opinion No. 2005-037 (2005).

Due process

Mother's contention that she was deprived of her due process rights because she was not given adequate notice that the trial court would be considering the issue of legal custody, under RC §§ 2152.19(A)(1) and 2151.353, of her son at a third hearing held after the son had been adjudicated delinquent was rejected because the trial court twice made the parties aware that it would consider the various dispositional alternatives at subsequent hearings and indicated that it would do so on its own motion. Moreover, the mother's presence at the hearing waived any objections she had to inadequacies of notice. In re Ratliff, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1625, 2007 Ohio 1770, (Apr. 13, 2007).

Former provisions

The court's final dispositional order correctly complied with former RC § 2151.355(A)(4): In re R.W.J., 155 Ohio App. 3d 52, 798 N.E.2d 1206, 2003 Ohio 5407, (2003).

Length of detention

Appellant's commitment to the county juvenile detention center for 30 days was authorized by RC § 2152.19(A)(3), despite his claim that there was a lack of evidence of prior dispositions or his failure to cooperate, because he was adjudicated a delinquent child, and, in light of appellant's actions resulting in his adjudication and the fact that his commitment was suspended on the condition that he comply with other court orders, the commitment was not an abuse of discretion. In re D.B., 2006 Ohio App. LEXIS 3147, 2006 Ohio 3240, (2006).

The fact that the maximum sentence under the criminal law for negligent assault was sixty days did not mean that a juvenile could be placed in detention for only sixty days: In re Tiber, 154 Ohio App. 3d 360, 797 N.E.2d 161, 2003 Ohio 5155, (2003).

Probation

A juvenile court does not have the jurisdiction to reimpose a suspended commitment to a department of youth services facility after a juvenile has been released from probation: *In re Cross*, 96 Ohio St. 3d 328, 774 N.E.2d 258, 2002 Ohio 4183, (2002).

Temporary custody award to agency

If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to RC § 2151.35.4(A)(1) or RC § 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in RC § 2151.35.3(F) and RC § 2151.41.5: OAG No. 2003-004 (2003).

[§ 2152.19.1] § 2152.191 Children subject to sex offender registration and notification law.

Effective until 1-1-08.

If a child is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense or for committing a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, both of the following apply:

(A) Sections 2152.82 to 2152.85 and Chapter 2950. of the Revised Code apply to the child and the adjudication.

(B) In addition to any order of disposition it makes of the child under this chapter, the court may make any determination, adjudication, or order authorized under sections 2152.82 to 2152.85 and Chapter 2950. of the Revised Code and shall make any determination, adjudication, or order required under those sections and that chapter.

HISTORY: 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03.

[§ 2152.19.1] § 2152.191 Children subject to sex offender registration and notification law.

Effective 1-1-08.

If a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, both of the following apply:

(A) Sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code apply to the child and the adjudication.

(B) In addition to any order of disposition it makes of the child under this chapter, the court may make any determination, adjudication, or order authorized under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code and shall make any determination, adjudication, or order required under those sections and that chapter.

HISTORY: 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of SB 3 (149 v —) read as follows:

SECTION 3. Sections 1 and 2 of this act shall take effect on January 1, 2002, or the earliest date permitted by law, whichever is later.

Effect of Amendments

152 v S 10, effective January 1, 2008, in the introductory paragraph, deleted "that is not a registration-exempt sexually oriented offense" following "sexually oriented offense" and "for committing" preceding "a child-victim"; and corrected internal references.

S.B. 5, Acts 2003, effective July 31, 2003, in the introductory paragraph, inserted, "that is not a registration-exempt sexually oriented offense or for committing a child-victim oriented offense," and substituted "January 1, 2002, both" for "the effective date of this section, all."

[§ 2152.19.2] § 2152.192 Notice to institution or association and county sheriff that child has been adjudicated delinquent for sexually oriented offense.

If a court or child welfare agency places a delinquent child in an institution or association, as defined in section 5103.02 of the Revised Code, that is certified by the department of job and family services pursuant to section 5103.03 of the Revised Code and if that child has been adjudicated delinquent for committing an act that is a sexually oriented offense in either a prior delinquency adjudication or in the most recent delinquency adjudication, the court or child welfare agency shall notify the operator of the institution or association and the sheriff of the county in which the institution or association is located that the child has been adjudicated delinquent for committing an act that is a sexually oriented offense.

HISTORY: 151 v H 95, § 1, eff. 8-3-06.

§ 2152.20 Fines; costs; restitution; order of criminal forfeiture; community service.

(A) If a child is adjudicated a delinquent child or a juvenile traffic offender, the court may order any of the following dispositions, in addition to any other disposition authorized or required by this chapter:

(1) Impose a fine in accordance with the following schedule:

(a) For an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed fifty dollars;

(b) For an act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed one hundred dollars;

(c) For an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed one hundred fifty dollars;

(d) For an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed two hundred dollars;

(e) For an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed two hundred fifty dollars;

(f) For an act that would be a felony of the fifth degree or an unclassified felony if committed by an adult, a fine not to exceed three hundred dollars;

(g) For an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed four hundred dollars;

(h) For an act that would be a felony of the third degree if committed by an adult, a fine not to exceed seven hundred fifty dollars;

(i) For an act that would be a felony of the second degree if committed by an adult, a fine not to exceed one thousand dollars;

(j) For an act that would be a felony of the first degree if committed by an adult, a fine not to exceed one thousand five hundred dollars;

(k) For an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed two thousand dollars.

(2) Require the child to pay costs;

(3) Unless the child's delinquent act or juvenile traffic offense would be a minor misdemeanor if committed by an adult or could be disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 if the court has established a juvenile traffic violations bureau, require the child to make restitution to the victim of the child's delinquent act or juvenile traffic offense or, if the victim is deceased, to a survivor of the victim in an amount based upon the victim's economic loss caused by or related to the delinquent act or juvenile traffic offense. The court may not require a child to make restitution pursuant to this division if the child's delinquent act or juvenile traffic offense would be a minor misdemeanor if committed by an adult or could be disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 if the court has established a juvenile traffic violations bureau. If the court requires restitution under this division, the restitution shall be made directly to the victim in open court or to the probation department that serves the jurisdiction or the clerk of courts on behalf of the victim.

If the court requires restitution under this division, the restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.

If the court requires restitution under this division, the court may base the restitution order on an amount recommended by the victim or survivor of the victim, the delinquent child, the juvenile traffic offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and any other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the delinquent act or juvenile traffic offense. If the court decides to order restitution under this division and the amount of the restitution is disputed by the victim or survivor or by the delinquent child or juvenile traffic offender, the court shall hold a hearing on the restitution. If the court requires restitution under this division, the court shall determine, or order the determination of, the amount of restitution to be paid by the delinquent child or juvenile traffic offender. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by or on behalf of the victim against the delinquent child or juvenile traffic offender or the delinquent child's or juvenile traffic offender's parent, guardian, or other custodian.

If the court requires restitution under this division, the court may order that the delinquent child or juvenile traffic offender pay a surcharge, in an amount not exceeding five per cent of the amount of restitution

otherwise ordered under this division, to the entity responsible for collecting and processing the restitution payments.

The victim or the survivor of the victim may request that the prosecuting authority file a motion, or the delinquent child or juvenile traffic offender may file a motion, for modification of the payment terms of any restitution ordered under this division. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(4) Require the child to reimburse any or all of the costs incurred for services or sanctions provided or imposed, including, but not limited to, the following:

(a) All or part of the costs of implementing any community control imposed as a disposition under section 2152.19 of the Revised Code, including a supervision fee;

(b) All or part of the costs of confinement in a residential facility described in section 2152.19 of the Revised Code or in a department of youth services institution, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment provided, and the costs of repairing property the delinquent child damaged while so confined. The amount of reimbursement ordered for a child under this division shall not exceed the total amount of reimbursement the child is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement. The court may collect any reimbursement ordered under this division. If the court does not order reimbursement under this division, confinement costs may be assessed pursuant to a repayment policy adopted under section 2929.37 of the Revised Code and division (D) of section 307.93, division (A) of section 341.19, division (C) of section 341.23 or 753.16, division (C) of section 2301.56, or division (B) of section 341.14, 753.02, 753.04, or 2947.19 of the Revised Code.

(B) Chapter 2981. of the Revised Code applies to a child who is adjudicated a delinquent child for violating section 2923.32 or 2923.42 of the Revised Code or for committing an act that, if committed by an adult, would be a felony drug abuse offense.

(C) The court may hold a hearing if necessary to determine whether a child is able to pay a sanction under this section.

(D) If a child who is adjudicated a delinquent child is indigent, the court shall consider imposing a term of community service under division (A) of section 2152.19 of the Revised Code in lieu of imposing a financial sanction under this section. If a child who is adjudicated a delinquent child is not indigent, the court may impose a term of community service under that division in lieu of, or in addition to, imposing a financial sanction under this section. The court may order community service for an act that if committed by an adult would be a minor misdemeanor.

If a child fails to pay a financial sanction imposed under this section, the court may impose a term of community service in lieu of the sanction.

(E) The clerk of the court, or another person authorized by law or by the court to collect a financial sanction imposed under this section, may do any of the following:

(1) Enter into contracts with one or more public agencies or private vendors for the collection of the amounts due under the financial sanction, which amounts may include interest from the date of imposition of the financial sanction;

(2) Permit payment of all, or any portion of, the financial sanction in installments, by credit or debit card,

by another type of electronic transfer, or by any other reasonable method, within any period of time, and on any terms that the court considers just, except that the maximum time permitted for payment shall not exceed five years. The clerk may pay any fee associated with processing an electronic transfer out of public money and may charge the fee to the delinquent child.

(3) To defray administrative costs, charge a reasonable fee to a child who elects a payment plan rather than a lump sum payment of a financial sanction.

HISTORY: 148 v S 179, § 3 (Eff. 1-1-2002); 149 v H 170, Eff. 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 162, § 1, eff. 10-12-06; 151 v H 241, § 1, eff. 7-1-07; 152 v H 120, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v H 120.

The provisions of § 4 of 151 v H 241 read as follows:

SECTION 4. Sections 1, 2, and 3 of this act shall take effect on July 1, 2007. If a criminal or civil forfeiture action relating to misconduct under Title XXIX of the Revised Code was or is commenced before July 1, 2007, and is still pending on that date, the court in which the case is pending shall, to the extent practical, apply the provisions of Chapter 2981. of the Revised Code in the case.

The effective date is set by section 4 of HB 490.

Effect of Amendments

152 v H 120, effective July 1, 2007, deleted (B)(3), pertaining to children adjudicated by a juvenile court to be delinquent children for an act in violation of RC § 2923.42.

151 v H 241, effective July 1, 2007, rewrote (B).

151 v H 162, effective October 12, 2006, corrected internal references.

150 v H 52, effective June 1, 2004, rewrote (A)(3).

H.B. 490, Acts 2002, effective January 1, 2004, substituted the last sentence for "based on a substantial change in the delinquent child's ability to pay" in the final paragraph of (A)(3).

Cross-References to Related Sections

Defenses or immunities of subdivision and employee, RC § 2744.03.

Disposition of juvenile traffic offender, RC § 2152.21.

Duties and powers of probation department, RC § 2151.14.

Records, RC § 2152.71.

Serious youth offender dispositional sentence, RC § 2152.13.

Victim's bill of rights pamphlet, RC § 109.42.

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Generally

Trial court was not mandated by RC § 2152.20(C) to hold a hearing before it could impose financial sanctions against an indigent juvenile, nor did the statute mandate that the court impose community control sanctions upon an indigent juvenile; rather the statutes directed the court to "consider" imposing a community control sanction, but, in contrast to § 2152.20(C), the language of RC § 2152.20(D) did impose a requirement upon the trial court, obliging it to consider community service in lieu of sanctions when the child being sentenced was indigent. In re Spears, 2006 Ohio App. LEXIS 1761, 2006 Ohio 1920, (2006).

When appellant was committed to the Department of Youth Services, while Ohio R. Juv. P. 29 was substantially complied with when the trial court accepted his admission and waiver of counsel, he did not waive the right to object to the imposition of a fine and restitution because he was not advised that this could be a consequence of his plea, nor was he given the opportunity to seek the imposition of community service in lieu of these financial

sanctions, and the trial court's magistrate and judge erroneously failed to consider the imposition of community service, as required by RC § 2152.20(D). In re Spears, 2006 Ohio App. LEXIS 1761, 2006 Ohio 1920, (2006).

Trial court did not err in failing to consider community service in lieu of financial sanctions as it was clear that the trial court considered many options for defendant, which no doubt included community service, but dismissed those options due to defendant's past history. In re Joshua R. C., 2005 Ohio App. LEXIS 5610, 2005 Ohio 6248, (2005).

Trial court did not err by declining to exercise its discretion because the plain language of RC § 2152.20(C) did not require the juvenile court to hold a hearing to determine whether defendant was able to pay a financial sanction. Although the language of RC § 2152.20(D) did impose a requirement upon the trial court, obliging it to consider community service in lieu of sanctions when the child being sentenced was indigent, the record did not demonstrate that the trial court did not make that consideration. In re C. P., 2005 Ohio App. LEXIS 1743, 2005 Ohio 1819, (2005).

Since the trial court only imposed the financial sanctions of fines, court costs and costs of confinement and did not sentence the juvenile for nonpayment, it was within the court's discretion whether to conduct a hearing to determine the juvenile's ability to pay. In re McClanahan, 2004 Ohio App. LEXIS 3759, 2004 Ohio 4113, (2004), appeal denied by 104 Ohio St. 3d 1426, 2004 Ohio 6585, 819 N.E.2d 709, 2004 Ohio LEXIS 2973 (2004).

Trial court did not violate the mandates of RC § 2152.20(D) in not giving defendant juvenile community service in lieu of a \$1,450 fine because the trial court considered the indigency issue by reviewing the motion to vacate fines and costs and subsequently denying that motion. In re Hopkins, 2003 Ohio App. LEXIS 4568, 2003 Ohio 5081, (2003).

Court costs

Defendant, a juvenile, waived his right to assert on appeal that the juvenile court erred in imposing the payment of court costs on him upon finding that he was a delinquent child, as he failed to raise the issue of his indigency before the juvenile court and he failed to appear for a hearing with respect to payment of court costs pursuant to RC § 2152.20(C). In re Lower, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1581, 2007 Ohio 1735, (Apr. 5, 2007).

Funeral expenses

The court did not abuse its discretion, under former law, by ordering the juvenile to reimburse the victim's family for funeral expenses. In re Jacobs, 148 Ohio App. 3d 173, 772 N.E.2d 671, 2002 Ohio 2844, (2002).

[§ 2152.20.1] § 2152.201 Reimbursement of investigation, prosecution, and response costs concerning act of terrorism.

(A) In addition to any other dispositions authorized or required by this chapter, the juvenile court making disposition of a child adjudicated a delinquent child for committing a violation of section 2909.22, 2909.23, or 2909.24 of the Revised Code or a violation of section 2921.32 of the Revised Code when the offense or act committed by the person aided or to be aided as described in that section is an act of terrorism may order the child to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in the investigation and prosecution of the violation. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the dispositional hearing for the child.

(B) If a child is adjudicated a delinquent child for committing a violation of section 2909.23 or 2909.24 of

the Revised Code and if any political subdivision incurred any response costs as a result of, or in making any response to, the threat of the specified offense involved in the violation of section 2909.23 of the Revised Code or the actual specified offense involved in the violation of section 2909.24 of the Revised Code, in addition to any other dispositions authorized or required by this chapter, the juvenile court making disposition of the child for the violation may order the child to reimburse the involved political subdivision for the response costs it so incurred.

(C) As used in this section, "response costs" and "act of terrorism" have the same meanings as in section 2909.21 of the Revised Code.

HISTORY: 149 v S 184, Eff 5-15-2002.

[§ 2152.20.2] § 2152.202 Reimbursement of costs of drug tests confirming that substance contained controlled substance.

(A) In addition to the dispositions authorized or required under section 2152.20 of the Revised Code and to any costs otherwise authorized or required under any provision of law, the juvenile court making disposition of a child adjudicated a delinquent child for committing an act that would be a drug abuse offense if committed by an adult may order the child to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under section 2925.51 of the Revised Code or in any other manner on any substance that was the basis of, or involved in, the delinquent act to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order a delinquent child under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance.

The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the dispositional hearing for the child.

(B) As used in this section, "controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

HISTORY: 151 v H 163, § 1, eff. 10-12-06.

§ 2152.21 Disposition of juvenile traffic offender.

(A) Unless division (C) of this section applies, if a child is adjudicated a juvenile traffic offender, the court may make any of the following orders of disposition:

(1) Impose costs and one or more financial sanctions in accordance with section 2152.20 of the Revised Code;

(2) Suspend the child's driver's license, probationary driver's license, or temporary instruction permit for a definite period not exceeding two years or suspend the registration of all motor vehicles registered in the name of the child for a definite period not exceeding two years. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child

has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(3) Place the child on community control;

(4) If the child is adjudicated a juvenile traffic offender for an act other than an act that would be a minor misdemeanor if committed by an adult and other than an act that could be disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 if the court has established a juvenile traffic violations bureau, require the child to make restitution pursuant to division (A)(3) of section 2152.20 of the Revised Code;

(5)(a) If the child is adjudicated a juvenile traffic offender for committing a violation of division (A) of section 4511.19 of the Revised Code or of a municipal ordinance that is substantially equivalent to that division, commit the child, for not longer than five days, to either of the following:

(i) The temporary custody of a detention facility or district detention facility established under section 2152.41 of the Revised Code;

(ii) The temporary custody of any school, camp, institution, or other facility for children operated in whole or in part for the care of juvenile traffic offenders of that nature by the county, by a district organized under section 2151.65 or 2152.41 of the Revised Code, or by a private agency or organization within the state that is authorized and qualified to provide the care, treatment, or placement required.

(b) If an order of disposition committing a child to the temporary custody of a home, school, camp, institution, or other facility of that nature is made under division (A)(5)(a) of this section, the length of the commitment shall not be reduced or diminished as a credit for any time that the child was held in a place of detention or shelter care, or otherwise was detained, prior to entry of the order of disposition.

(6) If, after making a disposition under divisions (A)(1) to (5) of this section, the court finds upon further hearing that the child has failed to comply with the orders of the court and the child's operation of a motor vehicle constitutes the child a danger to the child and to others, the court may make any disposition authorized by divisions (A)(1), (3), (4), and (7) of section 2152.19 of the Revised Code, except that the child may not be committed to or placed in a secure correctional facility unless authorized by division (A) (5) of this section, and commitment to or placement in a detention facility may not exceed twenty-four hours.

(B) If a child is adjudicated a juvenile traffic offender for violating division (A) or (B) of section 4511.19 of the Revised Code, in addition to any order of disposition made under division (A) of this section, the court shall impose a class six suspension of the temporary instruction permit, probationary driver's license, or driver's license issued to the child from the range specified in Division (A)(6) of section 4510.02 of the revised code. The court, in its discretion, may terminate the suspension if, the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending a program as described in this division, the court shall retain the child's temporary instruction permit, probationary driver's license, or driver's license issued, and the court shall return the permit or license if it terminated the suspension as described in this division.

(C) If a child is adjudicated a juvenile traffic offender for violating division (B)(1) of section 4513.263

[4513.26.3] of the Revised Code, the court shall impose the appropriate fine set forth in division (G) of that section. If a child is adjudicated a juvenile traffic offender for violating division (B)(3) of section 4513.263 [4513.26.3] of the Revised Code and if the child is sixteen years of age or older, the court shall impose the fine set forth in division (G)(2) of that section. If a child is adjudicated a juvenile traffic offender for violating division (B)(3) of section 4513.263 [4513.26.3] of the Revised Code and if the child is under sixteen years of age, the court shall not impose a fine but may place the child on probation or community control.

(D) A juvenile traffic offender is subject to sections 4509.01 to 4509.78 of the Revised Code.

HISTORY: RC § 2151.35.6, 133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 137 v H 1 (Eff 8-26-77); 137 v H 222 (Eff 10-4-77); 141 v S 54 (Eff 5-6-86); 141 v H 428 (Eff 12-23-86); 142 v H 643 (Eff 3-17-89); 143 v H 330 (Eff 6-30-89); 143 v H 381 (Eff 7-1-89); 143 v S 131 (Eff 7-25-90); 144 v H 118 (Eff 6-1-92); 144 v H 154 (Eff 7-31-92); 144 v S 98 (Eff 11-12-92); 146 v H 1 (Eff 1-1-96); 146 v H 265 (Eff 3-3-97); 147 v S 35 (Eff 1-1-99); 147 v H 2 (Eff 1-1-99); 148 v S 181 (Eff 9-4-2000); RC § 2152.21, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400, § 1. Eff. 4-3-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 2152.19.

Effect of Amendments

150 v H 52, effective June 1, 2004, rewrote (A)(4); and made minor stylistic changes.

S.B. 123, Acts 2002, effective January 1, 2004, substituted "permit for a definite period not exceeding two years or suspend" for "permit or" in (A)(2); rewrote (B); in (C), substituted "(B)(1) of section 4513.263" for "(B)(1) or (2) of section 4513.263", "division (G) of that section" for "in section 4513.99 of the Revised Code", and "division (G)(2) of that section" for "in division (G) of section 4513.99 of the Revised Code"; and made minor stylistic changes.

Cross-References to Related Sections

County or district detention facility, RC § 2152.41.

Definitions, RC §§ 2151.01.1, 2152.02.

Duties and powers of probation department, RC § 2151.14.

Place of detention, RC § 2152.26.

Ohio Rules

Dispositional proceedings, JuvR 29(F), 34, 35.

Relinquishment of jurisdiction, JuvR 30.

Social history, examinations and investigation, JuvR 32.

CASE NOTES AND OAG

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Appeals

The judgment entry noting "restitution to be determined" was not a final appealable order: (decided under former analogous section) In re Zakov, 107 Ohio App. 3d 716, 669 N.E.2d 344 (1995).

Revised Code § 2501.02 grants the courts of appeals jurisdiction over appeals from juvenile court judgments and final orders rendered in juvenile traffic offender proceedings: (decided under former analogous section) In re Hartman, 2 Ohio St. 3d 154, 2 Ohio B. 699, 443 N.E.2d 516 (1983).

Driver's license

Testimony of the magistrate who had suspended defendant's license supported the trial court's finding to enhance his convictions of causing the death of another while operating a motor vehicle, under RC § R.C. § 2903.06(A)(3), and causing the death of another as a proximate result of committing a minor misdemeanor traffic violation, RC § 2903.06(A)(4). The magistrate testified that he suspended the license pursuant to RC § 2152.21, which did, in fact, authorize the juvenile court to suspend a juvenile's driver's license. State v. Daly, 2006 Ohio App. LEXIS 6742, 2006 Ohio 6817, (2006).

The juvenile court has the authority to suspend a juvenile's driver license until the juvenile's twenty-first birthday: (decided under former analogous section) In re Mason, 1997 Ohio App. LEXIS 5757 (9th Dist. 1997).

Where appellant was charged only with reckless operation, that offense is not contemplated by RC § 4509.10.1 and accordingly, court lacked jurisdiction to suspend appellant's license for failure to provide proof of financial responsibility: (decided under former analogous section) In re Chapa, 1996 Ohio App. LEXIS 1716 (3rd Dist. 1996).

The driver's license of a juvenile who violates RC § 4511.19(B)(2) cannot be suspended past the juvenile's eighteenth birthday: (decided under former analogous section) In re Eric W., 113 Ohio App. 3d 367, 680 N.E.2d 1275 (1996).

Unless RC § 2151.35.6(A)(7) applies, a juvenile court may suspend a driver's license only until the offender's eighteenth birthday: (decided under former analogous section) State v. Minix, 101 Ohio App. 3d 380, 655 N.E.2d 789 (1995).

Fines

The language, "[a]ll fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen," appearing in RC § 5503.04, includes such fines or moneys when they are collected in probate and juvenile courts. An action in a juvenile court may be considered a "prosecution" for purposes of RC § 5503.04 [OAG No. 82-062 and 1943 OAG No. 6406, p.547 overruled to the extent that they are inconsistent with this opinion]: (decided under former analogous section) OAG No. 87-023 (1987).

Fines imposed upon juvenile traffic offenders pursuant to RC § 2151.35.6(A) must be paid to the general fund of the county treasury pursuant to RC § 2949.11 rather than to the county law library association pursuant to RC § 3375.52 or RC § 3375.53 (1943 OAG No. 6406, p.547, approved and followed in part): (decided under former analogous section) OAG No. 82-062 (1982).

Pleadings

A complaint alleging a child to be a juvenile traffic offender is neither a criminal nor a civil proceeding: (decided under former analogous section) In re C., 43 Ohio Misc. 98, 72 Ohio Op. 2d 421, 334 N.E.2d 545 (JC 1975).

Restitution

When a minor is employed pursuant to a juvenile court restitution order, the arrangement is subject to RC Chapter 4109., except to the extent that it comes within the exceptions set forth in RC § 4109.06: (decided under former analogous section) OAG No. 87-104 (1987).

Time limits

The statutory speedy trial provisions of RC § 2945.71 et seq. do not apply to juvenile traffic offenders: (decided under former analogous section) State v. Reed, 54 Ohio App. 2d 193, 8 Ohio Op. 3d 333, 376 N.E.2d 609 (1977).

§ 2152.22 Court control of child following commitment to department; judicial release.

Effective until 1-1-08.

(A) When a child is committed to the legal custody of the department of youth services under this chapter, the

juvenile court relinquishes control with respect to the child so committed, except as provided in divisions (B), (C), and (G) of this section or in sections 2152.82 to 2152.85 of the Revised Code. Subject to divisions (B) and (C) of this section, sections 2151.353 [2151.35.3] and 2151.412 [2151.41.2] to 2151.421 [2151.42.1] of the Revised Code, sections 2152.82 to 2152.85 of the Revised Code, and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

The department shall not release the child from a department facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court in division (A)(1) of section 2152.16 of the Revised Code and any term of commitment imposed under section 2152.17 of the Revised Code or prior to the child's attainment of twenty-one years of age, except upon the order of a court pursuant to division (B) or (C) of this section or in accordance with section 5139.54 of the Revised Code.

(B)(1) The court that commits a delinquent child to the department may grant judicial release of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of section 2152.17 of the Revised Code has ended.

(2) If the department of youth services desires to release a child during a period specified in division (B)(1) of this section, it shall request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for a judicial release to court supervision from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following: approve the release by journal entry; schedule within thirty days after the request is received a time for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release to court supervision within the applicable period. The additional request may be made no earlier than thirty days after the filing of the prior request for a judicial release to court supervision. Upon the filing of a second request for a judicial release to court supervision, the court shall either approve or disapprove the release by journal entry or schedule within thirty days after the request is received a time for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (B)(2) of this section, it may order the department to deliver the

child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves the release, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

(C)(1) The court that commits a delinquent child to the department may grant judicial release of the child to department of youth services supervision under this division during the second half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of section 2152.17 of the Revised Code has ended.

(2) If the department of youth services desires to release a child during a period specified in division (C)(1) of this section, it shall request the court that committed the child to grant a judicial release to department of youth services supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to department of youth services supervision. Upon receipt of a request for judicial release to department of youth services supervision, the child, or the child's parent, or upon its own motion at any time during that period, the court shall do one of the following: approve the release by journal entry; schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for release under this division by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of ninety days that the child is in a secure department facility after the filing of a prior request for early release. Upon the filing of a request for release under this division subsequent to an initial request, the court shall either approve or disapprove the release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (C)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and shall

order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to department of youth services supervision.

If the court approves the judicial release to department of youth services supervision, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (E) of this section that shall include the conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by the department as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional conditions, it shall enter those additional conditions in its journal and shall send to the department a copy of the journal entry of the additional conditions.

If the court approves the judicial release to department of youth services supervision, the actual date on which the department shall release the child is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in a department facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in a department facility while the department finds the suitable placement.

(D) If a child is released under division (B) or (C) of this section and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with the conditions of the child's judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under division (C) of this section, divisions (A) to (E) of section 5139.52 of the Revised Code apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was held in a secure department facility prior to the child's judicial release shall be considered as time served in fulfilling the prescribed period of institutionalization that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three

months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with which the department has contracted to provide a revocation program.

(E) The department of youth services, prior to the release of a child pursuant to division (C) of this section, shall do all of the following:

(1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release;

(2) Completely discuss the conditions of the plan prepared pursuant to division (E)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;

(3) Have the plan prepared pursuant to division (E)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) of this section;

(4) Prior to the child's release, file a copy of the treatment plan prepared pursuant to division (E)(1) of this section with the committing court and the juvenile court of the county in which the child is to be placed.

(F) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions for altering the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(G) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in section 5139.51 of the Revised Code with respect to the granting of supervised release by the release authority and to perform the functions specified in section 5139.52 of the Revised Code with respect to violations of the conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

§ 2152.22 Court control of child following commitment to department; judicial release.

Effective 1-1-08.

(A) When a child is committed to the legal custody of the department of youth services under this chapter, the juvenile court relinquishes control with respect to the child so committed, except as provided in divisions (B), (C), and (G) of this section or in sections 2152.82 to 2152.86 of the Revised Code. Subject to divisions (B) and (C) of this section, sections 2151.353 [2151.35.3] and 2151.412 [2151.41.2] to 2151.421 [2151.42.1] of the Revised Code, sections 2152.82 to 2152.86 of the Revised Code, and any other provision of law that specifies a

different duration for a dispositional order, all other dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

The department shall not release the child from a department facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court in division (A)(1) of section 2152.16 of the Revised Code and any term of commitment imposed under section 2152.17 of the Revised Code or prior to the child's attainment of twenty-one years of age, except upon the order of a court pursuant to division (B) or (C) of this section or in accordance with section 5139.54 of the Revised Code.

(B)(1) The court that commits a delinquent child to the department may grant judicial release of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of section 2152.17 of the Revised Code has ended.

(2) If the department of youth services desires to release a child during a period specified in division (B)(1) of this section, it shall request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for a judicial release to court supervision from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall do one of the following: approve the release by journal entry; schedule within thirty days after the request is received a time for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for a release under this division by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release to court supervision within the applicable period. The additional request may be made no earlier than thirty days after the filing of the prior request for a judicial release to court supervision. Upon the filing of a second request for a judicial release to court supervision, the court shall either approve or disapprove the release by journal entry or schedule within thirty days after the request is received a time for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (B)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing

whether the child should be granted a judicial release to court supervision.

If the court approves the release, it shall order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the custody of the department of youth services.

(C)(1) The court that commits a delinquent child to the department may grant judicial release of the child to department of youth services supervision under this division during the second half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday, provided any commitment imposed under division (A), (B), (C), or (D) of section 2152.17 of the Revised Code has ended.

(2) If the department of youth services desires to release a child during a period specified in division (C)(1) of this section, it shall request the court that committed the child to grant a judicial release to department of youth services supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to department of youth services supervision. Upon receipt of a request for judicial release to department of youth services supervision, the child, or the child's parent, or upon its own motion at any time during that period, the court shall do one of the following: approve the release by journal entry; schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; or reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for release under this division by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of ninety days that the child is in a secure department facility after the filing of a prior request for early release. Upon the filing of a request for release under this division subsequent to an initial request, the court shall either approve or disapprove the release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

(3) If a court schedules a hearing under division (C)(2) of this section, it may order the department to deliver the child to the court on the date set for the hearing and shall order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release to department of youth services supervision.

If the court approves the judicial release to department of youth services supervision, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (E) of this section that shall include the conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by the department as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional conditions, it shall enter those additional conditions in its journal and shall send to the department a copy of the journal entry of the additional conditions.

If the court approves the judicial release to department of youth services supervision, the actual date on which the department shall release the child is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in a department facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in a department facility while the department finds the suitable placement.

(D) If a child is released under division (B) or (C) of this section and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with the conditions of the child's judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under division (C) of this section, divisions (A) to (E) of section 5139.52 of the Revised Code apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was held in a secure department facility prior to the child's judicial release shall be considered as time served in fulfilling the prescribed period of institutionalization that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with which the department has contracted to provide a revocation program.

(E) The department of youth services, prior to the release of a child pursuant to division (C) of this section, shall do all of the following:

(1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release;

(2) Completely discuss the conditions of the plan prepared pursuant to division (E)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;

(3) Have the plan prepared pursuant to division (E)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) of this section;

(4) Prior to the child's release, file a copy of the treatment plan prepared pursuant to division (E)(1) of this section with the committing court and the juvenile court of the county in which the child is to be placed.

(F) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions for altering the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(G) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in section 5139.51 of the Revised Code with respect to the granting of supervised release by the release authority and to perform the functions specified in section 5139.52 of the Revised Code with respect to violations of the conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

HISTORY: 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Effect of Amendments

152 v S 10, effective January 1, 2008, corrected internal references.

Cross-References to Related Sections

Commitment order by department of youth services, RC § 5139.05.

Department of youth services duty to aid in combating and preventing juvenile delinquency, RC § 5139.11.

Disposition of child committed to department of youth services, RC § 5139.06.

Emergency releases to meet overcrowding conditions, RC § 5139.20.

Hearing on alleged violation of supervised release, RC § 5139.52.

Information concerning certain delinquent children, RC § 2152.72.

Medical release or discharge, RC § 5139.54.

Parent killing other parent, custody order defined, RC § 3109.41.

Rehabilitation programs, RC § 5139.07.

Supervised release or discharge; requirements for release, RC § 5139.51.

Supervision of children released from institutions by department of youth services, RC § 5139.18.

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Early release
Jurisdiction

Early release

Former RC § 2151.38 did not preclude early release where the juvenile was serving a term of commitment on a firearm specification: *In re Howard*, 150 Ohio App. 3d 1, 778 N.E.2d 1106, 2002 Ohio 6004, (2002).

Jurisdiction

Trial court had the authority to grant judicial release and require court supervision over a juvenile defendant under RC § 2152.22(B)(1) because the trial court's order granting judicial release fell within the first half of the prescribed minimum term defendant was committed to the youth services department. The trial court maintained jurisdiction over defendant as seen by the fact that it addressed placement for defendant in its journal entries granting judicial release. *In re G.S.*, 2006 Ohio App. LEXIS 3042, 2006 Ohio 3161, (2006).

§ 2152.26 Place of detention.

(A) Except as provided in divisions (B) and (F) of this section, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:

(1) A certified foster home or a home approved by the court;

(2) A facility operated by a certified child welfare agency;

(3) Any other suitable place designated by the court.

(B) In addition to the places listed in division (A) of this section, a child alleged to be or adjudicated a delinquent child may be held in a detention facility for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with division (F)(2) of this section in a facility of a type specified in that division. Division (B) of this section does not apply to a child alleged to be or adjudicated a delinquent child for chronic truancy, unless the child violated a lawful court order made pursuant to division (A)(6) of section 2152.19 of the Revised Code. Division (B) of this section also does not apply to a child alleged to be or adjudicated a delinquent child for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, unless the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 [2151.35.4] of the Revised Code.

(C)(1) Except as provided under division (C)(1) of section 2151.311 [2151.31.1] of the Revised Code or division (A)(5) of section 2152.21 of the Revised Code, a child alleged to be or adjudicated a juvenile traffic offender may not be held in any of the following facilities:

(a) A state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of crime, under arrest, or charged with a crime is held.

(b) A secure correctional facility.

(2) Except as provided under this section, sections 2151.56 to 2151.61, and divisions (A)(5) and (6) of section 2152.21 of the Revised Code, a child alleged to be or

adjudicated a juvenile traffic offender may not be held for more than twenty-four hours in a detention facility.

(D) Except as provided in division (F) of this section or in division (C) of section 2151.311 [2151.31.1], in division (C)(2) of section 5139.06 and section 5120.162 [5120.16.2], or in division (B) of section 5120.16 of the Revised Code, a child who is alleged to be or is adjudicated a delinquent child may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.

(E) Unless the detention is pursuant to division (F) of this section or division (C) of section 2151.311 [2151.31.1], division (C)(2) of section 5139.06 and section 5120.162 [5120.16.2], or division (B) of section 5120.16 of the Revised Code, the official in charge of the institution, jail, workhouse, or other facility shall inform the court immediately when a child, who is or appears to be under the age of eighteen years, is received at the facility, and shall deliver the child to the court upon request or transfer the child to a detention facility designated by the court.

(F)(1) If a case is transferred to another court for criminal prosecution pursuant to section 2152.12 of the Revised Code, the child may be transferred for detention pending the criminal prosecution in a jail or other facility in accordance with the law governing the detention of persons charged with crime. Any child so held shall be confined in a manner that keeps the child beyond the range of touch of all adult detainees. The child shall be supervised at all times during the detention.

(2) If a person is adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the person may be held under that disposition in places other than those specified in division (A) of this section, including, but not limited to, a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.

(3)(a) A person alleged to be a delinquent child may be held in places other than those specified in division (A) of this section, including, but not limited to, a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:

(i) The person attains eighteen years of age before the person is arrested or apprehended for that act.

(ii) The person is arrested or apprehended for that act before the person attains eighteen years of age, but the person attains eighteen years of age before the court orders a disposition in the case.

(b) If, pursuant to division (F)(3)(a) of this section, a person is held in a place other than a place specified in division (A) of this section, the person has the same rights to bail as an adult charged with the same offense who is confined in a jail pending trial.

HISTORY: RC § 2151.31.2, 133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 139 v H 440 (Eff 11-23-81); 143 v H 166 (Eff 2-14-90); 144 v S 331 (Eff 11-13-92); 145 v H 152 (Eff 7-1-93); 145 v H 571 (Eff 10-6-94); 146 v H 265 (Eff 3-3-97); 146 v H 124 (Eff 3-31-97); 147 v H 1 (Eff 7-1-98); 148 v S 181 (Eff 9-4-2000); 148 v H 445 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); RC § 2152.26, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003.

Cross-References to Related Sections

Procedure upon apprehension, custody, and detention, RC § 2151.31.1.

Ohio Administrative Code

Department of job and family services, division of social services—

Child care agencies. OAC ch. 5101:2-5.

Childrens residential facilities. OAC ch. 5101:2-9

Foster care. OAC ch. 5101:2-7.

Department of youth services—

Community juvenile corrections facilities. OAC ch. 5139-61 et seq.

Community residential centers (CRC). OAC ch. 5139-35.

Detention centers. OAC ch. 5139-37.

§ 2152.41 County or district detention facility; temporary boarding in private homes.

(A) Upon the recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a detention facility that shall be within a convenient distance of the juvenile court. The facility shall not be used for the confinement of adults charged with criminal offenses. The facility may be used to detain alleged delinquent children until final disposition for evaluation pursuant to section 2152.04 of the Revised Code, to confine children who are adjudicated delinquent children and placed in the facility pursuant to division (A)(3) of section 2152.19 of the Revised Code, and to confine children who are adjudicated juvenile traffic offenders and committed to the facility under division (A)(5) or (6) of section 2152.21 of the Revised Code.

(B) Upon the joint recommendation of the juvenile judges of two or more neighboring counties, the boards of county commissioners of the counties shall form themselves into a joint board and proceed to organize a district for the establishment and support of a detention facility for the use of the juvenile courts of those counties, in which alleged delinquent children may be detained as provided in division (A) of this section, by using a site or buildings already established in one of the counties or by providing for the purchase of a site and the erection of the necessary buildings on the site.

A child who is adjudicated to be a juvenile traffic offender for having committed a violation of division (A) of section 4511.19 of the Revised Code or of a municipal ordinance that is substantially comparable to that division may be confined in a detention facility or district detention facility pursuant to division (A)(5) of section 2152.21 of the Revised Code, provided the child is kept separate and apart from alleged delinquent children.

Except as otherwise provided by law, district detention facilities shall be established, operated, maintained, and managed in the same manner so far as applicable as county detention facilities.

Members of the board of county commissioners who meet by appointment to consider the organization of a district detention home, upon presentation of properly certified accounts, shall be paid their necessary expenses upon a warrant drawn by the county auditor of their county.

The county auditor of the county having the greatest population or, with the unanimous concurrence of the county auditors of the counties composing a district, the auditor of the county in which the detention facility is located shall be the fiscal officer of a detention facility district. The county auditors of the several counties composing a detention facility district shall meet at the district detention facility, not less than once in six months, to review accounts and to transact any other duties in

connection with the institution that pertain to the business of their office.

(C) In any county in which there is no detention facility or that is not served by a district detention facility, the juvenile court may enter into a contract, subject to the approval of the board of county commissioners, with another juvenile court, another county's detention facility, or a joint county detention facility. Alternately, the board of county commissioners shall provide funds for the boarding of children, who would be eligible for detention under division (A) of this section, temporarily in private homes or in certified foster homes approved by the court for a period not exceeding sixty days or until final disposition of their cases, whichever comes first. The court also may arrange with any public children services agency or private child placing agency to receive, or private noncustodial agency for temporary care of, children within the jurisdiction of the court.

If the court arranges for the board of children temporarily detained in certified foster homes or through any private child placing agency, the county shall pay a reasonable sum to be fixed by the court for the board of those children. In order to have certified foster homes available for service, an agreed monthly subsidy may be paid and a fixed rate per day for care of children actually residing in the certified foster home.

(D) The board of county commissioners of any county within a detention facility district, upon the recommendation of the juvenile court of that county, may withdraw from the district and sell or lease its right, title, and interest in the site, buildings, furniture, and equipment of the facility to any counties in the district, at any price and upon any such terms that are agreed upon among the boards of county commissioners of the counties concerned. Section 307.10 of the Revised Code does not apply to this division. The net proceeds of any sale or lease under this division shall be paid into the treasury of the withdrawing county.

The members of the board of trustees of a district detention facility who are residents of a county withdrawing from the district are deemed to have resigned their positions upon the completion of the withdrawal procedure provided by this division. The vacancies then created shall be filled as provided in this section.

(E) The children to be admitted for care in a county or district detention facility established under this section, the period during which they shall be cared for in the facility, and the removal and transfer of children from the facility shall be determined by the juvenile court that ordered the child's detention.

HISTORY: CC § 1639-22; 117 v 520; 121 v 557; Bureau of Code Revision, RC § 2151.34, 10-1-53; 128 v 1211 (Eff 11-2-59); 133 v S 49 (Eff 8-13-69); 133 v H 320 (Eff 11-19-69); 133 v H 931 (Eff 8-27-70); 136 v H 85 (Eff 11-28-75); 136 v H 1196 (Eff 8-9-76); 139 v H 440 (Eff 11-23-81); 141 v H 428 (Eff 12-23-86); 142 v S 89 (Eff 1-1-89); 143 v H 166 (Eff 2-14-90); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 145 v H 152 (Eff 7-1-93); 146 v H 265 (Eff 3-3-97); 148 v H 448 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); RC § 2152.41, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 400. Eff 4-3-2003.

Cross-References to Related Sections

Additional orders of disposition, RC § 2152.19.

Adoption of rules for payment of assistance for the construction or acquisition of a district detention facility, RC § 5139.29.

Application to department for assistance; funding of facility through taxes, gifts or other means, RC § 2152.43.

Conditions of financial assistance for construction or acquisition of detention facility, RC § 5139.27.1.

Confinement of delinquent child for purposes of preparing social history, RC § 2152.04.
 Definitions, RC § 2151.01.1.
 Delinquent child, RC § 2152.02.
 Juvenile traffic offender, RC § 2152.02.
 Department of youth services rules for detention facilities, RC § 5139.28.1.
 Designation of fiscal officer of district, RC § 2151.79.
 Fiscal officer defined, RC § 133.01.
 Disposition of juvenile traffic offender, RC § 2152.21.
 Funding of detention facility, RC § 2152.43.
 Powers and duties of department of job and family services in certification of institutions or associations for children, RC § 5103.03.
 School district liability for cost of education, RC § 2151.35.7.
 Superintendent of facility, RC § 2152.42.
 Taxing authority of county may issue general obligation securities to pay cost of acquiring or acquiring sites for schools, detention facilities, forestry camps, or other facilities, RC § 2151.65.5.
 Tax levy law—
 Subdivision, taxing authority defined, RC § 5705.01.
 Tax levy for youth rehabilitation facility, RC § 5705.19.
 Trustees of district detention facility, RC § 2152.44.
 Withdrawal of county from district; continuity of district tax levy, RC § 2151.78.

Ohio Rules

Detention separate from adults, JuvR 7(H).
 Proceedings after judgment, JuvR 35.

Ohio Administrative Code

Department of job and family services, division of social services—
 Child care agencies. OAC ch. 5101:2-5.
 Childrens residential facilities. OAC ch. 5101:2-9
 Foster care. OAC ch. 5101:2-7.
 Department of youth services—
 Community juvenile corrections facilities. OAC ch. 5139-61 et seq.
 Community residential centers (CRC). OAC ch. 5139-35.
 Detention centers. OAC ch. 5139-37.

Comparative Legislation

Detention:
 18 USCS §§ 5035, 5039
 CA—Cal Wel & Inst Code § 207
 FL—Fla. Stat. § 985.215
 IN—Burns Ind. Code Ann. § 31-34-6-1
 KY—KRS § 610.220 et seq
 MI—MCLS §§ 712A.15, 712A.16
 NY—NY CLS Family Ct Act § 304.1
 PA—42 P.S. § 6325

CASE NOTES AND OAG

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County commissioners
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County commissioners

Impossibility of performance is a viable defense to a complaint for mandamus seeking to compel county commissioners to provide a juvenile detention facility: (decided under former analogous section) State ex rel. Johns v. Richland County, 29 Ohio St. 2d 6, 58 Ohio Op. 2d 65, 278 N.E.2d 19 (1972).

This section provides that no child under eighteen shall be placed in or committed to any prison, jail, or lockup; and such section provides further that it is the mandatory duty of the county commissioners of each county, upon the advice and

recommendation of the juvenile judge, to provide a separate juvenile detention home for the detention of juveniles under the jurisdiction of the juvenile courts: (decided under former analogous section) Garland v. Dustman, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

This section, which requires that, "upon the advice and recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a place to be known as a detention home," is mandatory, and a writ of mandamus will issue to compel the board to exercise its discretion in making provision for such home: (decided under former analogous section) State ex rel. Ray v. South, 176 Ohio St. 241, 27 Ohio Op. 2d 133, 198 N.E.2d 919 (1964).

Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the joint board of county commissioners may employ legal counsel: (decided under former analogous section) OAG No. 83-064 (1983).

Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the county prosecuting attorneys of the participating counties have no duty to provide legal counsel for the joint board of county commissioners: (decided under former analogous section) OAG No. 83-064 (1983).

Where, under this section a juvenile judge of a county, on January 6, 1959, advised and recommended that a detention home be provided at a certain location and the board of county commissioners has taken no action in this regard for two years, the advice and recommendation for the establishment of a detention home are still in effect. The board, while not being required to follow the specific recommendations as to location, has a mandatory duty to provide a detention home within a convenient distance of the juvenile court: (decided under former analogous section) 1961 OAG No. 2034 (1961).

False imprisonment

Where a county has no separate juvenile detention home as provided in this section, and the only facility for the detention of juveniles, as ordered and authorized by the juvenile judge, is a juvenile ward which is separated and secluded from the adult sections but is located in the county jail; and where, pursuant to verbal directions by the chief probation officer of the juvenile court, an eight-year-old boy, in the company of his father who was arrested by deputy sheriffs at 1:30 a.m., is placed by the deputy sheriffs, together with his father, in the juvenile ward in the county jail until the mother of the boy could come to take the boy home; and where the boy and his father are in the juvenile ward in the county jail for approximately one-and-one half hours when the mother arrived and took the boy home; the sheriff of the county is not liable in damages in an action for false imprisonment, brought by the mother on behalf of the boy, for the detention of the boy placed in the juvenile ward by his deputy sheriffs under the specific directions of the chief probation officer of the juvenile court: (decided under former analogous section) Garland v. Dustman, 19 Ohio App. 2d 292, 48 Ohio Op. 2d 408, 251 N.E.2d 153 (1969).

Investigation of child abuse, neglect

Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at detention homes established pursuant to RC § 2151.34, at the Ohio Veterans' Children's Home operated pursuant to RC Chapter 5909., and at public school operating under standards set by the State Board of Education pursuant to RC Chapter 3301.: (decided under former analogous section) OAG No. 89-108 (1989).

Prior law

A final order of disposition of a child found to be delinquent, as prescribed by RC § 2151.35.5, may not include, as punishment or otherwise, confinement (or detention) in a juvenile detention home: (decided under former analogous section) In re Bolden, 37 Ohio App. 2d 7, 66 Ohio Op. 2d 26, 306 N.E.2d 166 (1973).

This section, providing that no child under eighteen years of

age shall be placed in any prison, jail or lock-up is mandatory and the county jail being a prison, within the meaning and inhibition of such section, the imprisonment of a child under eighteen years of age in such county jail is contrary to law: (decided under former analogous section) In re Karnes, 67 Ohio L. Ab. 449, 121 N.E.2d 156 (App 1953).

Amended House Bill No. 1196, effective August 9, 1976, does not operate to prohibit the commingling of pre-adjudicated and post-adjudicated youth confined in a district detention home. The Ohio Youth Commission may pursuant to RC § 5139.28.1 adopt a rule requiring the separation of an adjudicated delinquent where extraordinary circumstances make such separation necessary for the care, treatment or training of such youth, or where necessary to insure the safety of that youth, or any other youth in the detention home: (decided under former analogous section) OAG No. 77-006 (1977).

If the county adult detention facility is designed with a space which is enclosed on all sides, that is distinct, set apart and disconnected so that no child over the age of fifteen placed in that space will come in contact or communication with any adult convicted of or arrested for a crime and the public interest and safety require the detention of such child when a delinquent detention facility is not available, the use of such adult facility is authorized by the Revised Code: (decided under former analogous section) OAG No. 70-015 (1970).

A judge of a juvenile court may not commit a child who has been found to be a delinquent child, or a juvenile traffic offender, to the county jail upon the failure, refusal, or inability of such child to pay a fine and court costs: (decided under former analogous section) OAG No. 70-143 (1970).

If a district detention home is established pursuant to this section, the board of county commissioners of each participating county shall provide for its proportionate share of the costs of establishing, maintaining, and supporting the detention home: (decided under former analogous section) OAG No. 66-173 (1966).

A detention home provided by authority of this section is for the detention of "delinquent, dependent, neglected children, or juvenile traffic offenders... until final disposition": (decided under former analogous section) 1963 OAG No. 553 (1963).

Pursuant to this section a juvenile detention home is a place not used for the confinement of adult persons. Such a home should be separate and apart from buildings in which adult persons are confined. Accordingly, such a juvenile detention home may not properly be established in a county jail, even though one complete floor of the jail would be used for such purpose and the intention would be to keep the one floor separate and apart from the rest of the jail: (decided under former analogous section) 1962 OAG No. 2814 (1962).

School districts

Revised Code § 2151.35.7 does not require the school district of residence of a child placed in a detention home by a juvenile court to pay the cost of nonacademic summer activities provided for the child by the detention home: (decided under former analogous section) OAG No. 85-028 (1985).

Pursuant to RC § 2151.35.7, when a child is placed in a detention home established under RC § 2151.34, the child's school district, as determined by the court, is responsible for paying the cost of the education of the child (1963 OAG No. 553, p.552, and No. 261, p.326, overruled to the extent that they are inconsistent with this conclusion): (decided under former analogous section) OAG No. 80-101 (1980).

§ 2152.42 Superintendent of facility; employees; educational and recreational programs; medical and mental health services.

(A) Any detention facility established under section 2152.41 of the Revised Code shall be under the direction of a superintendent. The superintendent shall be appointed by, and under the direction of, the judge or judges or, for a district facility, the board of trustees of the facility. The superintendent serves at the pleasure of the

juvenile court or, in a district detention facility, at the pleasure of the board of trustees.

Before commencing work as superintendent, the person appointed shall obtain a bond, with sufficient surety, conditioned upon the full and faithful accounting of the funds and properties under the superintendent's control.

The superintendent, under the supervision and subject to the rules and regulations of the board, shall control, manage, operate, and have general charge of the facility and shall have the custody of its property, files, and records.

(B) For a county facility, the superintendent shall appoint all employees of the facility, who shall be in the unclassified civil service. The salaries shall be paid as provided by section 2151.13 of the Revised Code for other employees of the court, and the necessary expenses incurred in maintaining the facility shall be paid by the county.

For a district facility, the superintendent shall appoint other employees of the facility and fix their compensation, subject to approval of the board of trustees. Employees of a district facility, except for the superintendent, shall be in the classified civil service.

(C) During the school year, when possible, a comparable educational program with competent and trained staff shall be provided for children of school age who are in the facility. A sufficient number of trained recreational personnel shall be included among the staff. Medical and mental health services shall be made available.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Powers and duties of department of job and family services in certification of institutions or associations for children, RC § 5103.03.

Trustees of district detention facility, RC § 2152.44.

CASE NOTES AND OAG

Employees of facility

The administrative judge of the juvenile division has the authority to terminate at will the employment of employees of a juvenile detention center: (decided under former analogous section) Abbott v. Stepanik, 64 Ohio App. 3d 719, 582 N.E.2d 1082 (1990).

In case a juvenile detention home is established, it is under the supervision of the juvenile judge who also has the sole authority to appoint necessary employees for such home. The county, through the board of county commissioners, has a duty to provide sufficient funds for the operation of the home: (decided under former analogous section) 1961 OAG No. 2034 (1961).

§ 2152.43 Application to department for assistance; funding of facility through taxes, gifts or other means.

(A) A board of county commissioners that provides a detention facility and the board of trustees of a district detention facility may apply to the department of youth services under section 5139.281 [5139.28.1] of the Revised Code for assistance in defraying the cost of operating and maintaining the facility. The application shall be made on forms prescribed and furnished by the department.

The board of county commissioners of each county that participates in a district detention facility may apply to the department of youth services for assistance in defraying

the county's share of the cost of acquisition or construction of the facility, as provided in section 5139.271 [5139.27.1] of the Revised Code. Application shall be made in accordance with rules adopted by the department. No county shall be reimbursed for expenses incurred in the acquisition or construction of a district detention facility that serves a district having a population of less than one hundred thousand.

(B)(1) The joint boards of county commissioners of district detention facilities shall defray all necessary expenses of the facility not paid from funds made available under section 5139.281 [5139.28.1] of the Revised Code, through annual assessments of taxes, through gifts, or through other means.

If any county withdraws from a district under division (D) of section 2152.41 of the Revised Code, it shall continue to have levied against its tax duplicate any tax levied by the district during the period in which the county was a member of the district for current operating expenses, permanent improvements, or the retirement of bonded indebtedness. The levy shall continue to be a levy against the tax duplicate of the county until the time that it expires or is renewed.

(2) The current expenses of maintaining the facility not paid from funds made available under section 5139.281 [5139.28.1] of the Revised Code or division (C) of this section, and the cost of ordinary repairs to the facility, shall be paid by each county in accordance with one of the following methods as approved by the joint board of county commissioners:

(a) In proportion to the number of children from that county who are maintained in the facility during the year;

(b) By a levy submitted by the joint board of county commissioners under division (A) of section 5705.19 of the Revised Code and approved by the electors of the district;

(c) In proportion to the taxable property of each county, as shown by its tax duplicate;

(d) In any other method agreed upon by unanimous vote of the joint board of county commissioners.

(C) When any person donates or bequeaths any real or personal property to a county or district detention facility, the juvenile court or the trustees of the facility may accept and use the gift, consistent with the best interest of the institution and the conditions of the gift.

HISTORY: RC § 2151.34.1, 128 v 1211 (Eff 11-2-59); 136 v H 1196 (Eff 8-9-76); 137 v S 221 (Eff 11-23-77); 139 v H 440 (Eff 11-23-81); RC § 2152.43, 148 v S 179, § 3. Eff 1-1-2002; 151 v H 66, § 101.01, eff. 9-29-05.

The effective date is set by § 612.03 of 151 v H 66.

The effective date is set by section 5 of SB 179.

Effect of Amendments

151 v H 66, effective September 29, 2005, rewrote (B)(2)(d).

Cross-References to Related Sections

Conditions of financial assistance for construction or acquisition of detention facility, RC § 5139.27.1.

Inspection of schools and facilities by department of youth services, RC § 5139.31.

Powers and duties of department of job and family services in certification of institutions or associations for children, RC § 5103.03.

Trustees of district detention facility, RC § 2152.44.

CASE NOTES AND OAG

Taxes

There is no statutory authority to submit a proposed district levy to the voters of such district for the purpose of building a

district detention home pursuant to RC § 2151.34 et seq. either before or after the formation of a district board of trustees: (decided under former analogous section) OAG No. 66-173 (1966).

Until the juvenile judge or juvenile judges advise and recommend the establishment of a county or a district detention home, pursuant to this section, there is no legal authority to levy a tax for that purpose. There is no statutory authority for a tax levy in the alternative. Revised Code §§ 5705.19, 5705.25: (decided under former analogous section) OAG No. 66-173 (1966).

§ 2152.44 Trustees of district detention facility.

(A) As soon as practical after the organization of the joint board of county commissioners as provided by section 2152.41 of the Revised Code, the joint board shall appoint a board of not less than five trustees. The board shall hold office until the first annual meeting after the choice of an established site and buildings, or after the selection and purchase of a building site. At that time, the joint board of county commissioners shall appoint a board of not less than five trustees, one of whom shall hold office for a term of one year, one for a term of two years, one for a term of three years, half of the remaining number for a term of four years, and the remainder for a term of five years. Annually thereafter, the joint board of county commissioners shall appoint one or more trustees, each of whom shall hold office for a term of five years, to succeed the trustee or trustees whose term of office expires. A trustee may be appointed to successive terms. Any person appointed as a trustee shall be recommended and approved by the juvenile court judge or judges of the county of which the person resides.

At least one trustee shall reside in each county in the district. In districts composed of two counties, each county shall be entitled to not less than two trustees. In districts composed of more than four counties, the number of trustees shall be sufficiently increased, provided that there shall always be an uneven number of trustees on the board. The county in which a district detention facility is located shall have not less than two trustees, who, in the interim period between the regular meetings of the trustees, shall act as an executive committee in the discharge of all business pertaining to the facility.

The joint board of county commissioners may remove any trustee for good cause. The trustee appointed to fill any vacancy shall hold the office for the unexpired term of the predecessor trustee.

(B) The annual meeting of the board of trustees shall be held on the first Tuesday in May in each year.

A majority of the board constitutes a quorum. Other board meetings shall be held at least quarterly. The juvenile court judge of each county of the district, or the judge's designee, shall attend the meetings. The members of the board shall receive no compensation for their services, except their actual and necessary expenses. The treasurer shall pay the member's traveling expenses when properly certified.

(C) When the board of trustees does not choose an established institution in one of the counties of the district, it may select a suitable site for the erection of a district detention facility. The site must be easily accessible, conducive to health, economy in purchasing or in building, and the general interest of the facility and its residents, and be as near as practicable to the geographical center of the district.

In the interim between the selection and purchase of a site, and the erection and occupancy of the district detention facility, the joint board of county commissioners provided under section 2152.41 of the Revised Code may delegate to the board of trustees any powers and duties that, in its judgment, will be of general interest or aid to the institution. The joint board of county commissioners may appropriate a trustees' fund, to be expended by the trustees for contracts, purchases, or other necessary expenses of the facility. The trustees shall make a complete settlement with the joint board of county commissioners once each six months, or quarterly if required, and shall make to the board of county commissioners and to the juvenile court of each of the counties a full report of the condition of the facility and residents.

(D) The choice of an established site and buildings, or the purchase of a site, stock, implements, and general farm equipment, should there be a farm, the erection of buildings, and the completion and furnishing of the district detention facility for occupancy, shall be in the hands of the joint board of county commissioners organized under section 2152.41 of the Revised Code. The joint board of county commissioners may delegate all or a portion of these duties to the board of trustees, under any restrictions that the joint board of county commissioners imposes.

When an established site and buildings are used for a district detention facility, the joint board of county commissioners shall cause the value of that site and those buildings to be properly appraised. This appraisal value, or in case of the purchase of a site, the purchase price and the cost of all improvements thereto, shall be paid by the counties comprising the district, in proportion to the taxable property of each county, as shown by its tax duplicate.

(E) Once a district is established, the trustees shall operate, maintain, and manage the facility as provided in sections 2152.41 to 2152.43 of the Revised Code and, on and after the effective date of this amendment and notwithstanding any provision of the Revised Code to the contrary, may adopt bylaws regarding the daily operation, maintenance, and management of the facility. No bylaw adopted pursuant to this division may supersede any provision of the Revised Code.

HISTORY: RC § 2151.34.3, 128 v 1211 (Eff 11-2-59); RC § 2152.44, 148 v S 179, § 3. Eff 1-1-2002; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

The effective date is set by section 5 of SB 179.

Effect of Amendments

151 v H 530, effective June 30, 2006, added the language beginning "and, on and after" to the end of (E); and corrected internal references.

Cross-References to Related Sections

Powers and duties of department of job and family services in certification of institutions or associations for children, RC § 5103.03.

CASE NOTES AND OAG

Compatibility of provisions

There is nothing to preclude a juvenile court judge from being appointed a member of a board of trustees of a district detention home, if it is physically possible for one person to discharge the duties of both positions: (decided under former analogous section) OAG No. 66-112 (1966).

§ 2152.61 Orders controlling conduct of parent, guardian or other custodian.

(A) In any proceeding in which a child has been adjudicated a delinquent child or a juvenile traffic offender, on the application of a party or the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of the individual to the child if the court finds that an order of that type necessary to do either of the following:

(1) Control any conduct or relationship that will be detrimental or harmful to the child;

(2) Control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made.

(B) Due notice of the application or motion and the grounds for the application or motion under division (A) of this section, and an opportunity to be heard, shall be given to the person against whom the order under that division is directed. The order may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or control required by the court.

(C) A person's failure to comply with any order made by the court under this section is contempt of court under Chapter 2705. of the Revised Code.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Victim's bill of rights pamphlet, RC § 109.42.

CASE NOTES AND OAG

Due process

After it was decided to forbid contact between a mother and her son, the trial court should have scheduled a time soon afterwards for the mother to present her side of the story, if different from that of her son and her son's custodian, and anything else bearing on the matter of visitation, Ohio R. Juv. P. 35(A). In re Boucher, 2003 Ohio App. LEXIS 5119, 2003 Ohio 5719, (2003).

§ 2152.67 Jury trial; procedure.

Any adult who is arrested or charged under any provision in this chapter and who is charged with a crime may demand a trial by jury, or the juvenile judge upon the judge's own motion may call a jury. A demand for a jury trial shall be made in writing in not less than three days before the date set for trial, or within three days after counsel has been retained, whichever is later. Sections 2945.17 and 2945.23 to 2945.36 of the Revised Code, relating to the drawing and impaneling of jurors in criminal cases in the court of common pleas, other than in capital cases, shall apply to a jury trial under this section. The compensation of jurors and costs of the clerk and sheriff shall be taxed and paid in the same manner as in criminal cases in the court of common pleas.

HISTORY: GC § 1639-44; 117 v 520(534); Bureau of Code Revision, RC § 2151.47, 10-1-53; 132 v S 55 (Eff 10-24-67); 133 v H 1 (Eff 3-18-69); 148 v S 181 (Eff 9-4-2000); RC § 2152.67, 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Ohio Rules

Trial by jury, CrimR 23.

Comparative Legislation

Jury trial:

- CA—Cal Wel & Inst Code § 1801.5
- FL—Fla. Const. Art. I, § 15
- IL—Ill. Sup. Ct. R. 403
- IN—Burns Ind. Code Ann. § 31-32-6-7
- KY—KRS § 610.070
- MI—MCLS § 712A.17

§ 2152.71 Records; weekly report of case summaries; annual summary and report.

(A)(1) The juvenile court shall maintain records of all official cases brought before it, including, but not limited to, an appearance docket, a journal, and, in cases pertaining to an alleged delinquent child, arrest and custody records, complaints, journal entries, and hearing summaries. The court shall maintain a separate docket for traffic cases and shall record all traffic cases on the separate docket instead of on the general appearance docket. The parents, guardian, or other custodian of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased, may inspect these records, either in person or by counsel, during the hours in which the court is open. Division (A)(1) of this section does not require the release or authorize the inspection of arrest or incident reports, law enforcement investigatory reports or records, or witness statements.

(2) The juvenile court shall send to the superintendent of the bureau of criminal identification and investigation, pursuant to section 109.57 of the Revised Code, a weekly report containing a summary of each case that has come before it and that involves the disposition of a child who is a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult.

(B) The clerk of the court shall maintain a statistical record that includes all of the following:

(1) The number of complaints that are filed with, or indictments or information made to, the court that allege that a child is a delinquent child, in relation to which the court determines under division (D) of section 2151.27 of the Revised Code that the victim of the alleged delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the alleged commission of the act;

(2) The number of complaints, indictments, or information described in division (B)(1) of this section that result in the child being adjudicated a delinquent child;

(3) The number of complaints, indictments, or information described in division (B)(2) of this section in which the act upon which the delinquent child adjudication is based caused property damage or would be a theft offense, as defined in division (K) of section 2913.01 of the Revised Code, if committed by an adult;

(4) The number of complaints, indictments, or information described in division (B)(3) of this section that result in the delinquent child being required as an order of disposition made under division (A) of section 2152.20 of the Revised Code to make restitution for all or part of the property damage caused by the child's delinquent act or for all or part of the value of the property that was the subject of the delinquent act that would be a theft offense if committed by an adult;

(5) The number of complaints, indictments, or information described in division (B)(2) of this section in which the act upon which the delinquent child adjudication is based would have been an offense of violence if committed by an adult;

(6) The number of complaints, indictments, or information described in division (B)(5) of this section that result in the delinquent child being committed as an order of disposition made under section 2152.16, divisions (A) and (B) of section 2152.17, or division (A)(2) of section 2152.19 of the Revised Code to any facility for delinquent children operated by the county, a district, or a private agency or organization or to the department of youth services;

(7) The number of complaints, indictments, or information described in division (B)(1) of this section that result in the case being transferred for criminal prosecution to an appropriate court having jurisdiction of the offense under section 2152.12 of the Revised Code.

(C) The clerk of the court shall compile an annual summary covering the preceding calendar year showing all of the information for that year contained in the statistical record maintained under division (B) of this section. The statistical record and the annual summary shall be public records open for inspection. Neither the statistical record nor the annual summary shall include the identity of any party to a case.

(D) Not later than June of each year, the court shall prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition of the cases, and any other data pertaining to the work of the court that the juvenile judge directs. The court shall file copies of the report with the board of county commissioners. With the approval of the board, the court may print or cause to be printed copies of the report for distribution to persons and agencies interested in the court or community program for dependent, neglected, abused, or delinquent children and juvenile traffic offenders. The court shall include the number of copies ordered printed and the estimated cost of each printed copy on each copy of the report printed for distribution.

(E) If an officer is preparing pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 a presentence investigation report pertaining to a person, the court shall make available to the officer, for use in preparing the report, any records it possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications. The records to be made available pursuant to this division include, but are not limited to, any social history or report of a mental or physical examination regarding the person that was prepared pursuant to Juvenile Rule 32.

HISTORY: GC § 1639-13; 117 v 520; 121 v 557; 123 v 367; Bureau of Code Revision, RC § 2151.18, 10-1-53; 127 v 547 (Eff 9-14-57); 136 v H 85 (Eff 11-28-75); 138 v H 394 (Eff 9-26-79); 139 v H 440 (Eff 11-23-81); 140 v S 5 (Eff 9-26-84); 143 v S 268 (Eff 6-28-90); 145 v H 152 (Eff 7-1-93); 146 v H 1 (Eff 1-1-96); 146 v H 124 (Eff 3-31-97); 147 v H 2 (Eff 1-1-99); 148 v H 3 (Eff 11-22-99); 148 v S 181 (Eff 9-4-2000); RC § 2152.71, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 247 (Eff 5-30-2002); 149 v H 393. Eff 7-5-2002.

Comment, Legislative Service Commission

Section 2152.71 of the Revised Code is amended by this act [Sub. H.B. 247] and also by Sub. H.B. 393, both of the 124th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are

not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Cross-References to Related Sections

Complaint alleging that child is delinquent child or juvenile traffic offender, RC § 2152.02.1.
 Definitions, RC § 2151.01.1.
 Abused child, RC § 2151.03.1.
 Child without proper parental care, RC § 2151.05.
 Delinquent child, RC § 2152.02.
 Dependent child, RC § 2151.04.
 Juvenile traffic offender, RC § 2152.02.
 Neglected child, RC § 2151.03.
 Residence or legal settlement of child, RC § 2151.06.
 Unruly child, RC § 2151.02.2.
 Judge as clerk, RC § 2151.12.
 Judges of the court of domestic relations; juvenile court responsibility, RC § 2301.03.

CASE NOTES AND OAG

Records

A parent's right to inspect juvenile court records may be enforced by mandamus: (decided under former analogous section) State ex rel. Howard v. Ferreri, 70 Ohio St. 3d 587, 639 N.E.2d 1189 (1994).

Mandamus will not lie to require the judge of the juvenile court of Hamilton county "to keep and maintain records of all cases brought before" such court, "correct the errors in... partial records kept... journalize the orders, judgments," etc., and "exhibit to the attorneys" representing a minor charged with a crime "all books, records, papers, [and] dockets... in all cases and proceedings involving" such minor: (decided under former analogous section) State ex rel. Hibbard v. Hoffman, 101 Ohio App. 547, 1 Ohio Op. 2d 454, 137 N.E.2d 606 (1955).

§ 2152.72 Foster caregivers or prospective adoptive parents to receive information concerning certain delinquent children; psychological examination of child.

(A) This section applies only to a child who is or previously has been adjudicated a delinquent child for an act to which any of the following applies:

(1) The act is a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2907.02, 2907.03, or 2907.05 of the Revised Code.

(2) The act is a violation of section 2923.01 of the Revised Code and involved an attempt to commit aggravated murder or murder.

(3) The act would be a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a specification found in section 2941.141 [2941.14.1], 2941.144 [2941.14.4], or 2941.145 [2941.14.5] of the Revised Code or in another section of the Revised Code that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child.

(4) The act would be an offense of violence that is a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a specification found in section 2941.1411 [2941.14.11] of the Revised Code or in another section of the Revised Code that relates to the wearing or carrying of body armor during the commission of the act for which the child was adjudicated a delinquent child.

(B)(1) Except as provided in division (E) of this section, a public children services agency, private child placing agency, private noncustodial agency, or court, the department of youth services, or another private or

government entity shall not place a child in a certified foster home or for adoption until it provides the foster caregivers or prospective adoptive parents with all of the following:

(a) A written report describing the child's social history;

(b) A written report describing all the acts committed by the child the entity knows of that resulted in the child being adjudicated a delinquent child and the disposition made by the court, unless the records pertaining to the acts have been sealed pursuant to section 2151.356 [2151.35.6] of the Revised Code;

(c) A written report describing any other violent act committed by the child of which the entity is aware;

(d) The substantial and material conclusions and recommendations of any psychiatric or psychological examination conducted on the child or, if no psychological or psychiatric examination of the child is available, the substantial and material conclusions and recommendations of an examination to detect mental and emotional disorders conducted in compliance with the requirements of Chapter 4757. of the Revised Code by an independent social worker, social worker, professional clinical counselor, or professional counselor licensed under that chapter. The entity shall not provide any part of a psychological, psychiatric, or mental and emotional disorder examination to the foster caregivers or prospective adoptive parents other than the substantial and material conclusions.

(2) Notwithstanding sections 2151.356 [2151.35.6] to 2151.358 [2151.35.8] of the Revised Code, if records of an adjudication that a child is a delinquent child have been sealed pursuant to those sections and an entity knows the records have been sealed, the entity shall provide the foster caregivers or prospective adoptive parents a written statement that the records of a prior adjudication have been sealed.

(C)(1) The entity that places the child in a certified foster home or for adoption shall conduct a psychological examination of the child unless either of the following applies:

(a) An entity is not required to conduct the examination if an examination was conducted no more than one year prior to the child's placement, and division (C)(1)(b) of this section does not apply.

(b) An entity is not required to conduct the examination if a foster caregiver seeks to adopt the foster caregiver's foster child, and an examination was conducted no more than two years prior to the date the foster caregiver seeks to adopt the child.

(2) No later than sixty days after placing the child, the entity shall provide the foster caregiver or prospective adoptive parents a written report detailing the substantial and material conclusions and recommendations of the examination conducted pursuant to this division.

(D)(1) Except as provided in divisions (D)(2) and (3) of this section, the expenses of conducting the examinations and preparing the reports and assessment required by division (B) or (C) of this section shall be paid by the entity that places the child in the certified foster home or for adoption.

(2) When a juvenile court grants temporary or permanent custody of a child pursuant to any section of the Revised Code, including section 2151.33, 2151.353 [2151.35.3], 2151.354 [2151.35.4], or 2152.19 of the Revised Code, to a public children services agency or private child placing agency, the court shall provide the

agency the information described in division (B) of this section, pay the expenses of preparing that information, and, if a new examination is required to be conducted, pay the expenses of conducting the examination described in division (C) of this section. On receipt of the information described in division (B) of this section, the agency shall provide to the court written acknowledgment that the agency received the information. The court shall keep the acknowledgment and provide a copy to the agency. On the motion of the agency, the court may terminate the order granting temporary or permanent custody of the child to that agency, if the court does not provide the information described in division (B) of this section.

(3) If one of the following entities is placing a child in a certified foster home or for adoption with the assistance of or by contracting with a public children services agency, private child placing agency, or a private noncustodial agency, the entity shall provide the agency with the information described in division (B) of this section, pay the expenses of preparing that information, and, if a new examination is required to be conducted, pay the expenses of conducting the examination described in division (C) of this section:

(a) The department of youth services if the placement is pursuant to any section of the Revised Code including section 2152.22, 5139.06, 5139.07, 5139.38, or 5139.39 of the Revised Code;

(b) A juvenile court with temporary or permanent custody of a child pursuant to section 2151.354 [2151.35.4] or 2152.19 of the Revised Code;

(c) A public children services agency or private child placing agency with temporary or permanent custody of the child.

The agency receiving the information described in division (B) of this section shall provide the entity described in division (D)(3)(a) to (c) of this section that sent the information written acknowledgment that the agency received the information and provided it to the foster caregivers or prospective adoptive parents. The entity shall keep the acknowledgment and provide a copy to the agency. An entity that places a child in a certified foster home or for adoption with the assistance of or by contracting with an agency remains responsible to provide the information described in division (B) of this section to the foster caregivers or prospective adoptive parents unless the entity receives written acknowledgment that the agency provided the information.

(E) If a child is placed in a certified foster home as a result of an emergency removal of the child from home pursuant to division (D) of section 2151.31 of the Revised Code, an emergency change in the child's case plan pursuant to division (E)(3) of section 2151.412 [2151.41.2] of the Revised Code, or an emergency placement by the department of youth services pursuant to this chapter or Chapter 5139. of the Revised Code, the entity that places the child in the certified foster home shall provide the information described in division (B) of this section no later than ninety-six hours after the child is placed in the certified foster home.

(F) On receipt of the information described in divisions (B) and (C) of this section, the foster caregiver or prospective adoptive parents shall provide to the entity that places the child in the foster caregiver's or prospective adoptive parents' home a written acknowledgment that the foster caregiver or prospective adoptive parents received the information. The entity shall keep the

acknowledgment and provide a copy to the foster caregiver or prospective adoptive parents.

(G) No person employed by an entity subject to this section and made responsible by that entity for the child's placement in a certified foster home or for adoption shall fail to provide the foster caregivers or prospective adoptive parents with the information required by divisions (B) and (C) of this section.

(H) It is not a violation of any duty of confidentiality provided for in the Revised Code or a code of professional responsibility for a person or government entity to provide the substantial and material conclusions and recommendations of a psychiatric or psychological examination, or an examination to detect mental and emotional disorders, in accordance with division (B)(1)(d) or (C) of this section.

(I) As used in this section:

(1) "Body armor" has the same meaning as in section 2941.1411 [2941.14.11] of the Revised Code.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

HISTORY: RC § 2151.62, 147 v H 173 (Eff 7-29-98); 148 v H 448 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); 148 v S 222 (Eff 3-22-2001); 149 v S 27 (Eff 3-14-2002); RC § 2152.72, 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 27, Eff 3-15-2002; 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

The provisions of §§ 5(B), 7, and 8(B) of SB 27 (149 v —) read as follows:

SECTION 5.

• • •

(B) Section 2152.72 of the Revised Code, as amended by this act, shall take effect January 1, 2002.

SECTION 7. The amendment of section 2151.62 of the Revised Code is not intended to supersede its amendment and renumbering by Am. Sub. S.B. 179 of the 123rd General Assembly. Paragraphs of section 2151.62 of the Revised Code that are amended by this act were moved to section 2152.72 of the Revised Code by Am. Sub. S.B. 179, effective January 1, 2002, as part of its revision of the juvenile sentencing laws. Therefore, section 2152.72 of the Revised Code is amended by this act to continue, on and after January 1, 2002, the amendments this act is making to section 2151.62 of the Revised Code; section 2151.62 of the Revised Code as amended by this act is superseded on January 1, 2002, by the section as it results from its amendment and renumbering by Am. Sub. S.B. 179; and section 2152.72 of the Revised Code as amended by this act takes effect on January 1, 2002.

SECTION 8.

• • •

(B) Section 2152.72 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 448, Am. Sub. S.B. 222, and Am. Sub. S.B. 179 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

151 v H 137, effective October 12, 2006, corrected internal references and made minor stylistic changes.

Cross-References to Related Sections

Penalty, RC § 2152.99.

Courses comprising preplacement training program for foster caregivers, RC § 5103.03.9.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

§ 2152.73 Assignment of court employees to combat juvenile delinquency; administration of donations.

A juvenile court may participate with other public or private agencies of the county served by the court in programs that have as their objective the prevention and control of juvenile delinquency. The juvenile judge may assign employees of the court, as part of their regular duties, to work with organizations concerned with combatting conditions known to contribute to delinquency, providing adult sponsors for children who have been found to be delinquent children, and developing wholesome youth programs.

The juvenile judge may accept and administer on behalf of the court gifts, grants, bequests, and devises made to the court for the purpose of preventing delinquency.

HISTORY: RC § 2151.11, 131 v 631 (Eff 11-11-65); RC § 2152.73, 148 v § 179, § 3. Eff 1-1-2002.

Not analogous to former RC § 2151.11 (GC § 1639-7a; 122 v 390; 123 v 3; Bureau of Code Revision, 10-1-53) repealed, in 129 v 1072, eff 2-8-61.

The effective date is set by section 5 of SB 179.

Ohio Rules

Avoiding court action, JuvR 9.

§ 2152.74 DNA testing of adjudicated delinquents.

(A) As used in this section, "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 [109.57.3] of the Revised Code.

(B)(1) A child who is adjudicated a delinquent child for committing an act listed in division (D) of this section and who is committed to the custody of the department of youth services, placed in a detention facility or district detention facility pursuant to division (A)(3) of section 2152.19 of the Revised Code, or placed in a school, camp, institution, or other facility for delinquent children described in division (A)(2) of section 2152.19 of the Revised Code shall submit to a DNA specimen collection procedure administered by the director of youth services if committed to the department or by the chief administrative officer of the detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to which the child was committed or in which the child was placed. If the court commits the child to the department of youth services, the director of youth services shall cause the DNA specimen to be collected from the child during the intake process at an institution operated by or under the control of the department. If the court commits the child to or places the child in a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children, the chief administrative officer of the detention facility, district detention facility, school, camp, institu-

tion, or facility to which the child is committed or in which the child is placed shall cause the DNA specimen to be collected from the child during the intake process for the detention facility, district detention facility, school, camp, institution, or facility. The DNA specimen shall be collected from the child in accordance with division (C) of this section.

(2) If a child is adjudicated a delinquent child for committing an act listed in division (D) of this section, is committed to or placed in the department of youth services, a detention facility or district detention facility, or a school, camp, institution, or other facility for delinquent children, and does not submit to a DNA specimen collection procedure pursuant to division (B)(1) of this section, prior to the child's release from the custody of the department of youth services, from the custody of the detention facility or district detention facility, or from the custody of the school, camp, institution, or facility, the child shall submit to, and the director of youth services or the chief administrator of the detention facility, district detention facility, school, camp, institution, or facility to which the child is committed or in which the child was placed shall administer, a DNA specimen collection procedure at the institution operated by or under the control of the department of youth services or at the detention facility, district detention facility, school, camp, institution, or facility to which the child is committed or in which the child was placed. The DNA specimen shall be collected in accordance with division (C) of this section.

(3) If a child is adjudicated a delinquent child for committing an act listed in division (D) of this section, is not committed to or placed in the department of youth services, a detention facility or district detention facility, or a school, camp, institution, or other facility for delinquent children described in division (A)(2) or (3) of section 2152.19 of the Revised Code, and does not provide a DNA specimen pursuant to division (B)(1) or (2) of this section, the juvenile court shall order the child to report to the county probation department immediately after disposition to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation department. The DNA specimen shall be collected from the child in accordance with division (C) of this section.

(C) If the DNA specimen is collected by withdrawing blood from the child or a similarly invasive procedure, a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner shall collect in a medically approved manner the DNA specimen required to be collected pursuant to division (B) of this section. If the DNA specimen is collected by swabbing for buccal cells or a similarly noninvasive procedure, this section does not require that the DNA specimen be collected by a qualified medical practitioner of that nature. No later than fifteen days after the date of the collection of the DNA specimen, the director of youth services or the chief administrative officer of the detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to which the child is committed or in which the child was placed shall cause the DNA specimen to be forwarded to the bureau of criminal identification and investigation in accordance with procedures established by the superintendent of the bureau under division (H) of section 109.573 [109.57.3] of the Revised Code. The bureau shall provide the

specimen vials, mailing tubes, labels, postage, and inspection needed for the collection and forwarding of the DNA specimen to the bureau.

(D) The director of youth services and the chief administrative officer of a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children shall cause a DNA specimen to be collected in accordance with divisions (B) and (C) of this section from each child in its custody who is adjudicated a delinquent child for committing any of the following acts:

(1) An act that would be a felony if committed by an adult;

(2) A violation of any law that would be a misdemeanor if committed by an adult and that arose out of the same facts and circumstances and same act as did a charge against the child of a violation of section 2903.01, 2903.02, 2905.01, 2907.02, 2907.03, 2907.05, or 2911.11 of the Revised Code that previously was dismissed or amended or as did a charge against the child of a violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996, that previously was dismissed or amended;

(3) A violation of section 2919.23 of the Revised Code that would be a misdemeanor if committed by an adult and that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(4) A violation of section 2923.03 of the Revised Code involving complicity in committing a violation of section 2907.04 of the Revised Code that would be a misdemeanor if committed by an adult.

HISTORY: RC § 2151.31.5, 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 124 (Eff 3-31-97); 147 v H 526 (Eff 9-1-98); 148 v H 442 (Eff 10-17-2000); RC § 2152.74, 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 427 (Eff 8-29-2002); 149 v H 400, Eff 4-3-2003; 150 v H 525, § 1, eff. 5-18-05; 151 v H 66, § 101.01, eff. 6-30-05.

† So in enrolled bill, division (B)(2). Elsewhere, herein, see “chief administrative officer.”

The effective date is set by § 612.12 of 151 v H 66.

Effect of Amendments

150 v H 525, effective May 18, 2005, deleted the next to last sentence in (B)(1) and (2), pertaining to the forwarding to the bureau of criminal identification and investigation of DNA specimens; added (B)(3); rewrote (D); and deleted (E), pertaining to a nonrequirement by the director of youth services and chief administrative officer of a facility for delinquent children to comply with this section.

Comment, Legislative Service Commission

Section 2152.74 of the Revised Code is amended by Sub. H.B. 525 of the 125th General Assembly and Am. Sub. H.B. 66 of the 126th General Assembly. The amendment by H.B. 66 is ineffective. The amendment by H.B. 525 resulted in repealing the language H.B. 66 attempted to amend. The cross-reference did not exist and therefore could not be amended.

Cross-References to Related Sections

DNA laboratory and database may be established; disclosure of information, RC § 109.57.3.

Practice Manuals and Treatises

Ohio Transaction Guide: Family Law & Forms § 4.28 Juvenile Court Proceedings

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Constitutionality

DNA collection under RC § 2151.31.5 does not constitute a consequence under JuvR 29(D). The statute does not violate the fourth amendment: (decided under former analogous section) In re Nicholson, 132 Ohio App. 3d 303, 724 N.E.2d 1217 (1999).

Probation or supervised release

Pursuant to RC § 2152.74(B)(3), a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to RC § 2152.19(A)(4) on or after May 18, 2005. If a juvenile released from one of the Department of Youth Services' institutions before May 18, 2005, and currently on supervised release pursuant to RC § 5139.51(B) has not previously submitted to a DNA specimen collection procedure pursuant to RC § 2152.74(B)(1), RC § 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile. RC § 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of the Department of Youth Services or an entity described in RC § 2152.19(A)(2) or RC § 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to RC § 2152.74(B)(1) or RC § 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under RC Chapter 2152 before May 18, 2005. A juvenile court may exercise its power to punish for contempt, conduct proceedings under RC Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to RC § 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under RC § 2152.74(B)(3). A juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is required to submit a DNA specimen under RC § 2152.74(B)(2) and who is on supervised release pursuant to RC § 5139.51(B) to submit to a DNA specimen collection procedure. Opinion No. 2005-037 (2005).

§ 2152.81 Deposition of child victim; video-taping; testimony taken outside courtroom and televised into it or replayed in courtroom.

(A)(1) As used in this section, “victim” includes any of the following persons:

(a) A person who was a victim of a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult;

(b) A person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult.

(2) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the

prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division, and, in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the

deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(B)(1) At any proceeding in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in

Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic

means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (A)(2) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint or information was filed or the indictment was returned, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (E) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a juvenile judge may order the testimony of a child victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the

violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the child victim to testify despite judicial requests to do so;

(2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F)(1) If a juvenile judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (A)(3) of this section or a proceeding under division (C) or (D) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

HISTORY: RC § 2151.35.11, 141 v H 108 (Eff 10-14-86); 146 v H 445 (Eff 9-3-96); 147 v S 53 (Eff 10-14-97); 148 v H 442 (Eff 10-17-2000); RC § 2152.81, 148 v S 179, § 3, Eff 1-1-2002.

† So in enrolled bill, division (A)(3).

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Intergovernmental cooperation, RC § 109.54.

Ohio Rules

Competency of children as witnesses, EvR 601.

Hearsay, EvR 801, 803, 804, 807.

Limitations and discovery, CrimR 16(E); JuvR 24(B).

Videotaped testimony and evidence, SupR 13.

Comparative Legislation

Videotape or closed circuit television testimony:

CA—Cal Pen Code §§ 1346, 1347

FL—Fla. Stat. § 92.53

IN—Burns Ind. Code Ann. §§ 31-34-13-1 et seq, 31-35-4-1 et seq

KY—KRS § 421.350

MI—MCLS § 600.2163a

NY—NY CLS CPL § 190.32

PA—42 P.S. § 5981 et seq

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Constitutionality

Allowing a child sex abuse victim to testify via closed circuit television, pursuant to RC § 2151.35.11, does not violate the confrontation rights of the accused. A child who is forced to

witness abuse of another child may also qualify as a "victim": (decided under former analogous section) In re Howard, 119 Ohio App. 3d 33, 694 N.E.2d 488 (1997).

Applicability

Revised Code § 2151.35.11 applies only when the accused is a child and the victim is a child under the age of eleven years: (decided under former analogous section) In re Burchfield, 51 Ohio App. 3d 148, 555 N.E.2d 325 (1988).

[§ 2152.81.1] § 2152.811 Determination removing presumptive exemption from registration.

Effective until 1-1-08.

If a court adjudicates a child a delinquent child for committing a presumptive registration-exempt sexually oriented offense, the court may determine pursuant to section 2950.021 [2950.02.1] of the Revised Code, prior to making an order of disposition for the child, that the child potentially should be subjected to classification as a juvenile offender registrant under sections 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under Chapter 2950. of the Revised Code upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense. If the court so determines, divisions (B)(1) and (3) of section 2950.021 [2950.02.1] of the Revised Code apply, and the court shall proceed as described in those divisions.

HISTORY: 150 v S 5, § 1, eff. 7-31-03.

[§ 2152.81.1] § 2152.811 Deposition of mentally retarded or developmentally disabled victim; taking of testimony outside room where proceeding is being conducted.

Effective 1-1-08.

(A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes any of the following persons:

(a) A mentally retarded person or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult;

(b) A mentally retarded person or developmentally disabled person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult.

(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341 [2903.34.1], 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], or 2907.323 [2907.32.3] of the Revised Code or an act that would be an offense of violence if committed by an adult and in

which an alleged victim of the violation or act was a mentally retarded person or developmentally disabled person, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken.

If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (C) of this section. If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the mentally retarded or developmentally disabled victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition also shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(1) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally

retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally retarded or developmentally disabled victim giving the deposition during the deposition.

The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section. If a deposition that is videotaped under this division is admitted as evidence at the proceeding, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the

recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the

proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act.

(E) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (F) of this section. If a juvenile judge

issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a juvenile judge may order the testimony of a mentally retarded or developmentally disabled victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the mentally retarded or developmentally disabled victim to testify despite judicial requests to do so;

(2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying.

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions

(B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

HISTORY: 150 v S 178, § 1, eff. 1-30-04; 152 v S 10, § 1, eff. 1-1-08.

Not analogous to former RC § 2152.811, repealed by 152 v S 10, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

This section was renumbered from RC § 2152.821 by 152 v S 10, effective January 1, 2008.

[JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW]

§ 2152.82 Order at time of dispositional order classifying child as juvenile sex offender registrant.

Effective until 1-1-08.

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if all of the following apply:

(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense that the child committed on or after January 1, 2002.

(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.

(3) The court has determined that the child previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(B) An order required under division (A) of this section shall be issued at the time the judge makes the orders of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct the hearing and make the determinations required by division (B) of section 2950.09 of the Revised Code regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (B) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim oriented offense to determine if the child is to be classified a sexual predator or a child-victim predator, shall make the determinations required by division (E) of section 2950.09 of the Revised Code regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (E) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim oriented offense to determine if the child is to be classified a habitual sex offender or a habitual child-victim offender, and shall otherwise comply with those divisions. When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge shall include in the order any determination that the delinquent child is, or is not, a sexual predator or child-victim predator or is, or is not, a habitual sex offender or habitual child-victim offender that the judge makes pursuant to division (B) or (E) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code and any related information required or authorized under the division under which the determination is made, including, but not limited to, any requirement imposed by the court subjecting a child who is a habitual sex offender or habitual child-victim offender to community notification provisions as described in division (E) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code.

(2) The judge shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted, and the order and any determinations included in the order are subject to modification or termination pursuant to sections 2152.84 and 2152.85 of the Revised Code.

(3) The judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order.

(4) The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A) of this section was made pursuant to this section.

(C) An order issued under division (A) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 or 2152.85 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(D) A court that adjudicates a child a delinquent child for a sexually oriented offense that is a registration-exempt sexually oriented offense shall not issue based on that adjudication an order under this section that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2152.82 Classification of child as juvenile offender registrant; compliance with sex offender registration and notification law; determination of tier classification.

Effective 1-1-08.

(A) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections

2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if all of the following apply:

(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.

(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

(B) An order required under division (A) of this section shall be issued at the time the judge makes the order of disposition for the delinquent child. Prior to issuing the order required by division (A) of this section, the judge shall conduct a hearing under section 2152.831 [2152.83.1] of the Revised Code to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code. When a judge issues an order under division (A) of this section, all of the following apply:

(1) The judge shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted, and the order and any determinations included in the order are subject to modification or termination pursuant to sections 2152.84 and 2152.85 of the Revised Code.

(2) The judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order.

(3) The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A) of this section was made pursuant to this section.

(4) If the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender, if the child is not a public registry-qualified juvenile offender registrant, and if the judge imposes a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code, the judge shall include the requirement in the order.

(5) The court shall include in the order its determination made at the hearing held under section 2151.831 [2151.83.1] of the Revised Code as to whether the delinquent child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C) Except as provided in division (D) of this section, an order issued under division (A) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 or 2152.85 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(D) If a court issues an order under division (A) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to section 2152.86 of the Revised Code if the court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote the section.
S.B. 5, Acts 2003, effective July 31, 2003, rewrote the section.

Cross-References to Related Sections

Children subject to sex offender registration and notification law, RC § 2152.19.1.

Classification as sexual predator, RC § 2950.09.

Commencement of duty to register; duration, RC § 2950.07.

Court control of child following commitment to department, RC § 2152.22.

Duty to register, RC § 2950.04.

Hearing upon completion of disposition on whether to continue classification or determination, RC § 2152.84.

Jurisdiction of juvenile court, RC § 2151.23.

Notice to delinquent child of duty to register and update address, RC § 2950.03.

Petition requesting reclassification or declassification, RC § 2152.85.

Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.

Subsequent orders classifying child as juvenile sex offender registrant, RC § 2152.83.

Ohio Administrative Code

Attorney general's office, bureau of criminal identification and investigation—

Registration of sex offenders; notifications. OAC ch. 109:5-2.

CASE NOTES AND OAG

Generally

Although defendant, a delinquent minor, had not been previously adjudicated a delinquent for a sexually oriented offense, as required by Ohio Rev. Code Ann. § 2152.82(A), such a finding was not required under Ohio Rev. Code Ann. § 2152.83(B), which was relied upon by the trial court in designating defendant as a juvenile sex offender registrant under Ohio Rev. Code Ann. § 2950.01(J); the trial court made the proper determination under § 2152.83(B)(1), finding that defendant had reoffended after prior treatment, and that his prior treatment had proved ineffective. In re J.F.F., 2005 Ohio App. LEXIS 1810, 2005 Ohio 1906, (2005).

[§ 2152.82.1] § 2152.821 Deposition of mentally retarded or developmentally disabled victim; taking of testimony outside room where proceeding is being conducted.

Effective until 1-1-08.

(A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes any of the following persons:

(a) A mentally retarded person or developmentally disabled person who was a victim of a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult;

(b) A mentally retarded person or developmentally disabled person against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult.

(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341 [2903.34.1], 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], or 2907.323 [2907.32.3] of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a mentally retarded person or developmentally disabled person, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the mentally retarded or developmentally disabled victim whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the mentally retarded or developmentally disabled victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child

charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the mentally retarded or developmentally disabled victim whose deposition is to be taken.

If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (C) of this section. If a deposition of a mentally retarded or developmentally disabled victim taken under this division is admitted as evidence at the proceeding under division (C) of this section, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the mentally retarded or developmentally disabled victim be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the mentally retarded or developmentally disabled victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition also shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(1) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the mentally retarded or developmentally disabled victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the mentally

retarded or developmentally disabled victim giving the deposition during the deposition.

The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the deposition shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section. If a deposition that is videotaped under this division is admitted as evidence at the proceeding, the mentally retarded or developmentally disabled victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as

a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally

disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act.

(E) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the mentally retarded or developmentally disabled victim giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor

on which the mentally retarded or developmentally disabled victim can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a juvenile judge may order the testimony of a mentally retarded or developmentally disabled victim to be taken outside of the room in which a proceeding is being conducted if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the mentally retarded or developmentally disabled victim to testify despite judicial requests to do so;

(2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying.

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

HISTORY: 150 v S 178, § 1, eff. 1-30-04.

[§ 2152.82.1] § 2152.821 Renumbered.

Effective 1-1-08.

Renumbered RC § 2152.811 by 152 v S 10. Eff 1-1-08

The effective date is set by § 3 of 152 v S 10.

§ 2152.83 Subsequent orders classifying child as juvenile sex offender registrant.

Effective until 1-1-08.

(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct the hearing and make the determinations required by division (B) of section 2950.09 of the Revised Code regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (B) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim oriented offense to determine if the child is to be classified a sexual predator or a child-victim predator, shall make the determinations required by division (E) of section 2950.09 of the Revised Code regarding a sexually oriented offense that is not a registration-exempt sexually oriented offense or division (E) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim oriented offense to determine if the child is to be classified a habitual sex offender or a habitual child-victim offender, and shall otherwise comply with those divisions. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order all of the determinations and information identified in division (B)(1) of section 2152.82 of the Revised Code that are relevant.

(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility, a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense that is not a registration-exempt sexually oriented offense or is a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the depart-

ment of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and, if the judge conducts a hearing as described in division (C) of this section to determine whether the child is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, include in the order a statement that the judge has determined that the child is, or is not, a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, whichever is applicable.

(C) A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a sexual predator or child-victim predator only if the judge, in accordance with the procedures specified in division (B) of section 2950.09 of the Revised Code regarding sexual predators or division (B) of section 2950.091 [2950.09.1] of the Revised Code regarding child-victim predators, determines at the hearing by clear and convincing evidence that the child is a sexual predator or a child-victim predator. A judge may issue an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender only if the judge at the hearing determines as described in division (E) of section 2950.09 of the Revised Code regarding habitual sex offenders or division (E) of section 2950.091 [2950.09.1] of the Revised Code regarding habitual child-victim offenders that the child is a habitual sex offender or a habitual child-victim offender. If the judge issues an order under division (B) of this section that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender, the judge may impose a requirement subjecting the child to community notification provisions as described in division (E) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, whichever is applicable. If the court conducts a hearing as described in this division to determine whether the child is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, the judge shall comply with division (B) or (E) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, whichever is applicable, in all regards.

(D) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is

based, a hearing will be conducted and the order is subject to modification or termination pursuant to section 2152.84 of the Revised Code.

(E) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant and, if so, whether the child also is a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender, a judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature of the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense committed by the child;

(2) Whether the child has shown any genuine remorse or compunction for the offense;

(3) The public interest and safety;

(4) The factors set forth in division (B)(3) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, whichever is applicable;

(5) The factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(F) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) A court that adjudicates a child a delinquent child for a sexually oriented offense that is a registration-exempt sexually oriented offense shall not issue based on that adjudication an order under this section that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(H) As used in the section, "secure facility" has the same meaning as in section 2950.01 of the Revised Code.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2152.83 Classification at time of disposition or release from secure facility; determination of tier classification.

Effective 1-1-08.

(A)(1) The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if all of the following apply:

(a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a

child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was sixteen or seventeen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

(2) Prior to issuing the order required by division (A)(2) of this section, the judge shall conduct a hearing under section 2152.831 [2152.83.1] of the Revised Code, except as otherwise provided in that section, to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. When a judge issues an order under division (A)(1) of this section, the judge shall include in the order the determinations identified in division (B)(5) of section 2152.82 of the Revised Code.

(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

(b) The child was fourteen or fifteen years of age at the time of committing the offense.

(c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

(2) A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. The judge may conduct the hearing on the judge's own initiative or based upon a recommendation of an officer or employee of the department of youth services, a probation officer, an employee of the court, or a prosecutor or law enforcement officer. If the judge conducts the hearing, upon completion of the hearing, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of this section, shall do either of the following:

(a) Decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(b) Issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and that states the determination that the judge makes at the hearing held pursuant to section 2152.831 [2152.83.1] of the Revised Code as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(C)(1) Prior to issuing an order under division (B)(2)(b) of this section, the judge shall conduct a hearing under section 2152.831 [2152.83.1] of the Revised Code to determine whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. The judge may hold the hearing at the same time as the hearing under division (B) of this section.

(2) If a judge issues an order under division (A) or (B) of this section and the court determines that the delinquent child to whom the order applies is a tier III sex offender/child-victim offender and the child is not a public registry-qualified juvenile offender registrant, the judge may impose a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code. If the judge imposes a requirement subjecting the child to the victim and community notification provisions of sections 2950.10 and 2950.11 of the Revised Code, the judge shall include the requirement in the order.

(3) If a judge issues an order under division (A) or (B) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

The judge also shall include in the order a statement that, upon completion of the disposition of the delinquent child that was made for the sexually oriented offense or child-victim oriented offense upon which the order is based, a hearing will be conducted and the order is subject to modification or termination pursuant to section 2152.84 of the Revised Code.

(D) In making a decision under division (B) of this section as to whether a delinquent child should be classified a juvenile offender registrant, a judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;

(2) Whether the child has shown any genuine remorse or compunction for the offense;

(3) The public interest and safety;

(4) The factors set forth in division (K) of section 2950.11 of the Revised Code, provided that references in the factors as set forth in that division to "the offender" shall be construed for purposes of this division to be references to "the delinquent child;"

(5) The factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code as those factors apply regarding the delinquent child, the offense, and the victim;

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

(E) An order issued under division (A) or (B) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.84 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. The child's attainment of eighteen or twenty-one years of age does not affect or terminate the

order, and the order remains in effect for the period of time described in this division.

(F) If a court issues an order under division (A) or (B) of this section before January 1, 2008, not later than February 1, 2008, the court shall terminate the order and issue a new order that reclassifies the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to section 2152.86 of the Revised Code if the court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code and if the act that was the basis of the classification of the delinquent child as a juvenile offender registrant and is the basis of the serious youthful offender dispositional sentence is any of the following:

(1) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(2) Committing, attempting to commit, conspiring to commit, or complicity in committing a violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child.

(G) As used in this section, "secure facility" has the same meaning as in section 2950.01 of the Revised Code.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote the section.

S.B. 5, Acts 2003, effective July 31, 2003, rewrote the section.

Cross-References to Related Sections

Children subject to sex offender registration and notification law, RC § 2152.19.1.

Classification as sexual predator, RC § 2950.09.

Commencement of duty to register; duration, RC § 2950.07.

Court control of child following commitment to department, RC § 2152.22.

Duty to register, RC § 2950.04.

Hearing upon completion of disposition on whether to continue classification or determination, RC § 2152.84.

Jurisdiction of juvenile court, RC § 2151.23.

Notice to delinquent child of duty to register and update address, RC § 2950.03.

Notice to victim of offender's or delinquent child's registration or change of information, RC § 2950.10.

Persons to be notified within geographical area, RC § 2950.11.

Petition requesting reclassification or declassification, RC § 2152.85.

Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.

Ohio Administrative Code

Attorney general's office, bureau of criminal identification and investigation—

Registration of sex offenders; notifications. OAC ch. 109:5-2.

CASE NOTES AND OAC

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Constitutionality

RC Chapter 2950 is constitutional as applied to minors: In re Goodman, 161 Ohio App. 3d 192, 829 N.E.2d 1219, 2005 Ohio 2364, (2005).

Generally

Although defendant, a delinquent minor, had not been previously adjudicated a delinquent for a sexually oriented offense, as required by RC § 2152.82(A), such a finding was not required under RC § 2152.83(B), which was relied upon by the trial court in designating defendant as a juvenile sex offender registrant under RC § 2950.01(J); the trial court made the proper determination under § 2152.83(B)(1), finding that defendant had reoffended after prior treatment, and that his prior treatment had proved ineffective. In re J.F.F., 2005 Ohio App. LEXIS 1810, 2005 Ohio 1906, (2005).

Jurisdiction

Trial court erred in classifying a juvenile sex offender subject to registration pursuant to RC § 2152.83(B)(1) where such classification occurred 13 months after he was released from the Department of Youth Services, as the trial court no longer had jurisdiction to make such a classification; pursuant to the clear language of § 2152.83(B)(1), the trial court had jurisdiction to impose such a classification either at the juvenile's delinquency disposition or upon his release from a secure facility. In re McAllister, 2006 Ohio App. LEXIS 5543, 2006 Ohio 5554, (2006).

Pre-treatment classification

Trial court did not err when it classified defendant, a juvenile, a sexual predator and a juvenile offender registrant prior to his treatment in a secure facility because, pursuant to RC § 2152.83(B)(1), the trial court had discretion regarding when to make a sexual predator determination with respect to a juvenile; further, the language in RC § 2152.84(A)(1) implied that the trial court had the discretion to classify a juvenile offender registrant pre-treatment and could revisit its decision upon the completion of treatment. In re Callahan, 2005 Ohio App. LEXIS 730, 2005 Ohio 735, (2005).

[§ 2152.83.1] § 2152.831 Hearing to determine tier classification; order; reclassification.

Effective 1-1-08.

(A) If, on or after January 1, 2008, a juvenile court adjudicates a child a delinquent child and classifies the child a juvenile offender registrant pursuant to section 2152.82 or 2152.83 of the Revised Code, before issuing the order that classifies the child a juvenile offender registrant the court shall conduct a hearing to determine whether to classify the child a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(B) When a judge issues an order under section 2152.82 or 2152.83 of the Revised Code that classifies a delinquent child a juvenile offender registrant, in addition to the other statements and information required by the section under which the order is issued, the judge shall include in the order its determination made under division (A) of this section as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender. When a judge issues an order under section 2152.84 or 2152.85 of the Revised Code that reclassifies a delinquent child from one tier of sex offender/child-victim offender to a different tier of sex offender/child-victim offender, in addition to the other statements and information required by the section under which the order is issued, the judge shall include in the

order its determination as to the reclassification of the child and the tier to which the child is reclassified.

(C) The provisions of this section do not apply to a delinquent child if the court is required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to section 2152.86 of the Revised Code.

HISTORY: 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2152.84 Hearing upon completion of disposition on whether to continue classification or determination.

Effective until 1-1-08.

(A)(1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, upon completion of the disposition of that child made for the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, and to determine whether the prior classification of the child as a juvenile offender registrant and, if applicable, as a sexual predator or child-victim predator or as a habitual sex offender or habitual child-victim offender should be continued, modified, or terminated as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of the factors listed in division (E) of section 2152.83 of the Revised Code, shall do one of the following, as applicable:

(a) Enter an order that continues the classification of the delinquent child made in the prior order issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code, and any sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender determination included in the order;

(b) If the prior order was issued under section 2152.82 or division (A) of section 2152.83 of the Revised Code and includes a determination by the judge that the delinquent child is a sexual predator or child-victim predator, enter, as applicable, an order that contains a determination that the child no longer is a sexual predator, the reason or reasons for that determination, and either a determination that the child is a habitual sex offender or a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender, or an order that contains a determination that the child no longer is a child-victim predator, the reason or reasons for that determination, and either a determination that the child is a habitual child-victim offender or a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender;

(c) If the prior order was issued under section 2152.82 or division (A) of section 2152.83 of the Revised Code and does not include a sexual predator or child-victim predator determination as described in division (A)(2)(b) of this section but includes a determination by the judge that the delinquent child is a habitual sex offender or a habitual child-victim offender, enter, as applicable, an order that contains a determination that the child no longer is a habitual sex offender and a determination that the child remains a juvenile sex offender registrant but is not a habitual offender, or an order that contains a determination that the child no longer is a habitual child-victim offender and a determination that the child remains a juvenile offender registrant but is not a habitual child-victim offender;

(d) If the prior order was issued under division (B) of section 2152.83 of the Revised Code and includes a determination by the judge that the delinquent child is a sexual predator or child-victim predator, enter, as applicable, an order that contains a determination that the child no longer is a sexual predator, the reason or reasons for that determination, and either a determination that the child is a habitual sex offender, a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender, or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, or an order that contains a determination that the child no longer is a child-victim predator, the reason or reasons for that determination, and either a determination that the child is a habitual child-victim offender, a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender, or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(e) If the prior order was issued under division (B) of section 2152.83 of the Revised Code and does not include a sexual predator or child-victim predator determination as described in division (A)(2)(d) of this section but includes a determination by the judge that the delinquent child is a habitual sex offender or habitual child-victim offender, enter, as applicable, an order that contains a determination that the child no longer is a habitual sex offender and either a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, or an order that contains a determination that the child no longer is a habitual child-victim offender and either a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(f) If the prior order was issued under division (B) of section 2152.83 of the Revised Code and does not include a sexual predator or child-victim predator determination or a habitual sex offender or habitual child-victim offender determination as described in divisions (A)(2)(d) and (e) of this section, enter, as applicable, an order that contains a determination that the delinquent child no

longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, or an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B) If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and any sexual predator or habitual sex offender determination included in the order, or that continues the prior classification of the delinquent child as a juvenile offender registrant and any child-victim predator or habitual child-victim offender determination included in the order, the prior classification and the prior determination, if applicable, shall remain in effect.

A judge may issue an order under division (A)(2) of this section that contains a determination that a child no longer is a sexual predator or no longer is a child-victim predator only if the judge, in accordance with the procedures specified in division (D)(1) of section 2950.09 of the Revised Code regarding a sexual predator, determines at the hearing by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future, or the judge, in accordance with the procedures specified in division (D)(1) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim predator, determines at the hearing by clear and convincing evidence that the delinquent child is unlikely to commit a child-victim oriented offense in the future. If the judge issues an order of that type, the judge shall provide the notifications described in division (D)(1) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, whichever is applicable, and the recipient of the notification shall comply with the provisions of that division.

If a judge issues an order under division (A)(2) of this section that otherwise reclassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code of the reclassification.

(C) If a judge issues an order under any provision of division (A)(2) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(D) In making a decision under division (A) of this section, a judge shall consider all relevant factors, including, but not limited to, the factors listed in division (E) of section 2152.83 of the Revised Code.

(E) An order issued under division (A)(2) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.85 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A)(2) of this section, the child's attainment of eighteen or

twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2152.84 Hearing upon completion of disposition on whether to continue classification or determination; reclassification.

Effective 1-1-08.

(A)(1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, upon completion of the disposition of that child made for the sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated as provided under division (A)(2) of this section, and to determine whether its prior determination made at the hearing held pursuant to section 2152.831 [2152.83.1] of the Revised Code as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender should be continued or modified as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of all relevant factors, including but not limited to, the factors listed in division (D) of section 2152.83 of the Revised Code, shall do one of the following as applicable:

(a) Enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable;

(b) If the prior order was issued under division (B) of section 2152.83 of the Revised Code, enter an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. An order issued under division (A)(2)(b) of this section also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. Division (A)(2)(b) of this section does not apply to a prior order issued under section 2152.82 or division (A) of section 2152.83 of the Revised Code.

(c) If the prior order was issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised

Code, enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of section 2152.83 of the Revised Code, and that modifies the prior determination made at the hearing held pursuant to section 2152.831 [2152.83.1] of the Revised Code that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. An order issued under division (A)(2)(c) of this section shall not include a determination that increases to a higher tier the tier classification of the delinquent child. An order issued under division (A)(2)(c) of this section shall specify the new determination made by the court at a hearing held pursuant to division (A)(1) of this section as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable.

(B)(1) If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, the prior classification and the prior determination shall remain in effect.

(2) A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification. A judge may not issue an order under that division that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier III sex offender/child-victim offender classification.

A judge may not issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier I sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier III sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code of the determination and reclassification.

(3) If a judge issues an order under division (A)(2)(b) of this section that declassifies the delinquent child as a juvenile offender registrant, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code of the declassification.

(C) If a judge issues an order under division (A)(2)(a), (b), or (c) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(D) An order issued under division (A)(2)(a) or (c) of this section and any determinations included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination of the order under section 2152.85 of the Revised Code, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. If an order is issued under division (A)(2)(a) or (c) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(E) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to section 2152.86 of the Revised Code.

HISTORY: 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote the section.

S.B. 5, Acts 2003, effective July 31, 2003, rewrote the section.

Cross-References to Related Sections

Children subject to sex offender registration and notification law, RC § 2152.19.1.

Classification as sexual predator, RC § 2950.09.

Commencement of duty to register; duration, RC § 2950.07.

Court control of child following commitment to department, RC § 2152.22.

Duty to register, RC § 2950.04.

Jurisdiction of juvenile court, RC § 2151.23.

Notice to victim of offender's or delinquent child's registration or change of information, RC § 2950.10.

Order at time of dispositional order classifying child as juvenile sex offender registrant, RC § 2152.82.

Periodic verification of current address, RC § 2950.06.

Persons to be notified within geographical area, RC § 2950.11.

Petition requesting reclassification or declassification, RC § 2152.85.

Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.

Subsequent orders classifying child as juvenile sex offender registrant, RC § 2152.83.

CASE NOTES AND OAG

Discretion of court

Trial court did not err when it classified defendant, a juvenile, a sexual predator and a juvenile offender registrant prior to his treatment in a secure facility because, pursuant to RC § 2152.83(B)(1), the trial court had discretion regarding when to make a sexual predator determination with respect to a juvenile; further, the language in RC § 2152.84(A)(1) implied that the trial court had the discretion to classify a juvenile offender registrant pre-treatment and could revisit its decision upon the completion of treatment. In re Callahan, 2005 Ohio App. LEXIS 730, 2005 Ohio 735, (2005).

§ 2152.85 Petition requesting reclassification or declassification.

Effective until 1-1-08.

(A) Upon the expiration of the applicable period of time specified in division (B)(1) or (2) of this section, a delinquent child who has been classified pursuant to this section or section 2152.82 or 2152.83 of the Revised Code a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a sexual predator or child-victim predator in the manner described in section 2152.82 or 2152.83 of the Revised Code and that determination remains in effect, to enter, as applicable, an order that contains a determination that the child no longer is a sexual predator, the reason or reasons for that determination, and either a determination that the child is a habitual sex offender or a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender, or an order that contains a determination that the child no longer is a child-victim predator, the reason or reasons for that determination, and either a determination that the child is a habitual child-victim offender or a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender;

(2) If the order containing the juvenile offender registrant classification under section 2152.82 or 2152.83 of the Revised Code or under division (C)(2) of this section pursuant to a petition filed under division (A) of this section does not include a sexual predator or child-victim predator determination as described in division (A)(1) of this section but includes a determination by the juvenile court judge that the delinquent child is a habitual sex offender or a habitual child-victim offender in the manner described in section 2152.82 or 2152.83 of the Revised Code, or in this section, and that determination remains in effect, to enter, as applicable, an order that contains a determination that the child no longer is a habitual sex offender and either a determination that the child remains a juvenile offender registrant or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, or an order that contains a determination that the child no longer is a habitual child-victim offender and either a determination that the child remains a juvenile offender registrant or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(3) If the order containing the juvenile offender registrant classification under section 2152.82 or 2152.83 of the Revised Code or under division (C)(2) of this section pursuant to a petition filed under division (A) of this section does not include a sexual predator or child-victim predator determination or a habitual sex offender or habitual child-victim offender determination as described in division (A)(1) or (2) of this section, to enter, as applicable, an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04,

2950.05, and 2950.06 of the Revised Code, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified a juvenile offender registrant relative to that offense or who has been adjudicated a delinquent child for committing on or after that date a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under section 2152.84 of the Revised Code.

(2) After the delinquent child's initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.

(3) After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

(C) Upon the filing of a petition under divisions (A) and (B) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (E) of section 2152.83 of the Revised Code, the judge, in the judge's discretion, shall do one of the following:

(1) Enter an order denying the petition;

(2) Issue an order that reclassifies or declassifies the delinquent child, in the requested manner specified in division (A)(1), (2), or (3) of this section.

(D) If a judge issues an order under division (C) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination that the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, if applicable, shall remain in effect.

A judge may issue an order under division (C) of this section that contains a determination that a child no longer is a sexual predator or no longer is a child-victim predator only if the judge conducts a hearing and, in accordance with the procedures specified in division (D)(1) of section 2950.09 of the Revised Code regarding a sexual predator, determines at the hearing by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future, or, in accordance with the procedures specified in division (D)(1) of section 2950.091 [2950.09.1] of the Revised Code regarding a child-victim predator, determines at the hearing by clear and convincing evidence that the delinquent child is unlikely to commit a child-victim oriented offense in the future. If the judge issues an order of that type, the judge shall provide the notifications described in

division (D)(1) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, whichever is applicable, and the recipient of the notification shall comply with the provisions of that division.

A judge may issue an order under division (C) of this section that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender only if the judge conducts a hearing and determines at the hearing as described in division (E) of section 2950.09 of the Revised Code regarding habitual sex offenders or division (E) of section 2950.091 [2950.09.1] of the Revised Code regarding habitual child-victim offenders that the child is a habitual sex offender or a habitual child-victim offender. If the judge issues an order that contains a determination that a delinquent child is a habitual sex offender or a habitual child-victim offender, the judge may impose a requirement subjecting the child to community notification provisions as described in that division.

(E) If a judge issues an order under division (C) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a further modification or a termination of the order under this section, and section 2152.851 [2152.85.1] of the Revised Code applies regarding the order and the determinations. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

HISTORY: 149 v S 3, EFF 1-1-2002; 150 v S 5, § 1, EFF. 7-31-03.

§ 2152.85 Petition requesting reclassification or declassification.

Effective 1-1-08.

(A) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified in division (B)(1), (2), or (3) of this section, a delinquent child who has been classified pursuant to this section or section 2152.82 or 2152.83 of the Revised Code a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier III sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as either a tier II sex offender/child-victim offender or a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no

longer has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(2) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier II sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(3) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under section 2152.84 of the Revised Code.

(2) After the delinquent child's initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.

(3) After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

(C) Upon the filing of a petition under division (A) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (D) of section 2152.83 of the Revised Code, the judge, in the judge's discretion, shall do one of the following:

(1) Enter an order denying the petition;

(2) Issue an order that reclassifies or declassifies the delinquent child in the requested manner.

(D) If a judge issues an order under division (C)(1) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, shall remain in effect.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier I sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code of the determination and reclassification.

If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the order also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of a copy of the order, promptly shall notify the sheriff with whom the child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code of the declassification.

(E) If a judge issues an order under division (C)(1) or (2) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of section 2950.03 of the Revised Code. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to section 2152.86 of the Revised Code.

HISTORY: 149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of SB 3 (149 v —) read as follows:

SECTION 3. Sections 1 and 2 of this act shall take effect on January 1, 2002, or the earliest date permitted by law, whichever is later.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote the section.

S.B. 5, Acts 2003, effective July 31, 2003, rewrote the section.

Cross-References to Related Sections

Children subject to sex offender registration and notification law, RC § 2152.19.1.

Classification as sexual predator, RC § 2950.09.

Commencement of duty to register; duration, RC § 2950.07.

Court control of child following commitment to department, RC § 2152.22.

Duty to register, RC § 2950.04.

Hearing upon completion of disposition on whether to continue classification or determination, RC § 2152.84.

Jurisdiction of juvenile court, RC § 2151.23.

Notice to victim of offender's or delinquent child's registration or change of information, RC § 2950.10.

Order at time of dispositional order classifying child as juvenile sex offender registrant, RC § 2152.82.

Periodic verification of current address, RC § 2950.06.

Persons to be notified within geographical area, RC § 2950.11.

Sexual predators, habitual sex offenders, sexually oriented offenders, definitions, RC § 2950.01.

Ohio Administrative Code

Attorney general's office, bureau of criminal identification and investigation—

Registration of sex offenders; notifications. OAC ch. 109:5-2.

[§ 2152.85.1] § 2152.851 Redesignation of offense as child-victim oriented offense.

Effective until 1-1-08.

(A) If, prior to the effective date of this section, a judge issues an order under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that classifies a delinquent child a juvenile offender registrant and if, on and after the effective date of this section, the sexually oriented offense upon which the order was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of the offense, the order shall remain in effect for the period described in the section under which it was issued, the order shall be considered for all purposes to be an order that classifies the child a juvenile offender registrant, division (A)(2)(b) of section 2950.041 [2950.04.1] of the Revised Code applies regarding the child, and the duty to register imposed pursuant to that division shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the child prior to the effective date of this section under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

(B) If an order of the type described in division (A) of this section included a classification or determination that the delinquent child was a sexual predator or habitual sex offender, notwithstanding the redesignation of the offense upon which the determination was based, all of the following apply:

(1) Divisions (A)(1) and (2) or (E)(1) and (2) of section 2950.091 [2950.09.1] of the Revised Code apply regarding the child and the judge's order made prior to the effective date of this section shall be considered for all purposes to be an order that classifies the child as described in those divisions;

(2) The child's classification or determination under divisions (A)(1) and (2) or (E)(1) and (2) of section 2950.091 [2950.09.1] of the Revised Code shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of

classification or determination made prior to the effective date of this section;

(3) The child's duties under Chapter 2950. of the Revised Code relative to that classification or determination shall be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to the effective date of this section.

HISTORY: 150 v S 5, § 1, eff. 7-31-03.

[§ 2152.85.1] § 2152.851 Continuation of duty imposed on child prior to 1-1-08.

Effective 1-1-08.

If, prior to January 1, 2008, a judge issues an order under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that classifies a delinquent child a juvenile offender registrant based on an adjudication for a sexually oriented offense or a child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, and if, on and after January 1, 2008, the offense upon which the order was based is a sexually oriented offense or a child-victim oriented offense as those terms are defined in section 2950.01 of the Revised Code on and after January 1, 2008, notwithstanding the changes to sections 2152.82, 2152.83, 2152.84, and 2152.85 of the Revised Code made on January 1, 2008, on and after that date, the order shall remain in effect for the period described in the section under which it was issued as that section exists on and after January 1, 2008, subject to subsequent modification or termination under section 2152.84, 2152.85, or 2950.15 of the Revised Code, or, if division (A)(3) of section 2152.86 of the Revised Code applies regarding the child, for the period described in division (C) of that section subject to modification or termination under section 2152.84, 2152.85, or 2950.15 of the Revised Code, whichever is applicable, and the duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code on and after January 1, 2008, shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

HISTORY: 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Effect of Amendments

152 v S 10, effective January 1, 2008, rewrote the section.

§ 2152.86 Court's duty on or after January 1, 2008 to classify child as juvenile offender registrant, specify compliance with SORN law, and additionally classify child as public registry-qualified juvenile offender registrant; reclassification.

Effective 1-1-08.

(A)(1) The court that, on or after January 1, 2008, adjudicates a child a delinquent child for committing an act shall issue as part of the dispositional order an order

that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if the child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code, and the child is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing any of the following acts:

(a) A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(b) A violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The child was adjudicated a delinquent child, and a juvenile court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing one of the acts described in division (A)(1)(a) or (b) of this section.

(b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(c) The court did not issue an order classifying the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to division (A)(1) of this section.

(3) If a court issued an order classifying a child a juvenile offender registrant pursuant to section 2152.82 or 2152.83 of the Revised Code prior to January 1, 2008, not later than February 1, 2008, the court shall issue a new order that reclassifies the child as a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:

(a) The sexually oriented offense that was the basis of the previous order that classified the child a juvenile offender registrant was an act described in division (A)(1)(a) or (b) of this section.

(b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(c) The court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for the act described in division (A)(1)(a) or (b) of this section.

(B)(1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to division (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act

described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. Section 2152.831 [2152.83.1] of the Revised Code does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.

(2) The judge that issues an order under division (A)(1), (2), or (3) of this section shall provide to the delinquent child who is the subject of the order and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order required under division (A)(1), (2), or (3) of this section. The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A)(1), (2), or (3) of this section was made pursuant to this section.

(C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in section 2950.15 of the Revised Code, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division. If an order is issued under division (A)(3) of this section, the duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code based upon that order shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

(D)(1) If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court's classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexu-

ally oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, the Rules of Juvenile Procedure apply except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing and shall provide notice to the delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on and after January 1, 2008. If a delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the issue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and that it has terminated the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

(2) An order issued under division (D)(1) of this section is independent of any order of a type described in division (F) of section 2950.031 [2950.03.1] of the Revised Code or division (E) of section 2950.032 [2950.03.2] of the Revised Code, and the court may issue an order under both division (D)(1) of this section and an order of a type described in division (F) of section 2950.031 [2950.03.1] of the Revised Code or division (E) of section 2950.032 [2950.03.2] of the Revised Code. A court that conducts a hearing under division (D)(1) of this section may consolidate that hearing with a hearing conducted for the same delinquent child under division (F) of section 2950.031 [2950.03.1] of the Revised Code or division (E) of section 2950.032 [2950.03.2] of the Revised Code.

HISTORY: 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2152.99 Penalty for failing to provide information to foster caregiver.

Whoever violates division (C) of section 2152.72 of the Revised Code is guilty of a minor misdemeanor.

HISTORY: 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Penalty for misdemeanor, RC § 2929.21.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care: information to be provided to caregivers; failure to provide. OAC 5101:2-42-90.

CHAPTER 2153: CUYAHOGA COUNTY JUVENILE COURT

Section

- 2153.01 Juvenile court division established.
- 2153.02 Judges; qualifications.
- 2153.03 Election of judges; terms of office; administrative judge.
- 2153.04 Repealed.
- 2153.05 Substitute judge; vacancies.
- 2153.06 Removal from office.
- 2153.07 Accommodations for court.
- 2153.08 Administrative judge to be clerk of court; may appoint deputies and clerks; bonds.
- [2153.08.1] 2153.081 Additional fees to pay for computerizing court or office of clerk or for computerized legal research services.
- 2153.09 Compensation of employees.
- 2153.10 Bond of clerk; amount.
- 2153.11 Bailiffs; compensation.
- 2153.12 Calendar of court; term.
- 2153.13 Contempt proceedings.
- 2153.14 Seal of court; form.
- 2153.15 May vacate and modify judgments.
- 2153.16 Jurisdiction of court.
- 2153.17 Laws now in force to apply.

§ 2153.01 Juvenile court division established.

There is hereby established within the court of common pleas of Cuyahoga county a juvenile division, which shall be styled "the court of common pleas, juvenile court division," referred to in sections 2153.02 to 2153.17 of the Revised Code, as "the juvenile court."

HISTORY: 134 v H 574. Eff 6-29-72.

Analogous to former RC § 2153.01 (GC § 1683-12; 114 v 45; Bureau of Code Revision, 10-1-53) repealed 134 v H 574, § 2, eff 6-29-72.

Cross-References to Related Sections

Guardians, definitions, RC § 2111.01.
Jurisdiction of court, RC § 2153.16.
Juvenile court defined, RC § 2151.01.1.
Powers of juvenile court, RC § 2153.15.

Ohio Constitution

Common pleas court, juvenile division, OConst art IV, § 4.

CASE NOTES AND OAG

Authority of court

The authority of the juvenile court to expend public funds to publish and distribute pamphlets under GC §§ 1683-12 to

1683-31 (RC § 2153.01 et seq) and 1639-1 to 1639-61 (RC § 2151.01 et seq) discussed: 1944 OAG No. 6877 (1944).

§ 2153.02 Judges; qualifications.

The juvenile court shall consist of six judges, each of whom, at the time of his election or appointment, shall be a qualified elector and resident of Cuyahoga county and shall have been admitted to practice as an attorney at law in this state for a period of at least six years immediately preceding his appointment or commencement of his term. They shall be elected and designated as judges of the court of common pleas, juvenile court division, and shall exercise the same powers and jurisdiction and receive the same compensation as other judges of the court of common pleas.

HISTORY: GC § 1683-13; 114 v 45, § 2; 121 v 290; Bureau of Code Revision, 10-1-53; 127 v 482 (Eff 9-14-57); 134 v H 574 (Eff 6-29-72); 136 v H 468 (Eff 2-20-76); 140 v H 113. Eff 1-8-85.

Cross-References to Related Sections

Jurisdiction of court, RC § 2153.16.
Powers of juvenile court, RC § 2153.15.

§ 2153.03 Election of judges; terms of office; administrative judge.

Each of the judges of the juvenile court division shall be elected for six years at the general election immediately preceding the year in which the term, as provided in this section, commences, and the judge's successor shall be elected at the general election immediately preceding the expiration of such term.

Each judge shall be elected by the electors of Cuyahoga county in the same manner as is provided for the election of judges of the court of common pleas. The terms of office of the judges of the juvenile court shall begin as follows: January 1, 1959, January 2, 1959, January 1, 1963, January 2, 1963, January 3, 1977, and January 3, 1987. Each of the judges of the juvenile court shall have the same judicial duties.

In addition to the judge's regular judicial duties, one of the judges shall be the administrator of the juvenile court's subdivisions and departments.

The administrative judge shall be elected in the manner provided by rule 3 of the rules adopted by the supreme court of Ohio for the superintendence of the common pleas court. During any absence from the court by the administrative judge, the administrative judge may designate one of the other judges to serve in the administrative judge's place and stead as the clerk of the court and as the administrator of the court's subdivisions and departments.

HISTORY: GC § 1683-14; 114 v 45, § 3; 121 v 290; Bureau of Code Revision, 10-1-53; 127 v 482 (Eff 9-14-57); 134 v H 574 (Eff 6-29-72); 136 v H 468 (Eff 2-20-76); 140 v H 113 (Eff 1-8-85); 146 v H 99. Eff 8-22-95.

CASE NOTES AND OAG

Employees of detention facility

The administrative judge of the juvenile division has the authority to terminate at will the employment of employees of a juvenile detention center: Abbott v. Stepanik, 64 Ohio App. 3d 719, 582 N.E.2d 1082 (1990).

§ 2153.04 Repealed, 134 v H 574, § 2 [GC § 1683-15; 114 v 45; 121 v 290; Bureau of Code Revision, 10-1-53]. Eff 6-29-72.

This section concerned salaries of judges.

§ 2153.05 Substitute judge; vacancies.

In case of the temporary absence or disability of a juvenile judge, or when the volume of cases pending in the juvenile court necessitates the assistance of an additional judge, and upon the request of a juvenile judge, the presiding judge of the court of common pleas of Cuyahoga county shall designate a judge of the court of common pleas of Cuyahoga county to act as juvenile judge during the absence or disability. If no judge of the court of common pleas is available for that purpose, the chief justice of the supreme court shall designate a juvenile judge, a probate judge, or a judge of the court of common pleas from another county to act as judge. Such judge shall receive the compensation for his services and expenses that is provided by section 141.07 of the Revised Code for judges of the courts of common pleas designated by the chief justice to hold court outside their respective counties.

Vacancies occurring in the office of the juvenile judge of Cuyahoga county shall be filled in the manner prescribed for the filling of vacancies in the office of the judges of the courts of common pleas.

HISTORY: GC § 1683-16; 114 v 45, § 5; 121 v 290; Bureau of Code Revision, 10-1-53; 146 v H 151. Eff 12-4-95.

Cross-References to Related Sections

Jurisdiction of court, RC § 2153.16.

Powers of juvenile court, RC § 2153.15.

§ 2153.06 Removal from office.

A juvenile judge is subject to the same disabilities and may be removed from office for the same causes and in the same manner as a judge of the court of common pleas.

HISTORY: GC § 1683-17; 114 v 45, § 6; Bureau of Code Revision. Eff 10-1-53.

§ 2153.07 Accommodations for court.

The board of county commissioners of Cuyahoga county shall provide suitable accommodations, facilities, and equipment for the juvenile court, its officers, and employees. The expense of maintaining and operating the court shall be paid out of the treasury of Cuyahoga county.

HISTORY: GC § 1683-18; 114 v 45, § 7; Bureau of Code Revision. Eff 10-1-53.

§ 2153.08 Administrative judge to be clerk of court; may appoint deputies and clerks; bonds.

The administrative juvenile judge shall have the care and custody of the files, papers, books, records, and moneys pertaining to the juvenile court, and shall be the clerk of said court, with all the powers and duties of a clerk of the court of common pleas in connection with the business of said juvenile court. He may appoint and employ such deputies, clerks, stenographers, and other assistants and attaches as are reasonably necessary in connection with the work of said court, and shall file with the county auditor certificates of such appointments. Any such appointee may be dismissed by the administrative judge. Each appointee shall qualify by taking the oath of office required by the clerk of the court of common pleas

under sections 3.22 and 3.23 of the Revised Code. When so qualified, each deputy clerk may perform the duties of the clerk and shall have the same powers as a deputy clerk of the court of common pleas in matters of which the court of common pleas now has concurrent jurisdiction by virtue of section 2151.07 of the Revised Code. The administrative judge may require any of his appointees to give bond in the sum of not less than one thousand dollars, conditioned for the honest and faithful performance of his duties. The approval of the sureties, the terms, the filing, and the beneficiaries of such bonds shall be the same as in the case of the bond of the clerk under section 2153.10 of the Revised Code. The clerk shall not be personally liable for the default, misfeasance, or nonfeasance of any appointee from whom a bond has been required, approved, and filed as provided in this section.

HISTORY: GC § 1683-20; 114 v 45, § 9; Bureau of Code Revision, 10-1-53; 134 v H 574. Eff 6-29-72.

Cross-References to Related Sections

Powers of juvenile court, RC § 2153.15.

CASE NOTES AND OAC

Employees

An administrative judge of the juvenile division of a court of common pleas is not authorized to enter into an employment agreement with employees of the court: *Malone v. Court of Common Pleas*, 45 Ohio St. 2d 245, 74 Ohio Op. 2d 413, 344 N.E.2d 126 (1976).

[§ 2153.08.1] § 2153.081 Additional fees to pay for computerizing court or office of clerk or for computerized legal research services.

(A)(1) The juvenile judges may determine that, for the efficient operation of their court, additional funds are required to computerize the court, to make available computerized legal research services, or both. Upon making a determination that additional funds are required for either or both of those purposes, the judges shall authorize and direct the clerk or a deputy clerk of the court to charge one additional fee not to exceed three dollars on the filing of each cause of action or appeal under division (A), (Q), or (U) of section 2303.20 of the Revised Code.

(2) All moneys collected under division (A)(1) of this section shall be paid to the county treasurer. The treasurer shall place the moneys from the fees in a separate fund to be disbursed, upon an order of the juvenile judges, in an amount no greater than the actual cost to the court of procuring and maintaining computer systems for the clerk's office, computerized legal research services, or both.

(3) If the court determines that the funds in the fund described in division (A)(2) of this section are more than sufficient to satisfy the purpose for which the additional fee described in division (A)(1) of this section was imposed, the court may declare a surplus in the fund and expend those surplus funds for other appropriate technological expenses of the court.

(B)(1) The juvenile judges may determine that, for the efficient operation of their court, additional funds are required to computerize the office of the clerk of the juvenile court and, upon that determination, may authorize and direct the clerk or a deputy clerk of the court to charge an additional fee, not to exceed ten dollars, on the

filing of each cause of action or appeal, on the filing, docketing, and endorsing of each certificate of judgment, or on the docketing and indexing of each aid in execution or petition to vacate, revive, or modify a judgment under divisions (A), (P), (Q), (T), and (U) of section 2303.20 of the Revised Code. Subject to division (B)(2) of this section, all moneys collected under this division shall be paid to the county treasurer to be disbursed, upon an order of the juvenile judges and subject to appropriation by the board of county commissioners, in an amount no greater than the actual cost to the juvenile court of procuring and maintaining computer systems for the clerk's office.

(2) If the juvenile judges make the determination described in division (B)(1) of this section, the board of county commissioners may issue one or more general obligation bonds for the purpose of procuring and maintaining the computer systems for the office of the clerk of the juvenile court. In addition to the purposes stated in division (B)(1) of this section for which the moneys collected under that division may be expended, the moneys additionally may be expended to pay debt charges on and financing costs related to any general obligation bonds issued pursuant to this division as they become due. General obligation bonds issued pursuant to this division are Chapter 133. securities.

HISTORY: 144 v H 405 (Eff 1-1-93); 144 v S 246. Eff 3-24-93.

§ 2153.09 Compensation of employees.

The compensation of the employees of the juvenile court shall be fixed by the administrative juvenile judge, which compensation shall not exceed in the aggregate the amount fixed by the board of county commissioners for such purpose. Such compensation so fixed shall be paid from the county treasury in semimonthly installments on the warrant of the county auditor.

HISTORY: GC § 1683-21; 114 v 45, § 10; Bureau of Code Revision, 10-1-53; 134 v H 574. Eff 6-29-72.

§ 2153.10 Bond of clerk; amount.

Before entering upon the duties of his office, the administrative juvenile judge, as judge and clerk of the juvenile court, and each judge shall execute and file with the county treasurer of Cuyahoga county a bond in the sum of not less than five thousand dollars, to be determined by the board of county commissioners of Cuyahoga county, with sufficient surety, to be approved by said board, conditioned for the faithful performance of such duties as clerk. Said bond shall be given for the benefit of Cuyahoga county, the state, and any person who may suffer loss by reason of a default in any of the conditions of said bond.

HISTORY: GC § 1683-22; 114 v 45, § 11; Bureau of Code Revision, 10-1-53; 134 v H 574. Eff 6-29-72.

Cross-References to Related Sections

Administrative juvenile judge to be clerk of court, RC § 2153.08.

§ 2153.11 Bailiffs; compensation.

The administrative juvenile judge may appoint one or more bailiffs to preserve order and perform such other duties as such judge requires, as provided for constables in section 2701.07 of the Revised Code. The compensa-

tion of any such appointee shall be fixed and paid on the same basis as provided by section 2701.08 of the Revised Code for the compensation of constables in the court of common pleas of Cuyahoga county.

HISTORY: GC § 1683-23; 114 v 45, § 12; Bureau of Code Revision, 10-1-53; 134 v H 574. Eff 6-29-72.

§ 2153.12 Calendar of court; term.

The calendar of the juvenile court shall be divided into four terms of three months each commencing on the first day of January, April, July, and October of each year. All actions and other business of the court pending at the expiration of any term of court shall be continued to the following term of court without any special or general entry or order to that effect. The juvenile judges may adjourn the court from day to day or to any other day in the same term whenever, in their opinion, the business of the court permits.

HISTORY: GC § 1683-24; 114 v 45, § 13; Bureau of Code Revision, Eff 10-1-53.

§ 2153.13 Contempt proceedings.

The juvenile court has the same jurisdiction in contempt of court proceedings provided for the court of common pleas and for other courts of record.

HISTORY: GC § 1683-25; 114 v 45, § 14; Bureau of Code Revision, Eff 10-1-53.

Cross-References to Related Sections

Jurisdiction of court, RC § 2153.16.

Powers of juvenile court, RC § 2153.15.

§ 2153.14 Seal of court; form.

The juvenile court shall have a seal which shall consist of the coat of arms of the state within a circle one and one-fourth inches in diameter and shall be surrounded by the words, "the juvenile court of Cuyahoga county, Ohio." Such seal shall have no other words or device engraved thereon. Such seal shall be affixed to the processes of the court, which shall be attested and be in the general form and served as provided for process of the court of common pleas.

HISTORY: GC § 1683-26; 114 v 45, § 15; Bureau of Code Revision, 10-1-53; 132 v H 164. Eff 12-15-67.

§ 2153.15 May vacate and modify judgments.

The juvenile court has the same power to vacate and modify its own judgments or orders during or after term as the probate court has under section 2101.33 of the Revised Code, and may adopt, publish, and revise rules and regulations for practice in said court not inconsistent with sections 2153.01 to 2153.17, inclusive, of the Revised Code.

HISTORY: GC § 1683-27; 114 v 45, § 16; Bureau of Code Revision, Eff 10-1-53.

Cross-References to Related Sections

Appeals, RC § 2153.17.

Jurisdiction of court, RC § 2153.16.

§ 2153.16 Jurisdiction of court.

The juvenile court shall exercise the jurisdiction and powers conferred upon the court by Chapters 2151. and 2152. and other sections of the Revised Code, unless the jurisdiction and powers are inconsistent with sections 2153.01 to 2153.17 of the Revised Code or are plainly inapplicable.

HISTORY: GC § 1683-28; 114 v 45, § 17; Bureau of Code Revision, 10-1-53; 127 v 847 (Eff 9-16-57); 134 v H 574 (Eff 6-29-72); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

Cross-References to Related Sections

Appeals, RC § 2153.17.
Powers of juvenile court, RC § 2153.15.

CASE NOTES AND OAG

Prior law

In 1934 the common pleas court of Cuyahoga county had jurisdiction concurrent with that of the juvenile court, under

authority of § 1639, General Code (108 Ohio Laws, pt. 2, 1130). Hence, conviction of juvenile for crime of burglary by common pleas court was not void for lack of jurisdiction: *In re Giordano*, 164 Ohio St. 509, 58 Ohio Op. 353, 132 N.E.2d 211 (1956).

§ 2153.17 Laws now in force to apply.

The sections of the Revised Code regulating the manner and grounds of appeal from any judgment, order, or decree rendered by the court of common pleas in the exercise of juvenile jurisdiction shall apply to the juvenile court.

HISTORY: GC § 1683-29; 114 v 45, § 18; Bureau of Code Revision. Eff 10-1-53.

CASE NOTES AND OAG

Habeas corpus

Habeas corpus may not be used as a substitute for appeal, nor may it be resorted to where an adequate remedy for review exists under this section: *In re Piazza*, 7 Ohio St. 2d 102, 36 Ohio Op. 2d 84, 218 N.E.2d 459 (1966).

OHIO RULES OF JUVENILE PROCEDURE

Complete with amendments through July 1, 2007

Rule

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RULE 1. Scope of rules; applicability; construction; exceptions

(A) **Applicability.** These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

(B) **Construction.** These rules shall be liberally inter-

preted and construed so as to effectuate the following purposes:

(1) to effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights;

(2) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;

(3) to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court, and to protect the welfare of the community; and

(4) to protect the public interest by treating children as persons in need of supervision, care and rehabilitation.

(C) **Exceptions.** These rules shall not apply to procedure (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.

When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules.

History: Amended, eff 7-1-91; 7-1-94; 7-1-95.

STAFF NOTES

7-1-95 AMENDMENT

RULE 1(C) EXCEPTIONS

The amendment effective July 1, 1994 contained an error that is corrected by this revision. The 1994 amendment erroneously referred to division (A)(4) of Rule 4, when no division (A)(4) exists.

7-1-94 AMENDMENT

RULE 1(C) EXCEPTIONS

Juv. R. 1(C)(4) now reflects current terminology used in Revised Code Sections 3111.01 through 3111.19 regarding the establishment of the parent and child relationship. Additionally, the division clarifies that Juv. R. 4(A)(4), regarding appointment of counsel for certain parties, now applies in actions to establish the parent and child relationship.

Cross-References to Related Statutes

Construction of juvenile court; purpose, RC § 2151.01.

Jurisdiction of juvenile court, RC § 2151.23.

Ohio Constitution

Common pleas court, juvenile division, Ohio Const. art. IV, § 4.

NOTES TO DECISIONS

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Custody
Dismissal

Custody

The Rules of Civil Procedure have no applicability to a custody proceeding in the court of common pleas, juvenile division. Rather, the Rules of Juvenile Procedure govern such proceedings: *Squires v. Squires*, 12 Ohio App. 3d 138, 468 N.E.2d 73, 12 Ohio B. 460, 1983 Ohio App. LEXIS 11354 (1983).

Dismissal

The court did not abuse its discretion by dismissing a rape charge against a ten-year-old on the basis that continuing prosecution would not further the juvenile court policies of the state: *In re Smith*, 80 Ohio App. 3d 502, 609 N.E.2d 1281, 1992 Ohio App. LEXIS 2772 (1992).

RULE 2. Definitions

As used in these rules:

(A) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.

(B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.

(C) "Agreement for temporary custody" means a voluntary agreement that is authorized by section 5103.15 of the Revised Code and transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(D) "Child" has the same meaning as in sections 2151.011 and 2152.02 of the Revised Code.

(E) "Chronic truant" has the same meaning as in section 2151.011 of the Revised Code.

(F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

(G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.

(H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.

(I) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(J) "Dependent child" has the same meaning as in section 2151.04 of the Revised Code.

(K) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.

(L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.

(M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

(N) "Guardian" means a person, association, or corporation that is granted authority by a probate court

pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in section 2151.021 of the Revised Code.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in section 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by section 2151.06 of the Revised Code.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

History: Amended, eff 7-1-94; 7-1-98; 7-1-01; 7-1-02.

STAFF NOTES

7-1-02 AMENDMENT

RULE 2 DEFINITIONS

The July 1, 2002, amendments substituted the language of "planned permanent living arrangement" for the former language of "long term foster care," to conform to the new legislative designation for these child-placing arrangements. Former division (W), "Long term foster care," was deleted, a new division (DD), "Planned permanent living arrangement," was added, and other divisions were relettered accordingly.

The amendments to Juv. R. 2 conform to section 2151.011 of the Revised Code. Juvenile Rules 10, 15, and 34 also were amended effective July 1, 2002 to reflect this change in terminology.

7-1-01 AMENDMENT

RULE 2 DEFINITIONS

Several definitions in Rule 2 were amended to correct the language: Rules 2(F), (H), (W), (AA), (BB), (EE), and (FF).

Rule 2(D) was amended to reflect that the definition of "child" in the Revised Code had been placed into two new sections, i.e., R.C. 2151.011 and 2152.02.

Rules 2(E) and (P) were added to reflect the new categories of chronic truant [defined in Revised Code section 2151.011 (B) (9)] and habitual truant [defined in Revised Code section 2151.011 (B) (18)], added by Sub. Sen. Bill 181, which became effective September 4, 2000. Other rules that were amended to reflect changes necessitated by the chronic and habitual truancy bill are Rule 10(A), Rule 15(B), Rule 27(A), Rule 29(F), and Rule 37.

Rules 2(I), (S) and (T) were amended to reflect the reorganization of the Revised Code made by Sub. Sen. Bill 179, effective January 1, 2002. The reorganization moved delinquency into a new chapter, Chapter 2152 of the Revised Code, thus necessitating that "juvenile court" and "juvenile judge" be redefined to include those having jurisdiction under Chapter 2152 as well as under Chapter 2151, and that "delinquent child" be amended to reflect it is now defined in section 2152.02.

Rule 2(KK) was added to reflect the new category of "serious youthful offender" created by Sub. Sen. Bill 179. Although the Revised Code does not define serious youthful offender specifically, sections 2152.11 and 2152.13 describe in detail the predicate offenses and other predicates to treatment as a serious youthful offender, as well as the types of dispositional sentencing available for each. Other rules that were amended to reflect changes necessitated by the serious youthful offender bill are Rule 7(A), Rule 22(D) and (E), Rule 27(A), and Rule 29(A), (C) and (F).

Rule 2(LL) defines "serious youthful offender proceedings." The new category of serious youthful offender created by Sub. Sen. Bill 179 contemplates imposition of an adult sentence in addition to a juvenile disposition upon conviction. Therefore, serious youthful offenders have statutory and constitutional rights commensurate with those of adults. Some proceedings in juvenile court needed to be altered to ensure adult substantive and procedural protections where appropriate. The amendment makes clear that juvenile protections and confidentiality apply both before a probable cause determination that a child may be subject to serious youthful offender disposition, and after a determination that the child shall not be given a serious youthful offender disposition.

7-1-98 AMENDMENT

RULE 2 DEFINITIONS

RULE 2(B) ADJUDICATORY HEARING

Included under the prior definition of "adjudicatory hearing" in Juv. R. 2(B) were proceedings in which "temporary legal custody should be converted to permanent custody." This provision, which had been included in Juv. R. 2 since its adoption in 1972, appeared to conflict with the 1994 enactment of Juv. R. 34(I), which provides, "Hearings to determine

whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody." Similarly, section 2151.414(A) of the Revised Code provides, "The adjudication that the child is an abused, neglected, or dependent child and the grant of temporary custody to the agency that filed the motion or placement into long-term foster care shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody."

The case law on this issue is in conflict. Several pre-1994 cases have held that hearings on motions for permanent custody are adjudicatory in nature. See *In re Hopkins* (1992), 78 OApp3d 92; *In re Workman* (June 14, 1993), Tuscarawas App. No. 92 AP080055, unreported; *In re Davis* (July 21, 1993), Summit App. No. 16051, unreported. The most recent reported decision, *In re Duncan/Walker Children*, (1996), 109 OApp3d 841, held that a permanent custody hearing under R.C. 2151.414 is adjudicatory, and did not make reference to either Juv. R. 2(B) or Juv. R. 34(I).

By deleting the final phrase of Juv. R. 2(B) with this amendment, Juv. R. 34(I) becomes the sole authority on this issue with the Rules of Juvenile Procedure.

RULE 2(D) CHILD

The definition of "child" contained in Juv. R. 2(D) has been amended to conform to the definition of the term found in sections 2151.011(B)(1)(a) of the Revised Code, as amended by legislation (1996 H 124, eff. 3-31-97, and 1996 H 265, eff. 3-3-97). Because the definition of the term "child" appears to be a matter of substantive law since it deals with a jurisdiction issue, the amended definition of the term simply makes reference to the statutory definition.

RULE 2(E) REMOVAL ACTION

The definition of the term "removal action" added as Juv. R. 2(E) refers to the cause of action first created by section 2151.55 of the Revised Code (1996 H 215, eff. 9-29-97). This new cause of action applies exclusively to a child in out-of-county foster home placement who is alleged to be causing a significant and unreasonable disruption to the educational process in the school the child is attending.

The addition of division (EE) required the relettering of previous divisions (EE) through (LL) to divisions (FF) through (MM).

7-1-94 AMENDMENT

Rule 2 DEFINITIONS

Definitions in Juv. R. 2 have been amended or added to reflect definitions found in Revised Code 2151.011, as amended by legislation (Am. Sub. S.B. 89 of the 117th General Assembly and Am. Sub. S.B. 3 of the 118th General Assembly). Amended language exists for the following terms: adjudicatory hearing; child; custodian; guardian; shelter care.

New terms defined in accordance with new statutes are: agreement for temporary custody; delinquent child; dependent child; juvenile traffic offender; legal custody; long term foster care; neglected child; permanent custody; permanent surrender; private child placing agency; public children services agency; residence or legal settlement; residual parental rights, privileges and responsibilities; temporary custody; unruly child.

All other changes in the definitions are to assure gender neutral language.

Ohio Administrative Code

Department of job and family services, division of social services

Children services definition of terms. OAC ch. 5101:2-1.

NOTES TO DECISIONS

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Generally

Juvenile Rule 2(16) affords a procedural device permitting a trial court to include individuals not specifically otherwise designated a party but whose presence is necessary to fully litigate an issue presented in the action. However, it allows a trial court to exercise its sound discretion in determining whether to designate a person an additional party: *In re Franklin*, 88 Ohio App. 3d 277, 623 N.E.2d 720, 1993 Ohio App. LEXIS 3020 (1993).

The mother of the victim of the delinquent act was never specifically designated by the court as a "party," making her objections to the referee's report a nullity. There is an appearance of unfairness where a hearing on objections is conducted without defense counsel present: *In re Ross*, 107 Ohio App. 3d 35, 667 N.E.2d 1012, 1995 Ohio App. LEXIS 4791 (1995).

A juvenile court has wide discretion in deciding whether to afford an individual party status: *In re Hitchcock*, 120 Ohio App. 3d 88, 696 N.E.2d 1090, 1996 Ohio App. LEXIS 5193 (1996).

Adoption

Mother's rights were not violated because the juvenile court could reasonably have concluded that the reasons for the mother's lack of contact with her child would be fully litigated in the probate court and that her due process rights would be protected by the adoption proceeding, as mandated by Ohio R. Juv. P. 2(II) and Ohio Rev. Code Ann. § 3107.07(A). Also, because the juvenile court's consent to the adoption was not required, both the trial court's order granting concurrent jurisdiction to the probate court and its subsequent order refusing to vacate it had no impact on the rights and obligations of the parties. *In re A.H.*, — Ohio App. 3d —, 2006 Ohio 3285, — N.E. 2d —, 2006 Ohio App. LEXIS 3201 (June 28, 2006).

Appeal

After a trial court awarded permanent custody of two minor children to a county social service agency, the children's maternal grandmother's appeal therefrom was dismissed due to her lack of standing, as she was not a "party" to the underlying proceedings pursuant to Ohio R. Juv. P. 2(Y), she had not sought intervention in the proceedings, and she never requested custody of the children. *In re Titionna K.*, — Ohio App. 3d —, 2007 Ohio 1861, — N.E.2d —, 2007 Ohio App. LEXIS 1701 (Apr. 20, 2007).

A county children services agency to which an unruly child is committed has no right of appeal because it is not a "party" to the proceeding, as defined in JuvR 2(16): *In re Blakey*, 65 Ohio App. 3d 341, 583 N.E.2d 1343, 1989 Ohio App. LEXIS 4335 (1989).

Conflict between statute and rule

Pursuant to Ohio Const. art. IV, § 5(B), JuvR 2(1) prevails over RC § 2151.35, making a hearing under RC § 2151.414 an adjudicatory hearing: *In re Brofford*, 83 Ohio App. 3d 869, 615 N.E.2d 1120, 1992 Ohio App. LEXIS 6119 (1992).

Counsel

Trial court erred by failing to appoint counsel after a possible conflict became known between the child's wishes and the recommendation of the guardian ad litem during the permanent custody hearing and thus, the child was entitled to counsel pursuant to Ohio Rev. Code Ann. § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). An attorney would have been required to provide zealous representation for his client and make every legitimate effort to secure an order allowing the child to have continued contact with her father, which the guardian ad litem could not do and remain consistent with his recommenda-

tion. In re H.R., — Ohio App. 3d —, 2006 Ohio 1595, — N.E. 2d —, 2006 Ohio App. LEXIS 1472 (Mar. 31, 2006).

In a permanent custody proceeding, a trial court did not fail to appoint counsel for the subject children when it appointed their guardian ad litem as their counsel, as this was provided for in Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 2(Y) and 4(A), and it was not claimed that the guardian ad litem's dual role resulted in a conflict of interest. In re Salsbery, — Ohio App. 3d —, 2006 Ohio 3274, — N.E. 2d —, 2006 Ohio App. LEXIS 3185 (June 19, 2006).

Trial court lacked jurisdiction under Ohio Rev. Code Ann. § 3109.04 and pursuant to the boundaries set under Ohio Const. art. IV, § 4(B) to have ordered that minor children be placed in the custody of a county agency pending a determination of parental alienation in a custody dispute between the children's parents, as there was no complaint filed in the juvenile court for such relief, as required by Ohio Rev. Code Ann. § 2151.23. The children were not "parties" to the action pursuant to Ohio R. Juv. P. 2(Y) and were not entitled to counsel to represent their interests under Ohio R. Juv. P. 4(A). Curie v. Curie, — Ohio App. 3d —, 2006 Ohio 6098, — N.E. 2d —, 2006 Ohio App. LEXIS 6058 (Nov. 17, 2006).

Trial court, at a minimum, was required to interview the child, on the record, to determine if she was of sufficient maturity to benefit from separate counsel in the permanent custody proceeding, but failed to do so. There was a clear conflict because the guardian ad litem recommended to the trial court that the mother's parental rights be terminated but the agency case supervisor for the child testified at the permanent custody hearing that the child ultimately wanted to be with her mom. In re Roque, — Ohio App. 3d —, 2006 Ohio 7007, — N.E. 2d —, 2006 Ohio App. LEXIS 6961 (Dec. 29, 2006).

Trial court did not err in failing to appoint counsel for three children who were the subject of a termination of parental rights proceeding where: (1) the children were older and of a higher maturity level, (2) the guardian ad litem's (GAL) recommendation did not conflict with the wishes of the children to not be returned to the mother's care, (3) the children's counselors also indicated that the children did not want to return to the mother, and (4) the juvenile court had an in-camera interview with the children and their statements in that interview conformed to the statements made by the GAL and the counselors. In re Nelson, — Ohio App. 3d —, 2005 Ohio 6600, — N.E. 2d —, 2005 Ohio App. LEXIS 5926 (Dec. 9, 2005).

Trial court did not err in granting a grandmother's appointed counsel's motion for leave to withdraw in a parental rights termination proceeding, as the grandmother was a party to the action, pursuant to Ohio R. Juv. P. 2(Y), and she was accordingly entitled to be represented by counsel, but she was not entitled to appointed counsel under RC § 2151.352; Ohio R. Juv. P. 4(A) was not applicable to the circumstances, as the right to counsel emanated from RC § 2151.352. In re Denisha Michelle T., 2005 Ohio 1032, 2005 Ohio App. LEXIS 1041 (2005).

Although neither the court nor the guardian ad litem ever had any direct interaction with the two children in a proceeding by a children's services agency seeking permanent custody, the court properly considered their wishes pursuant to Ohio Rev. Code Ann. § 2151.414(D) by being made aware of the older child's desire to be placed with his mother, through testimony of the mother and a caseworker, and accordingly, any error on that issue was deemed harmless. The Ohio Supreme Court had previously relied on its prior decisions, Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4(A) and 2(Y) in determining that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and is entitled to independent counsel in certain circumstances. In re Lane, 2004 Ohio 2798, 2004 Ohio App. LEXIS 2486 (2004).

Pursuant to RC § 2151.352, as clarified by JuvR 4(A) and JuvR 2(Y), a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances. In re Williams, 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Trial court erred by failing to determine if a mother was indigent and in failing to appoint counsel if she met the indigency requirement, in a parentage and child support action, as Ohio R.

Juv. P. 4(A) required that all parties to juvenile proceedings had the right to have counsel appointed if they were indigent, and Ohio R. Juv. P. 2(Y) defined "party" to a juvenile proceeding to include the parents of the child who was subject to the proceedings; however, regardless of this error, a child support enforcement agency lacked standing to raise this issue on appeal, as only those parties who could demonstrate a present interest in the subject matter of the litigation and who had been prejudiced by the trial court's decision had the right to file an appeal, and the agency failed to assert a plausible explanation as to how it had been prejudiced by the trial court's failure to appoint counsel for the mother. Still v. Hayman, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 3665 (July 30, 2003).

Custody

Trial court did not err in declining to grant change of legal custody to children's aunt and maternal grandparents pursuant to Ohio Rev. Code Ann. § 2151.415(A)(3) as the aunt had not had any contact with the children for two or three years and had no independent housing or employment, and their grandparents, who lived in New York, had also had limited contact with the children and had limited bedroom space in their residence. Moreover, the trial court expressed particular concern that these relatives expressed belief that the children should be with their mother, and pursuant to Ohio R. Juv. P. 2(Z), a trial court may properly recognize that legal custody to third parties will not provide a legal barrier to a parent's future attempted assertion of his or her residual rights concerning the child. In re Morales, — Ohio App. 3d —, 2006 Ohio 6384, — N.E. 2d —, 2006 Ohio App. LEXIS 6356 (Dec. 4, 2006).

Juvenile court did not err in denying the foster care parents' motions to join themselves as necessary parties, and for custody and companionship rights, as the goal of the county family welfare agency at the time the trial court was ruling on the motions in the dependency proceeding was to reunify the children with their parents, and not to permanently place the children with the foster parents; too, while the foster parents waived their argument that their due process rights were violated by not allowing them to pursue their actions in the juvenile courts by not raising that issue in the juvenile court, their argument was nevertheless meritless because only contractual, and not constitutional rights were involved in the foster care situation. In re McDaniel, — Ohio App. 3d —, 2004 Ohio 2595, — N.E. 2d —, 2004 Ohio App. LEXIS 2305 (May 21, 2004).

Individual who was permitted to participate in a custody proceeding had standing in that proceeding, whether named as a party or not; where the putative father was named in the custody motion, was served with the pleadings, and participated in the proceedings through counsel, he had standing in the matter, even though his paternity of the child had been neither established nor acknowledged. In re Phillips, — Ohio App. 3d —, 2003 Ohio 5107, — N.E. 2d —, 2003 Ohio App. LEXIS 4618 (Sept. 29, 2003).

Discovery

During a probable cause hearing held in juvenile court to determine, under Ohio R. Juv. P. 30(A), if there was probable cause to believe defendant committed an alleged crime, before determining if, under Ohio R. Juv. P. 30(C), defendant was amenable to rehabilitation in the juvenile system, defendant moved for discovery, pursuant to Ohio R. Juv. P. 24. While the probable cause hearing was not an adjudicatory hearing, under Ohio R. Juv. P. 2(B), in the sense that evidence was put to the trier of fact or that jeopardy attached, it was "critically important," and had to measure up to the essentials of due process and fair treatment. Defendant had the right to discover evidence the prosecutor would offer to establish probable cause. As the juvenile court had discretion to limit discovery, under Ohio R. Juv. P. 24(B), when the juvenile court merely deleted discovery of evidentiary materials the prosecution intended to use at trial, this was not an abuse of discretion. State v. Gilbert, — Ohio App. 3d —, 2005 Ohio 2350, — N.E. 2d —, 2005 Ohio App. LEXIS 2239 (May 13, 2005).

Motions for discovery are to be filed in accord with JuvR 22 prior to the adjudicatory hearing. A probable cause hearing pursuant to RC § 2151.26 and JuvR 30 is not an adjudicatory

hearing as defined in JuvR 2: In re Hunter, 99 Ohio Misc. 2d 107, 716 N.E.2d 802, 1999 Ohio Misc. LEXIS 25 (CP 1999).

Foster parents

Foster parents are not "parties" to juvenile court dispositional proceedings and do not have a right to intervene and move for custody of children who have been in their care and then removed from their home: In re Baatz, 1993 Ohio App. LEXIS 3996 (9th Dist. 1993).

Grandparents

Trial court did not err in not joining a paternal grandmother to a parental rights termination proceeding involving the parents of 10 minor children, although the grandmother lived with the family, as she was not a necessary party pursuant to Ohio R. Juv. P. 2(Y) and Ohio Rev. Code Ann. § 2151.28(C)(1); she did not hold the title of legal custodian or guardian of any of the children, and she had actual notice of the proceedings. In re Hilyard, — Ohio App. 3d —, 2006 Ohio 1977, — N.E. 2d —, 2006 Ohio App. LEXIS 1808 (Apr. 13, 2006).

Trial court did not err in adopting a magistrate's decision to deny maternal grandparents' motion to intervene in an action commenced by their minor grandchild's biological father, seeking a determination of paternity, custody, visitation, and child support pursuant to Ohio Rev. Code Ann. § 2151.23(A)(2), as they did not establish an *in loco parentis* relationship with the minor child merely because they cared for the child during a period of time when the complaint was filed, and accordingly, they were not within the scope of the parties defined under Ohio R. Juv. P. 2(Y) and they did not have a right to intervene in the matter pursuant to Ohio R. Civ. P. 24(A); there was no cause to review the issue of parental unsuitability or the constitutional right of parents in the care, custody, and management of their children at that juncture of the matter. Brokaw v. Haser, — Ohio App. 3d —, 2006 Ohio 5171, — N.E. 2d —, 2006 Ohio App. LEXIS 5134 (Sept. 29, 2006).

Where the maternal grandparents had temporary custody of their grandchild prior to a magistrate divesting them of the same, the juvenile court abused its discretion in denying the grandparents party status, as they had a legal right or a legally protectable interest in custody or visitation to their grandchild; moreover, under Ohio R. Juv. P. 2(OO), the fact that temporary custody could be terminated, at any time, did not change the fact that temporary custody, like legal custody, vested in the custodian a legal right which entitled the custodian to party status. In re Perez, — Ohio App. 3d —, 2004 Ohio 2707, — N.E. 2d —, 2004 Ohio App. LEXIS 2398 (May 24, 2004).

Trial court did not abuse its discretion in allowing a child's maternal grandparents to participate in litigation involving the father's request for custody over her, after her mother, whom she had resided with, died from cancer; the grandparents had spent a significant amount of time with the child since her birth and their presence was necessary to litigate the custody issue, and accordingly, they could be considered parties under Ohio R. Juv. P. 2(Y). Christopher A.L. v. Heather D.R., — Ohio App. 3d —, 2004 Ohio 4271, — N.E. 2d —, 2004 Ohio App. LEXIS 3880 (Aug. 13, 2004).

Intervention

Where the juvenile court used Ohio R. Civ. P. 24 as a guide to the exercise of its discretion for joining parties under Ohio R. Juv. P. 2(X), denial of the grandparents' motion to intervene was proper; the grandparents had no custody or visitation rights and were not needed to decide the child's best interest, and the complex paternity issues facing the child also justified denial. In re Goff, 2003 Ohio 6768, 2003 Ohio App. LEXIS 5989 (2003).

Trial court's denial of grandparents' motion to intervene in a custody case was affirmed where the grandparents never obtained any legal right to custody or visitation with the child, and had no interest which allowed them to intervene as of right. In re Goff, — Ohio App. 3d —, 2003 Ohio 6087, — N.E. 2d —, 2003 Ohio App. LEXIS 5442 (Nov. 14, 2003).

A foster parent may be permitted to intervene as a party in a custody proceeding: In re Zhang, 135 Ohio App. 3d 350, 734 N.E.2d 379, 1999 Ohio App. LEXIS 2615 (1999).

A juvenile court has broad discretion under JuvR 2(X) to determine those persons who properly should be allowed to intervene as parties in the proceeding before it; a juvenile court may use CivR 24 as a guide to the exercise of its discretion under JuvR 2(X), but it is not required to do so: In re Byerly, 1998 Ohio App. LEXIS 4630 (11th Dist. 1998).

Jurisdiction

Juvenile Court did not have jurisdiction to grant permanent custody of a child to a county agency, as the child was the ward of another State court that retained jurisdiction over the child after the court granted legal custody of the child to her relatives in her parents' divorce proceeding. In re Frenz, 2003 Ohio 3653, 2003 Ohio App. LEXIS 3289 (2003).

Parentage proceedings

In a putative father's action wherein he sought to establish a parent-child relationship, it was not a trial court error to have failed to include the child as a party to the action, pursuant to Ohio Rev. Code Ann. § 3111.07(A) and Ohio R. Juv. P. 2(Y), as the father initiated the action and he failed to name the child as a party. Any error was harmless where counsel or a guardian ad litem would not have been separately appointed for the child, as there was no showing of a conflict of interest between the child and mother. E.B. v. T.J., — Ohio App. 3d —, 2006 Ohio 441, — N.E. 2d —, 2006 Ohio App. LEXIS 383 (Feb. 2, 2006).

RULE 3. Waiver of rights

A child's right to be represented by counsel at a hearing conducted pursuant to Juv. R. 30 may not be waived. Other rights of a child may be waived with the permission of the court.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 3 WAIVER OF RIGHTS

Prior to this revision, some courts had interpreted Juv. R. 3 to permit a juvenile to waive the right of counsel at the probable cause hearing phase of the bindover process. Juv. R. 3 now makes specific reference to bindover proceedings delineated in Juv. R. 30 to remind the court and practitioners that a juvenile cannot waive counsel at any stage of the bindover procedure.

Cross-References to Related Statutes

Hearing procedure; findings; record, RC § 2151.35.
Right to counsel, RC § 2151.35.2.

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Bindover for prosecution

Where there was no indication in a juvenile court bindover order that a juvenile's waiver of a probable cause and amenability hearing was knowingly, competently, and intelligently made, a later delinquency charge against him on a new criminal matter required an appropriate bindover proceeding under Ohio Rev. Code Ann. § 2152.12 and Ohio R. Juv. P. 3. The hearing on the bindover issue was a critical phase that was mandatory under Ohio Rev. Code Ann. ch. 2152 and Ohio R. Juv. P. 30. State v. Brown, — Ohio App. 3d —, 2006 Ohio 4393, — N.E. 2d —, 2006 Ohio App. LEXIS 4330 (Aug. 25, 2006).

Due process

Due process in a juvenile proceeding must include: adequate written notice; advice as to the right to counsel, retained or

appointed; confrontation and cross-examination of witnesses; and the privilege against self-incrimination: In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, 1967 U.S. LEXIS 1478, 40 Ohio Op. 2d 378 (1967).

RULE 4. Assistance of counsel; guardian ad litem

(A) **Assistance of counsel.** Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

(B) **Guardian ad litem; when appointed.** The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

(1) The child has no parents, guardian, or legal custodian;

(2) The interests of the child and the interests of the parent may conflict;

(3) The parent is under eighteen years of age or appears to be mentally incompetent;

(4) The court believes that the parent of the child is not capable of representing the best interest of the child.

(5) Any proceeding involves allegations of abuse or neglect, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.

(6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for extension of the voluntary agreement.

(7) The proceeding is a removal action.

(8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

(C) **Guardian ad litem as counsel.**

(1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist[s].

(2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.

(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.

(D) **Appearance of attorneys.** An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) **Notice to guardian ad litem.** The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) **Withdrawal of counsel or guardian ad litem.** An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) **Costs.** The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

History: Amended, eff 7-1-76; 7-1-94; 7-1-95; 7-1-98.

STAFF NOTES

7-1-98 AMENDMENT

RULE 4(B) GUARDIAN AD LITEM; WHEN APPOINTED

The 1998 amendment added division (B)(7), requiring the appointment of a guardian ad litem for removal actions, as defined in Juv. R. 2(E), also added in the amendments effective July 1, 1998. At the discretion of the court, the court may appoint the guardian ad litem initially appointed for the child by the court that entered the original dispositional placement order, with the consent of that guardian ad litem. Alternatively, the court may appoint a new guardian ad litem.

The addition of a new division (B)(7) required the renumbering of the former division to what is now division (B)(8).

7-1-95 AMENDMENT

RULE 4 ASSISTANCE OF COUNSEL; GUARDIAN AD LITEM

The 1995 amendment changed the title of this rule and of division (A) to more accurately reflect the substance of the rule. There were no changes to the text of the rule.

7-1-94 AMENDMENT

RULE 4 RIGHT TO COUNSEL; GUARDIAN AD LITEM

Masculine references throughout Juv. R. 4 have been replaced by gender neutral language.

RULE 4(A) RIGHT TO COUNSEL; WHEN ARISES

The 1994 amendment added a new sentence to the end of division (A) to clarify that Juv. R. 4 does not create a right to court-appointed counsel, and that the right to appointed counsel arises from other sources of law.

RULE 4(B) GUARDIAN AD LITEM; WHEN APPOINTED

Juv. R. 4(B) governs the appointment of a guardian ad litem (GAL). New sections specify the appointment of a GAL as required by section 2151.281 of the Revised Code.

RULE 4(C) GUARDIAN AD LITEM AS COUNSEL

Juv. R. 4(C) requires the appointment of a new GAL when an attorney serving as GAL is also the child's attorney and a conflict of interest exists. (Revised Code 2151.281(H)).

RULE 4(E) NOTICE TO GUARDIAN AD LITEM

Juv. R. 4(E) specifies notice requirements to GALs pursuant to section 2151.281(I) of the Revised Code.

Cross-References to Related Statutes

Guardian ad litem, RC § 2151.28.1.

Right to counsel, RC § 2151.35.2.

Ohio Constitution

Right to counsel, Ohio Const. art. I, § 10.

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Generally

Trial court lacked jurisdiction under Ohio Rev. Code Ann. § 3109.04 and pursuant to the boundaries set under Ohio Const. art. IV, § 4(B) to have ordered that minor children be placed in the custody of a county agency pending a determination of parental alienation in a custody dispute between the children's parents, as there was no complaint filed in the juvenile court for such relief, as required by Ohio Rev. Code Ann. § 2151.23. The children were not "parties" to the action pursuant to Ohio R. Juv. P. 2(Y) and were not entitled to counsel to represent their interests under Ohio R. Juv. P. 4(A). *Curie v. Curie*, — Ohio App. 3d —, 2006 Ohio 6098, — N.E. 2d —, 2006 Ohio App. LEXIS 6058 (Nov. 17, 2006).

Juvenile court denied the mother due process in a custody matter by receiving a report of counsel appointed for her child without giving her a chance to review and challenge it, and erred by failing to hold a new permanent custody hearing with the participation of counsel for the child. In *re Williams*, 2003 Ohio 3550, 2003 Ohio App. LEXIS 3246 (2003).

Contempt

Although trial courts have the authority to enforce their orders through contempt proceedings, an order to pay court costs is essentially a judgment on a contractual debt where the court is the creditor and the party ordered to pay court costs is the debtor. As such, the court can collect only the money it is due by the methods provided for the collection of civil judgments. A contempt proceeding is not a proper method by which to collect a civil judgment. In *re Buffington*, 89 Ohio App. 3d 814, 627 N.E.2d 1013, 1993 Ohio App. LEXIS 3859 (1993).

Due process

Due process in a juvenile proceeding must include: adequate written notice; advice as to the right to counsel, retained or appointed; confrontation and cross-examination of witnesses; and the privilege against self-incrimination. In *re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, 1967 U.S. LEXIS 1478, 40 Ohio Op. 2d 378 (1967).

Fees

Where the county commissioners have set a maximum fee schedule for guardians ad litem, the court may not order additional payment for extraordinary services. In *re Shaw*, 1990 Ohio App. LEXIS 973 (5th Dist. 1990).

There is no statutory authority which authorizes the payment of guardian ad litem fees from county funds in a civil case involving the alleged negligent or intentional acts of an indigent minor in causing fire damage to a rental unit. *Nationwide Mut. Ins. Co. v. Wymer*, 33 Ohio App. 3d 318, 515 N.E.2d 987, 1986 Ohio App. LEXIS 10261 (1986).

Where an action is brought against a minor and his parent for fire damage to a rental unit caused by the minor, and where the court finds the minor liable for the damages, but finds his parent not liable, the fees and expenses of the child's court-appointed guardian ad litem are properly chargeable to the indigent minor and not to his parent, as part of the court costs. *Nationwide Mut. Ins. Co. v. Wymer*, 33 Ohio App. 3d 318, 515 N.E.2d 987, 1986 Ohio App. LEXIS 10261 (1986).

Guardian ad litem

JuvR 4(B)(2) mandates that the possibility that interests may conflict is sufficient for the required appointment of a guardian ad litem. In the context of a delinquency proceeding, a parent's or a legal guardian's speaking out against the child's penal interest raises a colorable claim of conflict. In *re K.B.*, 170 Ohio App. 3d 121, 2007 Ohio 396, 866 N.E.2d 66, 2007 Ohio App. LEXIS 346 (2007).

Plain and unambiguous language of Ohio R. Juv. P. 4(B)(2) mandated that the possibility that a child's interests "might conflict" with the interests of a parent was sufficient for the required appointment of a guardian ad litem, but a juvenile court was in the best position to weigh the relevant facts in determining whether a potential conflict of interest existed between the parent and child, and, in the context of a delinquency proceeding, a parent's speaking out against the child's penal interest raised a colorable claim of conflict which required a "thorough inquiry" by the juvenile court to determine whether a conflict of interest existed such that the court had to appoint a guardian ad litem, and a court's failure to appoint a guardian ad litem when these mandatory provisions required such an appointment constituted reversible error. In *re K.B.*, — Ohio App. 3d —, 2007 Ohio 396, — N.E. 2d —, 2007 Ohio App. LEXIS 346 (Feb. 1, 2007).

Absence of an objection did not preclude a reversal of a delinquency adjudication due to a juvenile court's failure to appoint a guardian ad litem when required under Ohio Rev. Code Ann. § 2151.281(A)(2) or Ohio R. Juv. P. 4(B)(2). In *re K.B.*, — Ohio App. 3d —, 2007 Ohio 396, — N.E. 2d —, 2007 Ohio App. LEXIS 346 (Feb. 1, 2007).

When a juvenile was charged with criminal offenses for entering her mother's bedroom without permission and using the telephone, the record sufficiently demonstrated a tension between the juvenile and the mother to require a trial court, under R.C. § 2151.281(A)(2) and Ohio R. Juv. P. 4(B)(2), to inquire into the need to appoint a guardian ad litem, and the failure to do so was an abuse of discretion and reversible error. In *re K.B.*, — Ohio App. 3d —, 2007 Ohio 396, — N.E. 2d —, 2007 Ohio App. LEXIS 346 (Feb. 1, 2007).

Juvenile court abused its discretion under Ohio Rev. Code Ann. § 2151.281(A) and Ohio R. Juv. P. 4(B) when it failed to appoint a guardian ad litem (GAL) to represent the interests of defendant, a juvenile, in delinquency proceedings, as there was a conflict of interest between the juvenile and his parents, who reported his actions to state authorities and who also testified against him in the adjudication phase of the delinquency proceeding. The fact that defendant failed to request a GAL or object to the lack of such an appointment did not preclude a reversal of the delinquency proceedings based on the juvenile court's error. In *re Dennis*, — Ohio App. 3d —, 2007 Ohio 2432, — N.E. 2d —, 2007 Ohio App. LEXIS 2263 (May 18, 2007).

Contrary to a mother's argument, a guardian ad litem's task in a dependency case did not involve advocating for child as his attorney where, because a conflict could have existed between the guardian ad litem's position and the child's position, a separate attorney was appointed as the child's advocate. In *re Neiberth*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 1420 (Mar. 22, 2006).

There was no plain error under Ohio R. Crim. P. 52(B) by a magistrate's decision under Juv. R. 4(B)(2) and Ohio Rev. Code Ann. § 2151.281(A) not to appoint a guardian ad litem for a juvenile in his proceeding for violation of probation, although he had skipped school and his mother was charged with allowing him to commit that conduct, as he was charged with other violations besides the truancy and there appeared to be no conflict between the mother and the juvenile. In *re J-M*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 6131 (Nov. 22, 2006).

There was no plain error under Ohio R. Crim. P. 52 by a juvenile court's failure to appoint a guardian pursuant to Ohio R. Juv. P. 4(B)(2) and Ohio Rev. Code Ann. § 2151.281(A)(2) for a juvenile who was the subject of delinquency proceedings, as there was no conflict of interest between the juvenile and his parents, nor was there a showing of a possibility of such conflict which would have required appointment of the guardian. In *re Smith*, — Ohio App. 3d —, 2006 Ohio 2788, — N.E.2d —, 2006 Ohio App. LEXIS 2625 (June 5, 2006).

There was no plain error, pursuant to Ohio R. Crim. P. 52(B), in a trial court's failure to appoint a guardian ad litem for a mother who had a "borderline to low average range of functioning" in a permanent custody proceeding by a county agency, pursuant to Ohio Rev. Code Ann. § 2151.281(C) and Ohio R. Juv. P. 4(B)(3), as the mother did not show that she was prejudiced by such failure of appointment, nor did she show how having a guardian

ad litem would have altered the outcome of the proceeding. In re McHugh Children, 2005 Ohio 2345, 2005 Ohio App. LEXIS 2235 (2005).

Trial court abused its discretion where it failed to appoint a guardian ad litem or inquire whether one was necessary where there was a conflict of interest between the juvenile and his legal guardians: In re Slider, 160 Ohio App. 3d 159, 2005 Ohio 1457, 826 N.E.2d 356, 2005 Ohio App. LEXIS 1413 (2005).

Appointment of a guardian ad litem for an alleged delinquent child was not required under the circumstances: In re D.M., 158 Ohio App. 3d 780, 2004 Ohio 5858, 822 N.E.2d 433, 2004 Ohio App. LEXIS 5300 (2004).

Reversal and remand were required where the trial court erred in failing to appoint a guardian ad litem to represent defendant juvenile when a conflict existed between the juvenile and his parents as the juvenile was accused of raping his half-sister; failure to appoint a guardian ad litem to oversee the juvenile's best interests was an abuse of discretion. In re K.J.F., — Ohio App. 3d —, 2004 Ohio 263, — N.E. 2d —, 2004 Ohio App. LEXIS 250 (Jan. 23, 2004).

Where neither appellant mother nor her attorney requested that the trial court appoint a guardian ad litem for the mother, the court did not violate Ohio R. Juv. P. 4(B) or RC § 2151.281(C) by failing to do so sua sponte, as the psychologist who examined the mother testified he was unable to conclude that she suffered from any mental illness; simply because she needed clarification of questions asked of her during the proceedings did not mean that she appeared mentally incompetent. In re K.P., 2004 Ohio 1674, 2004 Ohio App. LEXIS 1494 (2004).

Where the transcript of juvenile proceedings revealed no anger or tension between a juvenile defendant and her mother, only that the mother requested a disposition more lenient than what defendant herself sought, the record did not reflect a situation in which the magistrate plainly erred by failing to appoint a guardian ad litem on the basis of a conflict of interest. In re Harper, 2003 Ohio 6666, 2003 Ohio App. LEXIS 5962 (2003).

Pursuant to RC § 2151.281(C) the court shall appoint a guardian ad litem in any action to adjudicate a child dependent where it appears to the court that one or both parents are mentally incompetent; where information regarding second-hand reports of the father's mental problems were ambiguous at best, failing sua sponte to appoint a guardian was not error. In re Isaac M., 2003 Ohio 6197, 2003 Ohio App. LEXIS 5569 (2003).

Role of the guardian ad litem at the dispositional hearing was to protect the interests of the child and the guardian ad litem did so by filing a report that the children should not be returned to the parents; the guardian ad litem was not also required to use the specific words that the county welfare agency should be granted "permanent custody," especially since that recommendation was clear from the guardian ad litem's report. In re Myers, 2003 Ohio 2776, 2003 Ohio App. LEXIS 2492 (2003).

The court was required to appoint a guardian ad litem where there was a strong possibility of conflict of interest between the guardian and the child: In re Spradlin, 140 Ohio App. 3d 402, 2000 Ohio 2003, 2000 Ohio 2033, 2000 Ohio 2034, 2000 Ohio 2036, 747 N.E.2d 877, 2000 Ohio App. LEXIS 6293 (2000).

Where a trial court denied a motion to appoint a guardian ad litem based solely upon the timeliness of the motion and did not hear evidence on the conflict of interest issue, the trial court abused its discretion under R.C. § 2151.281(A) and Ohio R. Juv. P. 4(B). Johnson v. Johnson, 2003 Ohio 3278, 2003 Ohio App. LEXIS 2931 (2003).

The court abused its discretion by not appointing a guardian ad litem where the record indicated a strong possibility of conflicting interests between the juvenile and his father, who represented him at the adjudicatory and dispositional hearing: In re Sappington, 123 Ohio App. 3d 448, 704 N.E.2d 339, 1997 Ohio App. LEXIS 4773 (1997).

When a parent speaks against a child's penal interest in a delinquency case, the court must inquire whether there is a conflict of interest requiring appointment of a guardian ad litem: In re Howard, 119 Ohio App. 3d 201, 695 N.E.2d 1, 1997 Ohio App. LEXIS 1474 (1997).

Failure to appoint a guardian ad litem under JuvR 4(B) did not result in prejudicial error in a delinquency proceeding in which the child admitted to committing aggravated robbery. Child's aunt

was present during the admission, child was represented by counsel, no request was made for an appointment of a guardian ad litem and no objection was raised to the court's failure to make such an appointment: State v. White, 1995 Ohio App. LEXIS 2544 (1st Dist. 1995).

The guardian ad litem appointed for a child in a dependency action where the interest of the child and the parent may conflict must have no ties or loyalties to anyone with an adversary interest in the outcome such as a natural parent or the prospective adoptive parents: In re Christopher, 54 Ohio App. 2d 137, 376 N.E.2d 603, 8 Ohio Op. 3d 271, 1977 Ohio App. LEXIS 7026 (1977).

Where an infant child has been in the custody of prospective adoptive parents as a result of a permanent order of custody in a dependency action and that permanent order is subsequently vacated and the parent moves to terminate temporary custody, it appears that the interests of the child and parent may conflict and a guardian ad litem must be appointed for the child pursuant to JuvR 4(B) prior to the hearing on the mother's motion to terminate custody: In re Christopher, 54 Ohio App. 2d 137, 376 N.E.2d 603, 8 Ohio Op. 3d 271, 1977 Ohio App. LEXIS 7026 (1977).

Guardian ad litem or counsel

Juvenile court did not err in failing to appoint a new guardian ad litem for the child of a custody modification battle, as the attorney who was appointed as the child's guardian ad litem was also an able legal representative in the juvenile court proceeding between the child's divorced parents where no conflict in serving in both capacities existed pursuant to Ohio R. Juv. P. 4(C)(1) and (2); there was no evidence that the guardian became an advocate for either party, and she acted within her authority under Ohio Rev. Code Ann. § 2151.281(I). In re Smith, — Ohio App. 3d —, 2007 Ohio 893, — N.E. 2d —, 2007 Ohio App. LEXIS 812 (Mar. 2, 2007).

Based on Ohio R. Juv. P. 4(A) and (B), as well as Ohio Rev. Code Ann. §§ 2151.281(H) and 2151.352, a trial court did not err in appointing a licensed attorney to represent 10 children in a parental rights termination proceeding as both their legal counsel and their guardian ad litem, as none of the children "repeatedly expressed a desire" to remain with the parents, and there was no apparent or actual conflict shown in the attorney's dual capacity role. In re Hilyard, — Ohio App. 3d —, 2006 Ohio 1976, — N.E. 2d —, 2006 Ohio App. LEXIS 1809 (Apr. 13, 2006).

Trial court did not err by not appointing, pursuant to Ohio R. Juv. P. 4(C)(2), a separate attorney and a separate guardian ad litem to represent a mother's child in a permanent custody proceeding because there was no evidence that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. In re Elder, — Ohio App. 3d —, 2006 Ohio 5889, — N.E. 2d —, 2006 Ohio App. LEXIS 5834 (Nov. 2, 2006).

Trial court did not err by not appointing, pursuant to Ohio R. Juv. P. 4(C)(2), a separate attorney and a separate guardian ad litem to represent a mother's child in a permanent custody proceeding because there was no evidence that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. In re Parks, — Ohio App. 3d —, 2006 Ohio 5890, — N.E. 2d —, 2006 Ohio App. LEXIS 5835 (Nov. 2, 2006).

Ohio R. Juv. P. 4(C)(2) specifically provides for the appointment of a new guardian ad litem, and does not require an express finding that no conflict exists, and no other statute or rule refers to an express dual appointment or finding of no conflict; although the trial court erred in failing to file a formalized entry reflecting a dual appointment and no conflict, or appoint a guardian ad litem and separate counsel in a juvenile dependency proceeding, the trial court's initial failure to do so did not result to prejudice to the minor child. In re Beasley, 2003 Ohio 2857, 2003 Ohio App. LEXIS 2557 (2003).

Trial court did not err in failing to appoint separate individuals to serve as the guardian ad litem and the legal counsel for 10 children who were involved in a parental rights termination proceeding, pursuant to Ohio R. Juv. P. 4 and Ohio Rev. Code Ann. §§ 2151.353 and 2151.281(H), as there was no apparent or actual conflict shown in the appointed attorney's dual represen-

tation of the children; further, none of the children expressed a desire for custody that was adverse to the recommendation of the attorney. In re Hilyard, — Ohio App. 3d —, 2006 Ohio 1977, — N.E. 2d —, 2006 Ohio App. LEXIS 1808 (Apr. 13, 2006).

Under Ohio R. Juv. P. 4(C) and Ohio Rev. Code Ann. § 2151.281(H), the same attorney could be appointed, in a dependency proceeding, as both counsel and guardian ad litem for a child, but, when the attorney advocated a position that was adverse to the child's wishes regarding his custody, the attorney had to withdraw, under § 2151.281(H), and she had to be replaced by a new guardian ad litem. In re Butler, — Ohio App. 3d —, 2006 Ohio 4547, — N.E. 2d —, 2006 Ohio App. LEXIS 4510 (Sept. 5, 2006).

Trial court did not err in appointing the guardian ad litem (GAL) to serve in a dual capacity as GAL and as legal counsel for the children in a permanent custody proceeding instead of appointing an independent attorney to represent the children. Neither the trial court nor the parties identified a conflict with the dual representation, and the court could discern no conflict. In re B.K., — Ohio App. 3d —, 2006 Ohio 4424, — N.E. 2d —, 2006 Ohio App. LEXIS 4359 (Aug. 28, 2006).

In a permanent custody proceeding, a trial court did not fail to appoint counsel for the subject children when it appointed their guardian ad litem as their counsel, as this was provided for in Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 2(Y) and 4(A), and it was not claimed that the guardian ad litem's dual role resulted in a conflict of interest. In re Salsberry, — Ohio App. 3d —, 2006 Ohio 3274, — N.E. 2d —, 2006 Ohio App. LEXIS 3185 (June 19, 2006).

Trial court erred by failing to appoint the child's guardian ad litem to act as her attorney and did not make any determination as to whether the child possessed the competency and maturity to express her own wishes. However, the error did not require reversal because the child's wishes were evidenced by the guardian ad litem's report and witness testimony and were consistent with the guardian ad litem's recommendation. In re Kangas, — Ohio App. 3d —, 2006 Ohio 3433, — N.E. 2d —, 2006 Ohio App. LEXIS 3380 (June 30, 2006).

Where there was no evidence of a conflict of interest between a court-appointed guardian ad litem's role on behalf of children in a permanent custody proceeding and his additional role as their attorney, there was no need for the trial court to have appointed a separate individual to serve as their counsel pursuant to Ohio R. Juv. P. 4(C)(2) and Ohio Rev. Code Ann. § 2151.352. In re McHugh Children, 2005 Ohio 2345, 2005 Ohio App. LEXIS 2235 (2005).

Trial court did not err when it denied the father's request to appoint a separate attorney and separate guardian ad litem, in the permanent custody proceeding, because the father presented no evidence to establish that a conflict existed between the attorney's performance as the children's guardian ad litem and as their attorney. In re Miller, — Ohio App. 3d —, 2005 Ohio 856, — N.E. 2d —, 2005 Ohio App. LEXIS 875 (Feb. 24, 2005).

Where the trial court, in the modification of allocation of parental rights case, granted the father's motion to remove the attorney, who was hired by the mother to represent the child and acted as co-counsel with the guardian ad litem, the trial court's order was proper; the guardian ad litem was to act as counsel for the child as well pursuant to Ohio Rev. Code Ann. § 2151.281(H) and Cuyahoga County, Ohio, Ct. C.P. Dom. Rel. Div. R. 35(G), and pursuant to Ohio R. Juv. P. 4(C)(2), absent a conflict of interest, of which there was no evidence in the instant case, the appointment of separate counsel as co-counsel with the guardian ad litem was unnecessary. Jennings-Harder v. Yarnesch, 2004 Ohio 3960, 2004 Ohio App. LEXIS 3605 (2004).

For an attorney to act as guardian ad litem and attorney for the ward, there must be a dual appointment and a finding that no conflict exists: In re Duncan/Walker Children, 109 Ohio App. 3d 841, 673 N.E.2d 217, 1996 Ohio App. LEXIS 1272 (1996).

An attorney should not serve as both guardian ad litem and appointed counsel where there is a conflict in such roles: In re Baby Girl Baxter, 17 Ohio St. 3d 229, 479 N.E.2d 257, 17 Ohio B. 469, 1985 Ohio LEXIS 345 (1985).

Immunity of guardian ad litem

A guardian ad litem has absolute immunity from actions arising out of the performance of duties mandated by his role as advocate for the child in judicial proceedings (Kurzawa v. Mueller, 732 F.2d 1456, 1984 U.S. App. LEXIS 24281, [6th Cir. 1984] followed.); Penn v. McMonagle, 60 Ohio App. 3d 149, 573 N.E.2d 1234, 1990 Ohio App. LEXIS 4426 (1990).

Immunity of judge

A judge has judicial immunity as to removal of an attorney's name from a list of approved counsel who may be appointed to represent indigents: Eichenberger v. Petree, 76 Ohio App. 3d 779, 603 N.E.2d 366, 1992 Ohio App. LEXIS 153 (1992).

Ineffective assistance of counsel

Mother was not afforded every procedural and substantive protection the law allowed in the permanent custody proceedings. The mother received ineffective assistance of counsel because court-appointed counsel completely failed to take the minimal steps necessary to allow the mother to raise the due process concerns caused by the unconscionable delay by the magistrate and the trial court and, when the magistrate issued a decision containing many questionable findings of fact, trial counsel failed to take the elementary step of challenging those factual findings via timely objections, leading the trial court to adopt those factual findings. In re Sox, — Ohio App. 3d —, 2006 Ohio 7116, — N.E. 2d —, 2006 Ohio App. LEXIS 7064 (Dec. 28, 2006).

Trial counsel was not ineffective for failing to make a continuous objection to the hearing continuing when the mother failed to appear since the evidence showed that the mother had notice of the hearing, was offered transportation by the Sandusky County Department of Job and Family Services, and the Department was attempting to contact the mother during the hearing and someone on standby to bring her to court once contact was made; failure to request a bifurcated hearing did not amount to ineffective assistance since the mother failed to demonstrate any harm from such failure. In re Antonio C., 2004 Ohio 82, 2004 Ohio App. LEXIS 67 (2004).

Trial counsel did not render ineffective assistance of counsel by failing to object to the guardian ad litem's questioning of witnesses. The mother failed to overcome the strong presumption that trial counsel acted within the realm of reasonable trial strategy and that counsel was competent, and failed to show how counsel's failure to object to the guardian ad litem's questioning of witnesses prejudiced her or affected the outcome of the trial court's decision to award the agency permanent custody. In re Curry, 2004 Ohio 750, 2004 Ohio App. LEXIS 691 (2004).

In a proceeding to terminate a mother's parental rights, her counsel's decision not to present witnesses fell within the realm of trial strategy, and as she failed to show how this decision affected the outcome of the proceedings, she did not demonstrate ineffective assistance of counsel. In re Hatfield, 2003 Ohio 7339, 2003 Ohio App. LEXIS 6668 (2003).

Father had the right to be represented by counsel in a child support matter and had the right to effective assistance of counsel; however, the father failed to show that he was denied effective assistance of counsel in either his counsel's failure to present his case that he paid past child support or in his counsel's failure to raise a laches defense. Newbauer v. Bertrand, — Ohio App. 3d —, 2003 Ohio 5109, — N.E. 2d —, 2003 Ohio App. LEXIS 4612 (Sept. 29, 2003).

The right to counsel, guaranteed in permanent custody proceedings by RC § 2151.352 and by Ohio R. Juv. P. 4, includes the right to the effective assistance of counsel, and the test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody. In re Riley, 2003 Ohio 4109, 2003 Ohio App. LEXIS 3658 (2003).

The test for ineffective assistance of counsel used in criminal cases is equally applicable to actions seeking to force the permanent, involuntary termination of parental custody: In re Heston, 129 Ohio App. 3d 825, 719 N.E.2d 93, 1998 Ohio App. LEXIS 4280 (1998).

Parents receive ineffective assistance of counsel in termination of rights proceedings where appointed counsel fails to object to

the court's loss of jurisdiction: In re Travis Children, 80 Ohio App. 3d 620, 609 N.E.2d 1356, 1992 Ohio App. LEXIS 6662 (1992).

Magistrate report

The court did not comply with JuvR 4 and 29 when it adopted the referee's report and proposed entry without sufficient findings to enable the court to make an independent determination that the juvenile properly waived counsel and entered an admission: In re Montgomery, 117 Ohio App. 3d 696, 691 N.E.2d 349, 1997 Ohio App. LEXIS 35 (1997).

Right to counsel

Although a juvenile court failed to appoint a separate attorney pursuant to Ohio R. Juv. P. 4(A) for a child for over one and one-half years in proceedings involving a social service agency's request for permanent court custody, there was no showing that the delay impacted the outcome of the matter: In re J.W., — Ohio App. 3d —, 2007 Ohio App. LEXIS 1779 (Apr. 26, 2007).

Trial court acted reasonably in refusing to appoint an attorney for two of the children in the permanent custody proceedings because there was no evidence of a desire on the part of the children to be returned to their mother; both children were removed from the mother's home at a very young age, and had had limited, sporadic visitation with their mother thereafter. A guardian ad litem was appointed in the dual role of guardian ad litem and attorney for the children and, based on the circumstances presented, there was no basis to conclude that a conflict existed between the opinion of the guardian ad litem and the desires of the children. In re J.R., — Ohio App. 3d —, 2007 Ohio App. LEXIS 164 (Jan. 19, 2007).

Juvenile court violated defendant juvenile's right to counsel in his delinquency proceeding pursuant to U.S. Const. amends. V, VI, and XIV, Ohio Const. art. I, § 16, Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4 and 29 where a valid waiver of counsel was not obtained during the adjudicatory and disposition hearings and counsel was not appointed. Although defendant and his adoptive mother signed a standard form regarding his rights, the form was not accurately filled out and the court failed to review it to ascertain that defendant fully understood the rights therein. In re M.T., — Ohio App. 3d —, 2007 Ohio App. LEXIS 2258 (May 21, 2007).

There was no error in failing to commence the permanent custody hearing (Ohio Rev. Code Ann. § 2151.414) anew after counsel was appointed for the children, pursuant to Ohio R. Juv. P. 4 and Ohio Rev. Code Ann. § 2151.352, because the conflict between the guardian ad litem's recommendation and the children's wishes only became apparent after the hearing had commenced; the error was waived since the mother failed to object, pursuant to Ohio R. Juv. P. 40(3)(a)(i); the attorney declined the opportunity to call other witnesses who had testified at the earlier hearing, with full knowledge of what those witnesses had said, because the attorney was provided a transcript of that earlier hearing; and after the attorney was appointed to represent the children, the mother could no longer claim standing to object that the children's rights in the subsequent proceedings were violated. In re R.E., — Ohio App. 3d —, 2006 Ohio App. LEXIS 1256, — N.E. 2d —, 2006 Ohio App. LEXIS 1145 (Mar. 17, 2006).

Under the circumstances, appointment of counsel for the children in the permanent custody proceeding was not required because the children lacked the necessary maturity to give any credible testimony to the court about their wishes with regard to custody. In re Shriver, — Ohio App. 3d —, 2006 Ohio App. LEXIS 2792, — N.E. 2d —, 2006 Ohio App. LEXIS 2641 (June 5, 2006).

Father's contention that the trial court erred in failing to appoint counsel for his children to represent them in a permanent custody proceeding was without merit. The father waived his right to complain of the alleged error on appeal by his failure to raise the issue before the trial court, and even so, the record indicated that the trial court appointed an individual as both guardian ad litem and counsel for all three children. In re Salsberry, — Ohio App. 3d —, 2006 Ohio App. LEXIS 3272, — N.E. 2d —, 2006 Ohio App. LEXIS 3190 (June 19, 2006).

Trial court did not err in not appointing an attorney to represent a mother's children in a permanent custody proceeding since the statements by the two older children that they loved

their mother and missed her did not constitute evidence that they had an affirmative desire to live with their mother on a permanent basis that was in conflict with their guardian ad litem's recommendation that permanent custody be granted to the agency. Moreover, the second oldest son lacked maturity to understand the proceedings. In re A.T., — Ohio App. 3d —, 2006 Ohio App. LEXIS 3583 (Aug. 2, 2006).

In proceedings that granted a motion filed by a county children's services agency for permanent custody of a mother's three children under Ohio Rev. Code Ann. § 2151.414(B)(1), a trial court did not err in failing to appoint an attorney for each child. The appointment of separate attorneys was required only when a conflict existed between the role of guardian ad litem and that of attorney under Ohio R. Juv. P. 4(C)(2), and no evidence was presented to show that a conflict existed between the performance of the children's attorney as their appointed counsel under Ohio Rev. Code Ann. § 2151.352 and her role as their guardian ad litem. In re Parks, — Ohio App. 3d —, 2006 Ohio App. LEXIS 5891, — N.E. 2d —, 2006 Ohio App. LEXIS 5836 (Nov. 2, 2006).

Trial court erred by failing to appoint counsel after a possible conflict became known between the child's wishes and the recommendation of the guardian ad litem during the permanent custody hearing and thus, the child was entitled to counsel pursuant to Ohio Rev. Code Ann. § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). An attorney would have been required to provide zealous representation for his client and make every legitimate effort to secure an order allowing the child to have continued contact with her father, which the guardian ad litem could not do and remain consistent with his recommendation. In re H.R., — Ohio App. 3d —, 2006 Ohio App. LEXIS 1595, — N.E. 2d —, 2006 Ohio App. LEXIS 1472 (Mar. 31, 2006).

Trial court, at a minimum, was required to interview the child, on the record, to determine if she was of sufficient maturity to benefit from separate counsel in the permanent custody proceeding, but failed to do so. There was a clear conflict because the guardian ad litem recommended to the trial court that the mother's parental rights be terminated but the agency case supervisor for the child testified at the permanent custody hearing that the child ultimately wanted to be with her mom. In re Roque, — Ohio App. 3d —, 2006 Ohio App. LEXIS 7007, — N.E. 2d —, 2006 Ohio App. LEXIS 6961 (Dec. 29, 2006).

There was no merit to the mother's motion to remove the guardian ad litem (GAL) because the mother did not provide any details as to the "truly justifiable" reasons for which she alleged that the GAL should be removed. Nor did the mother point to any law supporting her contention that the vague incidents referred to amounted to a GAL failing to perform his duties. In re Thomas, — Ohio App. 3d —, 2006 Ohio App. LEXIS 3324, — N.E. 2d —, 2006 Ohio App. LEXIS 3237 (June 29, 2006).

Mother's due process rights were not violated because she would have been entitled to the appointment of counsel during the permanent custody hearing, pursuant to Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4, had she requested such from the trial court. The record established that she failed to appear at any of the trial court proceedings prior to the commencement of the permanent custody hearing and never filed a written request asking the trial court to appoint counsel on her behalf. In re Westfall, — Ohio App. 3d —, 2006 Ohio App. LEXIS 6717, — N.E. 2d —, 2006 Ohio App. LEXIS 6644 (Dec. 18, 2006).

Mother's permanent surrender of parental rights was not invalid on the ground that the mother's attorney was not present when she signed the surrender because a voluntary surrender is not an adversarial proceeding, and thus, the attendance of a parent's counsel is not mandated during discussions leading to a permanent surrender of custody. Neither Ohio Rev. Code Ann. § 5103.15 nor Ohio R. Juv. P. 4(A), contemplates the right of an indigent person to have an attorney present during a private, contractual transfer of permanent custody. In re Young, — Ohio App. 3d —, 2006 Ohio App. LEXIS 4537, — N.E. 2d —, 2006 Ohio App. LEXIS 4487 (Sept. 1, 2006).

Trial court did not err in failing to appoint counsel for three children who were the subject of a termination of parental rights proceeding where: (1) the children were older and of a higher maturity level, (2) the guardian ad litem's (GAL) recommendation did not conflict with the wishes of the children to not be returned to the mother's care, (3) the children's counselors also indicated

that the children did not want to return to the mother, and (4) the juvenile court had an in-camera interview with the children and their statements in that interview conformed to the statements made by the GAL and the counselors. In re Nelson, — Ohio App. 3d —, 2005 Ohio 6600, — N.E. 2d —, 2005 Ohio App. LEXIS 5926 (Dec. 9, 2005).

Without any evidence of the children's wishes before it (in the permanent custody hearing pursuant to Ohio Rev. Code Ann. § 2151.414), the trial court did not make, and could not have made, the meaningful determination required as to whether the children needed separate counsel, pursuant to Ohio Rev. Code Ann. § 2151.352, as clarified by Ohio R. Juv. P. 4(A) and Ohio R. Juv. P. 2(Y). The guardian ad litem's report, which was filed during the hearing, did not take a position on what the best interest of the children was. In re Thuy B., — Ohio App. 3d —, 2005 Ohio 4280, — N.E. 2d —, 2005 Ohio App. LEXIS 3884 (Aug. 18, 2005).

There was no error in failing to appoint a separate attorney for the child in the permanent custody proceedings because there was no clear conflict of interest between what the child desired and what the guardian ad litem was recommending. Due to the child's extensive medical and cognitive issues, she was not able to participate at all in any decisions surrounding her best interests but her desires were taken into consideration. In re P.S., — Ohio App. 3d —, 2005 Ohio 4157, — N.E. 2d —, 2005 Ohio App. LEXIS 3766 (Aug. 11, 2005).

There was no error in the trial court's decision not to inquire further into appointment of separate counsel for the children in the permanent custody proceeding, because no conflict existed between the recommendation of the guardian ad litem and the wishes of the children; moreover, the guardian ad litem was able to ascertain the wishes of the children through the lay guardian. In re Miller, — Ohio App. 3d —, 2005 Ohio 897, — N.E. 2d —, 2005 Ohio App. LEXIS 900 (Mar. 3, 2005).

There was no evidence regarding the son's wishes and/or level of maturity on which the juvenile court could have made any decision regarding the appointment of counsel; the juvenile court did not appoint counsel for the children, did not expressly appoint the guardian ad litem to act as their counsel, and did not make any determination as to whether any of the children lacked the maturity to benefit from the appointment of counsel. In re Ridenour, 2004 Ohio 1958, 2004 Ohio App. LEXIS 1703 (2004).

Pursuant to RC § 2151.352, as clarified by JuvR 4(A) and JuvR 2(Y), a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances: In re Williams, 101 Ohio St. 3d 398, 2004 Ohio 1500, 805 N.E.2d 1110, 2004 Ohio LEXIS 705 (2004).

Although neither the court nor the guardian ad litem ever had any direct interaction with the two children in a proceeding by a children's services agency seeking permanent custody, the court properly considered their wishes pursuant to Ohio Rev. Code Ann. § 2151.414(D) by being made aware of the older child's desire to be placed with his mother, through testimony of the mother and a caseworker, and accordingly, any error on that issue was deemed harmless. The Ohio Supreme Court had previously relied on its prior decisions, Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4(A) and 2(Y) in determining that a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and is entitled to independent counsel in certain circumstances. In re Lane, 2004 Ohio 2798, 2004 Ohio App. LEXIS 2486 (2004).

In a temporary custody proceeding, the trial court did not err in awarding temporary custody to a father and grandmother without appointing counsel for the minor child because the record reflected that the mother, although informed of this right to counsel, pursuant to Ohio R. Juv. P. 4(A) and Ohio Rev. Code Ann. § 2151.353, failed to request counsel for the minor child. In re S.M., 2004 Ohio 1243, 2004 Ohio App. LEXIS 1101 (2004).

Trial court did not abuse its discretion in denying the mother's motion to vacate the permanent custody award because the mother was informed of her right to counsel and the procedures necessary to obtain appointed counsel, but she failed to avail herself of such rights; thus, she was not denied the right to counsel afforded by Ohio R. Juv. P. 4(A). In re Williams, 2004 Ohio 678, 2004 Ohio App. LEXIS 592 (2004).

Holding in In re Williams may be applied retroactively. The trial court should have conducted an investigation into whether children who were the subject of a proceeding to terminate parental rights were entitled to counsel. The mother's failure to raise the issue in the trial court did not waive the children's rights: In re Moore, 158 Ohio App. 3d 679, 2004 Ohio 4544, 821 N.E.2d 1039, 2004 Ohio App. LEXIS 4140 (2004).

Failure to appoint counsel to represent all of the allegedly abused children was rendered harmless because the court was not prevented from knowing the wishes of the children. In re Joshua B., 2003 Ohio 3096, 2003 Ohio App. LEXIS 2797 (2003).

Trial court did not abuse its discretion when it declined to grant a mother a hearing on her motion to appoint a second guardian ad litem for her child, in a case where she sought to suspend the child's father's visitation with the child, because, under Ohio R. Juv. P. 4(C), the trial court was not required to hold a hearing on such a motion, and there was no indication in the record that the guardian ad litem was unfair or partial, and the guardian ad litem's report revealed the reasons for her recommendations. Edwards v. Livingstone, — Ohio App. 3d —, 2003 Ohio 4099, — N.E. 2d —, 2003 Ohio App. LEXIS 3646 (Aug. 1, 2003).

In a child support enforcement proceeding, an incarcerated obligor father did not show that he was entitled to appointed counsel under Ohio R. Juv. P. 4 or RC § 2151.352 because he did not establish that he was indigent. Jones v. Bowens, 2003 Ohio 5224, 2003 Ohio App. LEXIS 4671 (2003).

Trial court erred by failing to determine if a mother was indigent and in failing to appoint counsel if she met the indigency requirement, in a parentage and child support action, as Ohio R. Juv. P. 4(A) required that all parties to juvenile proceedings had the right to have counsel appointed if they were indigent, and Ohio R. Juv. P. 2(Y) defined "party" to a juvenile proceeding to include the parents of the child who was subject to the proceedings; however, regardless of this error, a child support enforcement agency lacked standing to raise this issue on appeal, as only those parties who could demonstrate a present interest in the subject matter of the litigation and who had been prejudiced by the trial court's decision had the right to file an appeal, and the agency failed to assert a plausible explanation as to how it had been prejudiced by the trial court's failure to appoint counsel for the mother. Still v. Hayman, — Ohio App. 3d —, — N.E. 2d —, 2003 Ohio App. LEXIS 3665 (July 30, 2003).

An adjudication proceeding cannot go forward unless the juvenile is represented by counsel or there has been a valid waiver. Delegating the task of hiring counsel to the juvenile is inappropriate: In re Johnston, 142 Ohio App. 3d 314, 755 N.E.2d 457, 2001 Ohio App. LEXIS 1937 (2001).

Children who were the subject of a proceeding for termination of parental rights were entitled to appointed counsel, especially where there were indications that they wanted to remain with the parents. The appointment of an attorney as the substitute guardian was not sufficient: In re Stacey S., 136 Ohio App. 3d 503, 1999 Ohio 989, 737 N.E.2d 92, 1999 Ohio App. LEXIS 6336 (1999).

Neither RC § 2151.35.2 nor JuvR 4 requires appointment of counsel for a natural parent who has notice of the custody proceedings and disavows any interest in obtaining custody: In re Whaley, 86 Ohio App. 3d 304, 620 N.E.2d 954, 1993 Ohio App. LEXIS 801 (1993).

The court did not err by appointing counsel for a grandparent seeking visitation rights: Holley v. Higgins, 86 Ohio App. 3d 240, 620 N.E.2d 251, 1993 Ohio App. LEXIS 769 (1993).

A party who has a right to appointed counsel in a juvenile court action for child support is also entitled to counsel on the issues of custody and visitation: McKinney v. McClure, 102 Ohio App. 3d 165, 656 N.E.2d 1310, 1995 Ohio App. LEXIS 1124 (1995).

A parent who has executed an invalid surrender of parental rights is entitled to appointed counsel if the parent is indigent: State ex rel. Lunsford v. Buck, 88 Ohio App. 3d 425, 623 NE2d 1356, 1993 Ohio App. LEXIS 3473.

Juvenile Rule 4(A) and RC § 2151.31.2 guarantee the right to counsel for all indigent parties in juvenile court proceedings: Lowry v. Lowry, 48 Ohio App. 3d 184, 549 N.E.2d 176, 1988 Ohio App. LEXIS 1889 (1988).

A refusal to appoint counsel for an indigent parent in parental termination proceedings was held not violative of due process:

Lassiter v. Dep't of Social Services, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640, 1981 U.S. LEXIS 107 (1981).

The guarantee of the right to be represented by counsel set forth in JuvR 4(A) does not, as to a nonindigent party, require that trial be continued indefinitely until counsel can be obtained, but merely requires, if it does not appear that counsel cannot be obtained through the exercise of reasonable diligence and a willingness to enter into reasonable contractual arrangements for counsel's services, that a reasonable opportunity be given to the party before trial to employ such counsel: *In re Bolden*, 37 Ohio App. 2d 7, 66 Ohio Op. 2d 26, 306 N.E.2d 166, 1973 Ohio App. LEXIS 796 (1973).

Waiver of counsel

Trial court did not err in finding that a father waived his right to the effective assistance of trial counsel under Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4(A) during a permanent custody proceeding. The father consistently appeared alone at the hearings and, despite having been informed several times by the trial court, the prosecutor, and the family services agency of his right to counsel, never made a clear request for counsel or took any steps to obtain counsel. *In re Saunders*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 392 (Feb. 1, 2007).

Appellant's purported waiver of counsel at a probation revocation hearing was not valid, under Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4 and 35(B), because the trial court's advisement as to that right appeared to state that appellant had the right if he wanted an evidentiary hearing, but not if he wanted to admit the violation he was charged with, which was not the law. *In re Lohr*, — Ohio App. 3d —, 2007 Ohio 1130, — N.E. 2d —, 2007 Ohio App. LEXIS 1046 (Mar. 7, 2007).

Appellant's purported waiver of counsel at a probation revocation hearing was not valid, under RC § 2151.352 and Ohio R. Juv. P. 4 and 35(B), because the trial court's advisement as to that right appeared to state that appellant had the right if he wanted an evidentiary hearing, but not if he wanted to admit the violation he was charged with, which was not the law. *In re Lohr*, — Ohio App. 3d —, 2007 Ohio 1130, — N.E. 2d —, 2007 Ohio App. LEXIS 1046 (Mar. 7, 2007).

Trial court erred in failing to determine whether appellant child knowingly and voluntarily waived his right to an attorney. The trial court should have explained the elements and seriousness of the charge against him and should have determined that appellant child was not being coerced or pressured into waiving his right to counsel, addressed his parents to ensure there was no conflict of interest and that the parents also understood the proceedings. *In re Mills*, — Ohio App. 3d —, 2007 Ohio 924, — N.E. 2d —, 2007 Ohio App. LEXIS 882 (Mar. 5, 2007).

When a trial court did not properly accept appellant's waiver of appellant's right to counsel, it did not cure this initial deficient waiver of counsel by engaging in an additional colloquy with appellant later in the proceedings related to appellant entering an admission or denial regarding the charges against appellant. *In re McDonald*, — Ohio App. 3d —, 2007 Ohio 2324, — N.E. 2d —, 2007 Ohio App. LEXIS 2175 (May 10, 2007).

Appellant was improperly adjudicated to be a delinquent child because the trial court did not adequately find if appellant's waiver of appellant's right to counsel, under Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4(A), was voluntary, knowing and intelligent, as it did not make sufficient inquiry to find if appellant fully understood and intelligently relinquished that right because, before accepting appellant's waiver of counsel, (1) it did not adequately warn appellant of the dangers and disadvantages of self-representation, (2) it should have advised appellant of the nature of the charges and the range of allowable punishments, and (3) it should have advised appellant of possible defenses to the charges and applicable mitigating circumstances. *In re McDonald*, — Ohio App. 3d —, 2007 Ohio 2324, — N.E. 2d —, 2007 Ohio App. LEXIS 2175 (May 10, 2007).

When a trial court did not properly accept appellant's waiver of appellant's right to counsel, at appellant's initial appearance, all subsequent proceedings, including probation revocation proceedings, were necessarily similarly tainted. *In re McDonald*, — Ohio App. 3d —, 2007 Ohio 2324, — N.E. 2d —, 2007 Ohio App. LEXIS 2175 (May 10, 2007).

When appellant was charged with offenses in juvenile court, Ohio Rev. Code Ann. § 2151.352 did not require that counsel be appointed to represent him because the statute, as well as Ohio R. Juv. P. 4(A) and 29(B), allowed him to waive counsel, which he knowingly, intelligently, and voluntarily did. *In re Spears*, — Ohio App. 3d —, 2006 Ohio 1920, — N.E. 2d —, 2006 Ohio App. LEXIS 1761 (Apr. 17, 2006).

Based on a review of the record as a whole, and in consideration of the affirmations of the minor and her mother that they wished to proceed without counsel on her delinquency charge for drug possession, the requirements of Ohio R. Juv. P. 29(B) were met and the minor's waiver of counsel was voluntarily, knowingly and understandingly given. The trial court explained to the minor her right to counsel, the nature, elements, and category of the charge, her right to a trial, the possible commitment, her right to remain silent, her right to present evidence in her defense and her right to cross-examine witnesses and, as each right was explained, the minor answered that she understood the right and then the minor and her mother agreed to proceed without counsel. *In re Loos*, — Ohio App. 3d —, 2006 Ohio 3932, — N.E. 2d —, 2006 Ohio App. LEXIS 3891 (July 31, 2006).

Although the trial court substantially complied with Ohio R. Juv. P. 29(D) when it accepted defendant juvenile's waiver of counsel during the adjudication hearing, the trial court failed to reiterate defendant's right to counsel during disposition or allow him either to invoke or to waive his right to counsel at that stage as required by Ohio R. Juv. P. 34. *In re S. J.*, — Ohio App. 3d —, 2006 Ohio 4467, — N.E. 2d —, 2006 Ohio App. LEXIS 4395 (Aug. 30, 2006).

As a magistrate substantially complied with the requirements of Ohio R. Juv. P. 29(B)(1) and (4), although he erroneously notified the juvenile in a probation revocation proceeding that he had a right to be represented by a lawyer if he wished and if his family could not afford a lawyer, such was not plain error under Ohio R. Crim. P. 52(B), as the magistrate carefully outlined the rights and responsibilities of the juvenile, and he made sure he understood the rights and the implications of his waiver; as the juvenile's waiver of his right to counsel was deemed knowing, voluntary, and intelligent, there was no violation of his right to counsel pursuant to Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4. *In re J-M*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 6131 (Nov. 22, 2006).

In determining whether a juvenile's waiver of counsel is knowing, intelligent and voluntary, a court is required to give close scrutiny to such factors as the juvenile's age, emotional stability, mental capacity, and prior criminal experience. *In re Kindred*, 2004 Ohio 3647, 2004 Ohio App. LEXIS 3281 (2004).

Where a trial court determined that defendant, a juvenile, waived his right to counsel in his juvenile delinquency proceeding without having conducted the type of dialogue contemplated by the Ohio Juvenile Procedure Rules, the waiver was insufficient and defendant's admission of true should not have been accepted; defendant, as a juvenile, had a right to counsel under Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4(A) and 29(B), and the trial court was required to make a sufficient inquiry as to his knowing, intelligent, and voluntary waiver of that right in order to avoid violating defendant's right to due process under U.S. Const. amends. V and XIV and Ohio Const. art. I, § 16. *In re Christner*, 2004 Ohio 4252, 2004 Ohio App. LEXIS 3864 (2004).

To establish a valid waiver of counsel, a court must investigate as long and as thoroughly as the circumstances of the case demand: *In re Royal*, 132 Ohio App. 3d 496, 725 N.E.2d 685, 1999 Ohio App. LEXIS 854 (1999).

The waiver of counsel was not valid where the magistrate's explanation seemed to state that the right to counsel was triggered only if the juvenile elected to proceed to trial. A waiver of rights form signed after the charge was admitted was not effective: *In re Doyle*, 122 Ohio App. 3d 767, 702 N.E.2d 970, 1997 Ohio App. LEXIS 4471 (1997).

Juvenile Rules 4(A) and 29(B) and RC § 2151.35.2 entitle a juvenile to be represented by counsel at all stages of the proceedings. However, that right may be waived: *In re East*, 105 Ohio App. 3d 221, 663 N.E.2d 983, 1995 Ohio App. LEXIS 2851 (1995).

Withdrawal of counsel

Trial court did not err in granting a grandmother's appointed counsel's motion for leave to withdraw in a parental rights termination proceeding, as the grandmother was a party to the action, pursuant to Ohio R. Juv. P. 2(Y), and she was accordingly entitled to be represented by counsel, but she was not entitled to appointed counsel under RC § 2151.352; Ohio R. Juv. P. 4(A) was not applicable to the circumstances, as the right to counsel emanated from RC § 2151.352. In re Denisha Michelle T., 2005 Ohio 1032, 2005 Ohio App. LEXIS 1041 (2005).

Parent's right to appointed counsel was not violated by her attorney's withdrawal in a proceeding to terminate parental rights where the parent's uncooperativeness and lack of interest in the proceedings were demonstrated by her failure to appear at scheduled hearings and by her attorney's unsuccessful attempts to contact her. In re C.H., 162 Ohio App. 3d 602, 2005 Ohio 4183, 834 N.E.2d 401, 2005 Ohio App. LEXIS 3821 (2005).

Pursuant to Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4(F), the trial court committed plain error in allowing the father's counsel to withdraw her representation immediately prior to the dispositional hearing regarding the father's parental rights because the father did not waive his right to counsel. The trial court could not reasonably have concluded that the failure of counsel's communication with the father, whether reasonable or not, resulted in the inability of counsel to ascertain the father's wishes because counsel, herself, informed the trial court that it was the father's desire to have custody of the child. In re Tyler Jo S., — Ohio App. 3d —, 2005 Ohio 1225, — N.E. 2d —, 2005 Ohio App. LEXIS 1214 (Mar. 18, 2005).

Father was denied his right to representation at the dispositional hearing, the equivalent to a denial of counsel in violation of Ohio R. Juv. P. 4(A), when the trial court allowed the father's attorney to withdraw on the day of the dispositional hearing (regarding the termination of his parental rights), in the father's absence, without prior motion or notice to the father; and, the attorney had stated that the father had indicated his desires to him. In re Sadie R., — Ohio App. 3d —, 2005 Ohio 325, — N.E. 2d —, 2005 Ohio App. LEXIS 292 (Jan. 28, 2005).

Given the background, experience, and conduct of the mother, the trial court did not err in determining that she waived her right to counsel and in granting counsel's motion to withdraw; the mother received notice of the scheduled hearings but failed to appear, the mother had had no contact with the attorney, and evidence showed that she had been disinterested in the child from the time of her birth, had been uncooperative with regard to case plan services, refused drug treatment, refused recommended psychiatric counseling, and failed to keep regularly scheduled meetings with her caseworkers. In re Savanah M., 2003 Ohio 5855, 2003 Ohio App. LEXIS 5209 (2003).

The court erred by allowing a parent's attorney to withdraw on the morning of the dispositional hearing, without prior notice to the client. A simple assertion that a party has been "uncooperative" is insufficient to demonstrate that an attorney should be allowed to withdraw, especially on the day of the dispositional hearing. In re M.L.R., 150 Ohio App. 3d 39, 2002 Ohio 5958, 779 N.E.2d 772, 2002 Ohio App. LEXIS 5796 (2002).

Where the guardian ad litem appointed for a parent who fled to China with a child was also an attorney, the court did not err by terminating parental rights without granting a continuance so that new counsel could be appointed for the parent to replace counsel who withdrew due to lack of communication with the parent. In re Zhang, 135 Ohio App. 3d 350, 734 N.E.2d 379, 1999 Ohio App. LEXIS 2615 (1999).

While parent had a right to be and was represented by counsel during dependency proceedings, once a finding of dependency was made, parent no longer had a statutory or constitutional right to counsel during the legal custody phase of the proceedings. Therefore, the court had no duty to offer parent a continuance or to appoint new counsel when parent's counsel withdrew on the date of the custody hearing before the proceedings began. In re Caputo, 1998 Ohio App. LEXIS 1519 (12th Dist. 1998).

Opinions of Attorney General

An indigent child is entitled pursuant to RC § 2151.35.2 and JuvR 4(A) to be represented by the county public defender in all juvenile court proceedings pertaining to a complaint alleging the

child to be a juvenile traffic offender, regardless of whether the outcome of the proceeding could result in a loss of liberty, except when the right to counsel is waived or the juvenile court pursuant to RC § 120.16(E) appoints counsel other than the county public defender or allows an indigent child to select his own personal counsel to represent him (1984 OAG No. 84-023, approved and followed): OAG No. 97-040 (1997).

Pursuant to RC § 2151.35.2, a child, his parents, custodian, or other persons in loco parentis, if indigent, is entitled to be represented in all juvenile proceedings by a public defender in accordance with the comprehensive system set forth in RC Chapter 120., regardless of whether the outcome of the proceeding could result in a loss of liberty: OAG No. 84-023 (1984).

RULE 5. [Reserved]

RULE 6. Taking into custody

(A) [When.] A child may be taken into custody:

- (1) pursuant to an order of the court;
- (2) pursuant to the law of arrest;
- (3) by a law enforcement officer or duly authorized officer of the court when any of the following conditions exist:

(a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(b) There are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm;

(c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child has abused or neglected another child in the household, and that the child is in danger of immediate or threatened physical or emotional harm;

(d) There are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;

(e) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child; or

(f) During the pendency of court proceedings, there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court or will not be brought to the court;

(g) A juvenile judge or designated magistrate has found that there is probable cause to believe any of the conditions set forth in division (A)(3)(a), (b), or (c) of this rule are present, has found that reasonable efforts have been made to notify the child's parents, guardian ad litem or custodian that the child may be placed into shelter care, except where notification would jeopardize the physical or emotional safety of the child or result in the child's removal from the court's jurisdiction, and has ordered ex parte, by telephone or otherwise, the taking of the child into custody.

(4) By the judge or designated magistrate ex parte pending the outcome of the adjudicatory and dispositional hearing in an abuse, neglect, or dependency proceeding, where it appears to the court that the best interest and welfare of the child require the immediate issuance of a shelter care order.

(B) **Probable cause hearing.** When a child is taken into custody pursuant to an ex parte emergency order pursuant to division (A)(3)(g) or (A)(4) of this rule, a

probable cause hearing shall be held before the end of the next business day after the day on which the order is issued but not later than seventy-two hours after the issuance of the emergency order.

History: Amended, eff 7-1-94; 7-1-96.

STAFF NOTES

7-1-96 AMENDMENT

RULE 6 TAKING INTO CUSTODY

The amendment changed the rule's reference from "referee" to "magistrate" in divisions (A)(3)(g) and (A)(4) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 6 TAKING INTO CUSTODY

The 1994 amendment modifies Juv. R. 6 to comply with section 2151.31 of the Revised Code, which requires particular conditions to exist to permit a law enforcement officer or a duly authorized officer of the court to take a child into emergency custody. Juv. R. 6(A)(3)(g) specifies when such taking into custody may be authorized by an ex parte telephone order pursuant to section 2151.31(D) of the Revised Code. Juv. R. 6(B) delineates time deadlines for a probable cause hearing to be held after the issuance of an emergency order.

Cross-References to Related Statutes

Apprehension, custody, and detention, RC § 2151.31.
Case to be initiated in or transferred to juvenile court, RC § 2152.03.
Procedure upon apprehension, RC § 2151.31.1.

Ohio Administrative Code

Department of job and family services, division of social services

Alleged child abuse and neglect; those mandated to report.
OAC ch. 5101:2-34.

Central registry reports on child abuse and neglect; referral procedures for children's protective services. OAC ch. 5101:2-35.

Child care agencies. OAC ch. 5101:2-5.

Public children services agency (PCSA). OAC ch. 5101:2-33.

Substitute care. OAC ch. 5101:2-42.

Authority to assume and retain custody of a child. OAC 5101:2-42-04.

Termination of custody of a child. OAC 5101:2-42-94.

Opinions of Attorney General

Removal from home

Under Ohio law, unless matters of public safety are involved, a child alleged to be abused, neglected, or dependent may be removed from his home by court order only upon a judicial determination that continuation in the home would be contrary to the child's best interests: OAG No. 87-105 (1987).

RULE 7. Detention and shelter care

(A) **Detention: standards.** A child taken into custody shall not be placed in detention or shelter care prior to final disposition unless any of the following apply:

(1) Detention or shelter care is required:

(a) to protect the child from immediate or threatened physical or emotional harm; or

(b) to protect the person or property of others from immediate or threatened physical or emotional harm.

(2) The child may abscond or be removed from the jurisdiction of the court;

(3) The child has no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to the court when required;

(4) An order for placement of the child in detention or shelter care has been made by the court;

(5) Confinement is authorized by statute.

(B) **Priorities in placement prior to hearing.** A person taking a child into custody shall, with all reasonable speed, do either of the following:

(1) Release the child to a parent, guardian, or other custodian;

(2) Where detention or shelter care appears to be required under the standards of division (A) of this rule, bring the child to the court or deliver the child to a place of detention or shelter care designated by the court.

(C) **Initial procedure upon detention.** Any person who delivers a child to a shelter or detention facility shall give the admissions officer at the facility a signed report stating why the child was taken into custody and why the child was not released to a parent, guardian or custodian, and shall assist the admissions officer, if necessary, in notifying the parent pursuant to division (E)(3) of this rule.

(D) **Admission.** The admissions officer in a shelter or detention facility, upon receipt of a child, shall review the report submitted pursuant to division (C) of this rule, make such further investigation as is feasible and do either of the following:

(1) Release the child to the care of a parent, guardian or custodian;

(2) Where detention or shelter care is required under the standards of division (A) of this rule, admit the child to the facility or place the child in some appropriate facility.

(E) **Procedure after admission.** When a child has been admitted to detention or shelter care the admissions officer shall do all of the following:

(1) Prepare a report stating the time the child was brought to the facility and the reasons the child was admitted;

(2) Advise the child of the right to telephone parents and counsel immediately and at reasonable times thereafter and the time, place, and purpose of the detention hearing;

(3) Use reasonable diligence to contact the child's parent, guardian, or custodian and advise that person of all of the following:

(a) The place of and reasons for detention;

(b) The time the child may be visited;

(c) The time, place, and purpose of the detention hearing;

(d) The right to counsel and appointed counsel in the case of indigency.

(F) **Detention hearing.**

(1) Hearing: time; notice. When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and to the parents, guardian, or other custodian, if that person or those persons can be found.

(2) Hearing: advisement of rights. Prior to the hearing, the court shall inform the parties of the right to counsel

and to appointed counsel if indigent and the child's right to remain silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

(3) **Hearing procedure.** The court may consider any evidence, including the reports filed by the person who brought the child to the facility and the admissions officer, without regard to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter care is required under division (A) of this rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse, neglect, or dependency is alleged, the court shall determine whether there are any appropriate relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate relative as the temporary custodian of the child. The court shall make a reasonable efforts determination in accordance with Juv. R. 27(B)(1).

(G) **Rehearing.** If a parent, guardian, or custodian did not receive notice of the initial hearing and did not appear or waive appearance at the hearing, the court shall rehear the matter promptly. After a child is placed in shelter care or detention care, any party and the guardian ad litem of the child may file a motion with the court requesting that the child be released from detention or shelter care. Upon the filing of the motion, the court shall hold a hearing within seventy-two hours.

(H) **Separation from adults.** No child shall be placed in or committed to any prison, jail, lockup, or any other place where the child can come in contact or communication with any adult convicted of crime, under arrest, or charged with crime.

(I) **Physical examination.** The supervisor of a shelter or detention facility may provide for a physical examination of a child placed in the shelter or facility.

(J) **Telephone and visitation rights.** A child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter.

The child may be visited at reasonable visiting hours by the child's parents and adult members of the family, the child's pastor, and the child's teachers. The child may be visited by the child's attorney at any time.

History: Amended, eff 7-1-94; 7-1-01.

The provisions of § 3 of HB 180 (149 v —) read as follows:

SECTION 3. The General Assembly hereby requests the Supreme Court to promptly modify Rule 29 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments of this act to section 2151.28 of the Revised Code.

The General Assembly further requests the Supreme Court to promptly modify Rule 7 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments to this act to section 2151.31 of the Revised Code.

STAFF NOTES

7-1-01 AMENDMENT

RULE 7(A) DETENTION: STANDARDS

Rule 7(A) was amended to add two rationales for placing a child in detention or shelter care: one, that the child is endangering the person or property of others [(A)(1)(b)] and two, that a statutory provision authorizes confinement [(A)(5)]. Rule 7(A)(1)(b) conforms to Sub. Sen. Bill 179 (January 1, 2002 effective date), Revised Code section 2151.31(A)(6)(b) and (d). Rule 7(A)(5) ensures that statutory provisions, i.e., Revised Code sections 2152.04 and 2151.31 (C)(2), that

contemplate placing a child in detention are recognized as valid rationales by the Juvenile Rules.

7-1-94 AMENDMENT

RULE 7 DETENTION AND SHELTER CARE

Am. Sub. S.B. 89, effective January 1, 1989, changed the parameters under which a child could be detained. The law removed the authority to detain a child to protect the person and property of others or to protect the property of the child, so such language in Juv. R. 7(A)(1) has been deleted. Juv. R. 7(A)(1) does define the right to place a child in shelter care because of immediate or threatened physical or emotional harm pursuant to Revised Code 2151.31.

Juv. R. 7(F)(3) requires the court to determine the issues of the opportunity for suitable placement with relatives and of reasonable efforts made by agencies to prevent removal or to return the child home, in accordance with Revised Code 2151.314(B)(2) and 2151.419. "Reasonable efforts" are further defined by amended Juv. R. 27(B)(1).

Juv. R. 7(G) has been modified to include the seventy-two hour shelter care hearing requirement imposed by Revised Code 2151.31(E).

The title for Juv. R. 7(I) was changed from "Medical Examination" to "Physical Examination" to conform it to the definition specified in Juv. R. 2.

Cross-References to Related Statutes

Apprehension, custody, and detention, RC § 2151.31.

Confinement of delinquent child for purposes of preparing social history, RC § 2152.04.

Definitions, RC § 2151.01.1.

Detention hearing, RC § 2151.31.4.

Fingerprints and photographs, RC § 2151.31.3.

Place of detention, RC § 2151.31.2.

Procedure upon apprehension, RC § 2151.31.1.

Separate room for hearings, RC § 2151.24.

Temporary care; emergency medical treatment; reimbursement, RC § 2151.33.

Ohio Administrative Code

Department of job and family services, division of social services—

Children's residential facilities. OAC CH. 5101:2-9.

Foster care. OAC CH. 5101:2-7.

Substitute care. OAC CH. 5101:2-42.

Department of youth services—

Community juvenile corrections facilities. OAC CH. 5139-61.

Community residential centers (CRC). OAC CH. 5139-35.

Detention centers. OAC CH. 5139-37.

NOTES TO DECISIONS

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Generally

Trial court's decision granting an agency temporary custody of a mother's children, after the children had been returned to her from the agency's custody, was not against the manifest weight of the evidence because the primary concern of the shelter care hearing at which temporary custody was granted was the children's immediate safety and protection and (1) the mother, who had left the children with her husband, tested positive for marijuana and methamphetamine, and (2) her husband left the children with their father, contrary to court order. In re G.N., — Ohio App. 3d —, 2007 Ohio 126, — N.E. 2d —, 2007 Ohio App. LEXIS 104 (Jan. 16, 2007).

Considering the nature of shelter care hearings, where the primary emphasis is to ensure the safety of children, the juvenile court's grant of temporary custody to the agency was not against the manifest weight of the evidence: *In re G.N.*, 170 Ohio App. 3d 76, 2007 Ohio 126, 866 N.E.2d 32, 2007 Ohio App. LEXIS 104 (2007).

Constitutionality

Pretrial detention of juveniles presenting a serious risk of committing an offense was constitutional: *Schall v. Martin*, 467 U.S. 253, 104 S. Ct. 2403, 81 L. Ed. 2d 207, 1984 U.S. LEXIS 96 (1984).

Bail

A juvenile court may admit a juvenile bail in a case where the state has moved for a bindover. RC § 2151.31 and JuvR7, taken together, amount to a presumption against detention: *In re K.G.*, 89 Ohio Misc. 2d 16, 693 N.E.2d 1186, 1998 Ohio Misc. LEXIS 1 (CP 1997).

Evidence

The fact that the police did not immediately take defendant to a juvenile facility did not render his statements inadmissible: *State v. Bobo*, 65 Ohio App. 3d 685, 585 N.E.2d 429, 1989 Ohio App. LEXIS 4976 (1989).

Habeas Corpus

Juvenile Rule 7(G) provides that a party may move for a rehearing on a decision relating to detention or shelter care; thus habeas corpus relief is not available: *Petty v. McGinty*, 60 Ohio St. 2d 92, 397 N.E.2d 1190, 14 Ohio Op. 3d 331, 1979 Ohio LEXIS 505 (1979).

A parent, alleging that he failed to receive notice of a hearing concerning the shelter care of his child, must move the juvenile court for a rehearing, pursuant to JuvR 7(G), before seeking a writ of habeas corpus: *Linger v. Weiss*, 57 Ohio St. 2d 97, 386 N.E.2d 1354, 11 Ohio Op. 3d 281, 1979 Ohio LEXIS 373 (1979).

Reunification provision

Where a child is temporarily committed under JuvR 7, the court is not required to order a reunification plan: *In re Moloney*, 24 Ohio St. 3d 22, 492 N.E.2d 805, 24 Ohio B. 18, 1986 Ohio LEXIS 641 (1986).

Opinions of Attorney General

Revised Code § § 2151.31(A)(1), 2151.31.4(A), and JuvR 7(B) do not authorize the release of a child to the peace officer who took the child into custody: OAG No. 96-061 (1996).

If a peace officer determines that the detention or shelter care of a child appears to be required as provided in RC § 2151.31(C) and JuvR 7(A), the peace officer is required by RC § 2151.31.1(A) and JuvR 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child: OAG No. 96-061 (1996).

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

RULE 8. Filing by electronic means

A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(A) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(B) A provision shall specify the days and hours during which electronically transmitted documents will be re-

ceived by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(C) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

History: Effective 7-1-94; amended, eff 7-1-96; 7-1-01.

STAFF NOTES

7-1-01 AMENDMENT

RULE 8 FILING BY ELECTRONIC MEANS

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the addition of the first sentence of the rule and of divisions (B) and (C). The title of the rule was changed from "Filing by Facsimile Transmission." Comparable amendments were made to Civil Rule 5, Civil Rule 73 (for probate courts), Criminal Rule 12, and Appellate Rule 13.

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement these rules of practice and procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

7-1-96 AMENDMENT

RULE 8(A) PROCEDURE

The amendment changed the rule's reference from "referee" to "magistrate" in division (A)(2) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 8 FILING BY FACSIMILE TRANSMISSION

Juv. R. 8 is an attempt to facilitate juvenile court filings by electronic means. Concerns about the reliability of facsimile transmission are addressed in several divisions. The rule sets forth the form and procedural requirements necessary for proper facsimile transmission in an effort to minimize unauthorized filings. Division 8(B) also requires the court to meet certain standards in paper and equipment in order to assure that the electronic filings will be able to be read and handled by court personnel.

NOTES TO DECISIONS

Appeal

Because CivR 11 applies on appeal in a juvenile case, a signature was required on the notice of appeal: *In re Terrance P.*, 124 Ohio App. 3d 487, 706 N.E.2d 801, 1997 Ohio App. LEXIS 5646 (1997).

RULE 9. Intake

(A) **Court action to be avoided.** In all appropriate cases formal action should be avoided and other commu-

nity resources utilized to ameliorate situations brought to the attention of the court.

(B) **Screening; referral.** Information that a child is within the court's jurisdiction may be informally screened prior to the filing of a complaint to determine whether the filing of a complaint is in the best interest of the child and the public.

Cross-References to Related Statutes

Assignment of court employees to combat juvenile delinquency, RC § 2152.73.

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Best interest of child

Formal action against a juvenile defendant should be filed only when it is in the best interest of the child. In re N.K., 2003 Ohio 7059, 2003 Ohio App. LEXIS 6427 (2003).

Discretion of court

It is clear from the language of JuvR 9 that formal court action is permissible in appropriate cases, and that it is within the discretion of the court to proceed in such a manner: In re Corcoran, 68 Ohio App. 3d 213, 587 N.E.2d 957, 1990 Ohio App. LEXIS 2547 (1990).

The waiver doctrine in *State v. Awan* (1986), 22 OS3d 120, 489 NE2d 277, 22 OBR 199, 1986 Ohio LEXIS 566, is discretionary. Even where waiver is clear, this court reserves the right to consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it: In re M.D., 38 Ohio St. 3d 149, 527 N.E.2d 286, 1988 Ohio LEXIS 265 (1988).

Dismissal

In a father's action alleging that his daughter was an unruly child under Ohio Rev. Code Ann. § 2151.022, the juvenile court's dismissal of the complaint on the ground that it was improvidently filed, in that the complaint was filed as the result of pending litigation between the father and the mother regarding a change of custody of the daughter, was an exercise of the juvenile court's discretion under Ohio R. Juv. P. 9(A) to decide whether to commence juvenile court proceedings. In re Brant, — Ohio App. 3d —, 2005 Ohio 6577, — N.E. 2d —, 2005 Ohio App. LEXIS 5889 (Dec. 9, 2005).

The court did not abuse its discretion by dismissing a rape charge against a ten-year-old on the basis that continuing prosecution would not further the juvenile court policies of the state: In re Smith, 80 Ohio App. 3d 502, 609 N.E.2d 1281, 1992 Ohio App. LEXIS 2772 (1992).

Visiting judge

There was plain error in the journal entry transferring the permanent custody case to the docket of the visiting judge signed by a magistrate because, pursuant to Ohio R. Juv. P. 40 and Ohio R. Juv. P. 9, the magistrate was not empowered to refer cases to a visiting judge. Additionally, there was no notice of judicial approval by the sitting judge assigned the case. In re S.J., — Ohio App. 3d —, 2005 Ohio 1854, — N.E. 2d —, 2005 Ohio App. LEXIS 1763 (Apr. 21, 2005).

Opinions of Attorney General

A decision, at a particular point in time, not to charge, arrest, file a complaint with or refer a juvenile to the juvenile court pursuant to JuvR 9 does not require disclosure or terminate the juvenile's status as a "suspect," pursuant to RC § 149.43(A); OAG No. 90-101 (1990).

For purposes of the confidential law enforcement investigatory

records exception under RC § 149.43(A), a juvenile ceases to be a "suspect" upon arrest, being charged, the filing of a complaint or a referral to the juvenile court pursuant to JuvR 9; OAG No. 90-101 (1990).

For purposes of the confidential law enforcement investigatory records exception under RC § 149.43(A), a juvenile may be considered to be a "suspect" when no charge, arrest, complaint or referral to the juvenile court pursuant to JuvR 9 has been made: OAG No. 90-101 (1990).

RULE 10. Complaint

(A) **Filing.** Any person having knowledge of a child who appears to be a juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused may file a complaint with respect to the child in the juvenile court of the county in which the child has a residence or legal settlement, or in which the traffic offense, delinquency, unruliness, neglect, dependency, or abuse occurred.

Persons filing complaints that a child appears to be an unruly or delinquent child for being an habitual or chronic truant and the parent, guardian, or other person having care of the child has failed to cause the child to attend school may also file the complaint in the county in which the child is supposed to attend public school.

Any person may file a complaint to have determined the custody of a child not a ward of another court of this state, and any person entitled to the custody of a child and unlawfully deprived of such custody may file a complaint requesting a writ of habeas corpus. Complaints concerning custody shall be filed in the county where the child is found or was last known to be.

Any person with standing may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be. In a removal action, the complaint shall be filed in the county where the foster home is located.

When a case concerning a child is transferred or certified from another court, the certification from the transferring court shall be considered the complaint. The juvenile court may order the certification supplemented upon its own motion or that of a party.

(B) **Complaint: general form.** The complaint, which may be upon information and belief, shall satisfy all of the following requirements:

(1) State in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction of the court, and in juvenile traffic offense and delinquency proceedings, shall contain the numerical designation of the statute or ordinance alleged to have been violated;

(2) Contain the name and address of the parent, guardian, or custodian of the child or state that the name or address is unknown;

(3) Be made under oath.

(C) **Complaint: juvenile traffic offense.** A Uniform Traffic ticket shall be used as a complaint in juvenile traffic offense proceedings.

(D) **Complaint: permanent custody.** A complaint seeking permanent custody of a child shall state that permanent custody is sought.

(E) **Complaint: temporary custody.** A complaint seeking temporary custody of a child shall state that temporary custody is sought.

(F) **Complaint: planned permanent living**

arrangement. A complaint seeking the placement of a child into a planned permanent living arrangement shall state that placement into a planned permanent living arrangement is sought.

(G) **Complaint: habeas corpus.** Where a complaint for a writ of habeas corpus involving the custody of a child is based on the existence of a lawful court order, a certified copy of the order shall be attached to the complaint.

History: Amended, eff 7-1-75; 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-02.

STAFF NOTES

7-1-02 AMENDMENT

RULE 10(F) COMPLAINT: PLANNED PERMANENT LIVING ARRANGEMENT

The July 1, 2002, amendment to Juv. R. 10(F) substituted the language of "planned permanent living arrangement" for the former language of "long term foster care," to conform to the new legislative designation for these child-placing arrangements.

The amendment to Juv. R. 10(F) conforms to sections 2151.27(C) and 2151.353(B) of the Revised Code. Juvenile Rules 2, 15, and 34 also were amended effective July 1, 2002 to reflect this change in terminology.

7-1-01 AMENDMENT

RULE 10(A) FILING

Rule 10(A) was amended to conform to the Sub. Sen. Bill 181 (effective September 4, 2000) changes that provide in R.C. section 2151.27(A)(2) that chronic and habitual truancy complaints against both children and adults responsible for them may also be properly venued in the county in which the child is supposed to be attending public school.

7-1-98 AMENDMENT

RULE 10(A) FILING

The 1998 amendment revised the third paragraph of Juv. R. 10(A) by adding a reference to removal actions, which are defined in Juv. R. 2(E), also added by the 1998 amendments. The provisions that the complaint in removal actions must be filed in the county where the foster home is located clarifies the venue requirement where the boundaries of the school district extend beyond [a] single county.

The 1998 amendment also deleted from the third paragraph a reference to section 2151.23 of the Revised Code.

7-1-94 AMENDMENT

RULE 10 COMPLAINT

Division (A) of Juv. R. 10 now includes a residual category of persons who may file a complaint in juvenile court. Juv. R. 10(E) and 10(F) have been modified to require that complainants specifically plead whether or not temporary custody or long term foster care is sought. All changes are pursuant to section 2151.27 of the Revised Code, as amended by S.B. 89.

Cross-References to Related Statutes

Complaints, RC §§ 2151.27, 2152.02.1.

Ohio Rules

Definitions, SupR 2.

Ohio Administrative Code

Department of job and family services, division of social services—

Complaint by public children services agency (PCSA) or private child placing agency (PCPA) requesting custody—

Acceptance of permanent custody by permanent surrender. OAC 5101:2-42-09.

Acceptance of temporary custody by agreement and court-approved extensions. OAC 5101:2-42-08.

Obtaining permanent custody: termination of parental rights. OAC 5101:2-42-95.

Foster care. OAC ch. 5101:2-7.

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Generally

Right to file a petition for child custody is substantive, and JuvR 10 must be read in conjunction with the limitations expressed in RC §§ 2151.414(F) and 2151.353(E)(2): In re McBride, 110 Ohio St. 3d 19, 2006 Ohio 3454, 850 N.E.2d 43, 2006 Ohio LEXIS 2155 (2006).

Pursuant to Ohio Rev. Code Ann. § 2151.27, in a juvenile action, the complaint shall allege the particular facts upon which the allegation that the child is a neglected, or dependent child is based, and, pursuant to Ohio Rev. Code Ann. § 2151.353(B) and Ohio R. Juv. P. 10(D), shall contain a prayer specifically requesting permanent custody if that is the relief sought by the complainant; a complaint that sought to adjudicate a father's child neglected and abused properly stated the claim against the father. In re I.M., 2003 Ohio 7069, 2003 Ohio App. LEXIS 6437 (2003).

A complaint in juvenile court alleging delinquency need not be read as strictly as a criminal indictment: In re Good, 118 Ohio App. 3d 371, 692 N.E.2d 1072, 1997 Ohio App. LEXIS 609 (1997).

The parents' pro se complaint should not have been dismissed on the technicality that it cited the wrong statute: In re Fetters, 110 Ohio App. 3d 483, 674 N.E.2d 766, 1996 Ohio App. LEXIS 1570 (1996).

In a parental rights termination proceeding, claims were sufficient to establish juvenile court jurisdiction and apprise mother of the nature of the claims even though they did not provide exact dates of when the alleged events occurred: In re Pieper Children, 74 Ohio App. 3d 714, 600 N.E.2d 317, 1991 Ohio App. LEXIS 3262 (1991).

An objection based on a defect in the complaint must be heard before the adjudicatory hearing by a pre-hearing motion. Failure to make a timely objection constitutes a waiver: In re Dukes, 81 Ohio App. 3d 145, 610 N.E.2d 513, 1991 Ohio App. LEXIS 4735 (1991).

A delinquency complaint is sufficient under JuvR 10(B) to state a charge of complicity when it alleges that the juvenile knowingly aided another to commit robbery in violation of RC § 2923.03: In re Howard, 31 Ohio App. 3d 1, 508 N.E.2d 190, 31 Ohio B. 14, 1987 Ohio App. LEXIS 7481 (1987).

Even though a complaining witness may designate a particular statute or statutes as being violated by a child, a juvenile court is free to find, on the basis of the facts alleged and proved, a violation of an additional statute and that the accused is a delinquent child: In re Burgess, 13 Ohio App. 3d 374, 469 N.E.2d 967, 13 Ohio B. 456, 1984 Ohio App. LEXIS 10888 (1984).

In proving its case in a neglect and dependency proceeding, the state is not limited to those faults and habits of the custodial parent which are specifically listed in the complaint. It is not the intent of JuvR 10(B) to force a complainant to state in the complaint every fact surrounding each incident described: In re Sims, 13 Ohio App. 3d 37, 468 N.E.2d 111, 13 Ohio B. 40, 1983 Ohio App. LEXIS 11369 (1983).

A complaint under JuvR 10 and RC § 2151.27 alleging that a child is dependent must state the essential facts which bring the proceeding within the jurisdiction of the court: In re Hunt, 46 Ohio St. 2d 378, 75 Ohio Op. 2d 450, 348 N.E.2d 727, 1976 Ohio LEXIS 649 (1976).

Parent who has lost permanent custody

Parent who has lost permanent custody of a child to the state may, as a legal stranger to the child, petition for custody. In re McBride, 158 Ohio App. 3d 572, 2004 Ohio 5269, 817 N.E.2d 459, 2004 Ohio App. LEXIS 4860 (2004).

Transfer from another court

When a case concerning a child is transferred or certified from another court, the certification from the transferring court is deemed to be the complaint: In re Snider, 14 Ohio App. 3d 353, 471 N.E.2d 516, 14 Ohio B. 420, 1984 Ohio App. LEXIS 11738 (1984).

Such certification does not constitute a complaint in the juvenile court that such child is neglected, dependent or abused and those dispositions provided for under RC § 2151.35.3 pertaining to neglected, dependent or abused children, including an award of permanent custody to a county welfare department which has assumed the administration of child welfare, are not applicable to such a child, disposition thereof being subject to and controlled by RC § 3109.04: In re Snider, 14 Ohio App. 3d 353, 471 N.E.2d 516, 14 Ohio B. 420, 1984 Ohio App. LEXIS 11738 (1984).

While the certification shall be deemed to be the complaint in the juvenile court, such certification does not constitute a complaint in the juvenile court that such child is dependent or neglected and those dispositions provided for under RC § 2151.35.3, 2151.35.4, and 2151.35.5 pertaining to unruly, delinquent, dependent, or neglected children are not applicable to the disposition of such a child, disposition thereof being subject to and controlled by RC § 3109.04: In re Height, 47 Ohio App. 2d 203, 353 N.E.2d 887, 1 Ohio Op. 3d 279, 1975 Ohio App. LEXIS 5872 (1975).

RULE 11. Transfer to another county

(A) **Residence in another county; transfer optional.** If the child resides in a county of this state and the proceeding is commenced in a court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory or dispositional hearing for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes.

(B) **Proceedings in another county; transfer required.** The proceedings, other than a removal action, shall be so transferred if other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

(C) **Adjudicatory hearing in county where complaint filed.** Where either the transferring or receiving court finds that the interests of justice and the convenience of the parties so require, the adjudicatory hearing shall be held in the county wherein the complaint was filed. Thereafter the proceeding may be transferred to the county of the child's residence for disposition.

(D) **Transfer of records.** Certified copies of all legal and social records pertaining to the proceeding shall accompany the transfer.

History: Amended, eff 7-1-94; 7-1-98.

STAFF NOTES**7-1-98 AMENDMENT**

RULE 11(B) PROCEEDINGS IN ANOTHER COUNTY; TRANSFER REQUIRED.

An exception to the mandatory transfer provisions of Juv. R. 11(B) was added by this amendment to cover removal actions, which are defined in Juv. R. 2(EE), also added by the

1998 amendments. Mandatory transfer of the action to the county of the child's residence would be inconsistent with the purpose of a removal action.

7-1-94 AMENDMENT**RULE 11 TRANSFER TO ANOTHER COUNTY**

The 1994 amendments were made to reflect gender neutral language.

Cross-References to Related Statutes

Transfer to juvenile court of another county, RC § 2151.27.1.

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Appeal

Juvenile delinquency adjudication without a subsequent dispositional order did not constitute a "final order" that was subject to appeal pursuant to Ohio Rev. Code Ann. § 2501.02. A juvenile proceeding may have been transferred upon the filing of the complaint or after the adjudicatory or dispositional hearing, and the county to which the proceeding was transferred was to proceed as if the original complaint had been filed in that court. Where, after adjudication, a trial court transferred a juvenile case to a different county, where it remained pending, the order of adjudication was not subject to review. In re Williams, — Ohio App. 3d —, 2006 Ohio 2370, — N.E. 2d —, 2006 Ohio App. LEXIS 2268 (May 15, 2006).

A common pleas court order transferring proceedings involving an unruly minor to a juvenile court of another county is not a final appealable order where the transferee court has not yet accepted or rejected jurisdiction. A temporary custody order is not a final order: In re Devlin, 78 Ohio App. 3d 543, 605 N.E.2d 467, 1992 Ohio App. LEXIS 989 (1992).

Temporary custody orders entered pursuant to JuvR 34 are final and appealable when they are entered, and failure to timely appeal the orders precludes any further consideration of the hearings conducted prior to those orders: Ackerman v. Lucas Cty. Children Services Bd., 49 Ohio App. 3d 14, 550 N.E.2d 549, 1989 Ohio App. LEXIS 3536 (1989).

Discretion of court

The venue provisions of RC § 2151.27.1 and JuvR 11 are discretionary with the court: In re Meyer, 98 Ohio App. 3d 189, 648 N.E.2d 52, 1994 Ohio App. LEXIS 4792 (1994).

Jurisdiction

Where a mother sought to preclude a juvenile court judge from exercising post-judgment jurisdiction over visitation and custody motions filed by the father of her child after the mother had filed her intent to relocate to North Carolina with the child, her claim that the judge no longer had jurisdiction over the matter lacked merit, as the juvenile court and the judge had general statutory authority over such issues pursuant to Ohio Rev. Code Ann. §§ 2151.23 and 2151.231. The mother also failed to show entitlement to the writ where she had an adequate remedy at law through either an appeal or a request to transfer the proceedings to North Carolina, pursuant to Ohio R. Juv. P. 11 and 39, such that dismissal of the complaint was warranted. Rivers v. Ramsey, — Ohio App. 3d —, 2006 Ohio 1744, — N.E. 2d —, 2006 Ohio App. LEXIS 1610 (Apr. 3, 2006).

Residence of child

Under JuvR 11, an order of transfer may only be to the county of the child's residence. A child is not deemed to have the same residence as his parents, pursuant to RC § 2151.06, where the

child is in the custody of a public agency: In re Smith, 64 Ohio App. 3d 773, 582 N.E.2d 1117, 1990 Ohio App. LEXIS 162 (1990).

Juvenile Rule 11 governs venue in a custody proceeding in the juvenile division, and JuvR 11(A) states, in essence, that if the child resides in one county and the proceeding is commenced in another county, transfer to the county of the child's residence is optional: Squires v. Squires, 12 Ohio App. 3d 138, 468 N.E.2d 73, 12 Ohio B. 460, 1983 Ohio App. LEXIS 11354 (1983).

RULE 12. [Reserved]

RULE 13. Temporary disposition; temporary orders; emergency medical and surgical treatment

(A) **Temporary disposition.** Pending hearing on a complaint, the court may make such temporary orders concerning the custody or care of a child who is the subject of the complaint as the child's interest and welfare may require.

(B) Temporary orders.

(1) Pending hearing on a complaint, the judge or magistrate may issue temporary orders with respect to the relations and conduct of other persons toward a child who is the subject of the complaint as the child's interest and welfare may require.

(2) Upon the filing of an abuse, neglect, or dependency complaint, any party may by motion request that the court issue any of the following temporary orders to protect the best interest of the child:

(a) An order granting temporary custody of the child to a particular party;

(b) An order for the taking of the child into custody pending the outcome of the adjudicatory and dispositional hearings;

(c) An order granting, limiting, or eliminating visitation rights with respect to the child;

(d) An order for the payment of child support and continued maintenance of any medical, surgical, or hospital policies of insurance for the child that existed at the time of the filing of the complaint, petition, writ, or other document;

(e) An order requiring a party to vacate a residence that will be lawfully occupied by the child;

(f) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;

(g) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(3) The orders permitted by division (B)(2) of this rule may be granted ex parte if it appears that the best interest and welfare of the child require immediate issuance. If the court issues the requested ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next court day after the day on which it is issued, whichever occurs first. The court shall appoint a guardian ad litem for the child prior to the hearing. The court shall give written notice of the hearing by means reasonably likely to result in the party's receiving actual notice and include all of the following:

(a) The date, time, and location of the hearing;

(b) The issues to be addressed at the hearing;

(c) A statement that every party to the hearing has a

right to counsel and to court appointed counsel, if the party is indigent;

(d) The name, telephone number, and address of the person requesting the order;

(e) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.

(4) The court may review any order under this rule at any time upon motion of any party for good cause shown or upon the motion of the court.

(5) If the court does not grant an ex parte order, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed.

(C) **Emergency medical and surgical treatment.** Upon the certification of one or more reputable practicing physicians, the court may order such emergency medical and surgical treatment as appears to be immediately necessary for any child concerning whom a complaint has been filed.

(D) **Ex parte proceedings.** In addition to the ex parte proceeding described in division (B) of this rule, the court may proceed summarily and without notice under division (A), (B), or (C) of this rule, where it appears to the court that the interest and welfare of the child require that action be taken immediately.

(E) **Hearing; notice.** In addition to the procedures specified in division (B) of this rule and wherever possible, the court shall provide an opportunity for hearing before proceeding under division (D) of this rule. Where the court has proceeded without notice under division (D) of this rule, it shall give notice of the action it has taken to the parties and any other affected person and provide them an opportunity for a hearing concerning the continuing effects of the action.

(F) **Probable cause finding.** Upon the finding of probable cause at a shelter care hearing that a child is an abused child, the court may do any of the following:

(1) Upon motion by the court or of any party, issue reasonable protective orders with respect to the interviewing or deposition of the child;

(2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;

(3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) **Payment.** The court may order the parent, guardian, or custodian, if able, to pay for any emergency medical or surgical treatment provided pursuant to division (C) of this rule. The order of payment may be enforced by judgment, upon which execution may issue, and a failure to pay as ordered may be punished as contempt of court.

History: Amended, eff 7-1-94; 7-1-96.

STAFF NOTES

7-1-96 AMENDMENT

RULE 13(B) TEMPORARY ORDERS

The amendment changed the rule's reference from "referee" to "magistrate" in division (B)(1) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 13 TEMPORARY DISPOSITION; TEMPORARY ORDERS; EMERGENCY MEDICAL AND SURGICAL TREATMENT

S.B. 89 amended section 2151.33 of the Revised Code to clarify the court's previously existing authority to issue emergency orders for children and Juv. R. 13 has been revised to reflect those amendments. Division (B) sets forth the type of temporary orders a court is authorized to make in an abuse, neglect or dependency case, as well as the procedure to be followed for notice and hearings when orders are made ex parte.

Division (D) clarifies that other kinds of ex parte hearings other than those specified in division (B) are still permitted, and division (E) emphasizes notice and hearing requirements where possible with hearings under division (D).

In accordance with section 2151.33(B) of the Revised Code, division (F)(1), (2), and (3) list the actions the court may take after finding, at a shelter care hearing, probable cause to believe that a child is an abused child.

Cross-References to Related Statutes

Temporary care; emergency medical treatment; reimbursement, RC § 2151.33.

Ohio Administrative Code

Department of job and family services, division of social services—

Central registry reports on child abuse and neglect; referral procedures for children's protective services. OAC ch. 5101:2-35.

Procedures for intervening in cases involving alleged withholding of appropriate nutrition, hydration, medication, or medically indicated treatment from disabled infants with life-threatening conditions. OAC 5101:2-35-77.

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Generally

In a child custody dispute, it was not error for a trial court to grant temporary custody of the subject child to one of the parties during the course of a hearing, and the trial court's final order superceded the temporary order and corrected any error, rendering the issue moot. *Smith v. Quigg*, — Ohio App. 3d —, 2006 Ohio 1494, — N.E. 2d —, 2006 Ohio App. LEXIS 1371 (Mar. 22, 2006).

Trial court did not err in granting the mother's ex parte motion for custody of the children without a hearing as required by JuvR 13(B)(3) because the temporary order granting the mother custody ultimately merged with the final judgment of the trial court. *Font v. Morris*, — Ohio App. 3d —, 2004 Ohio 2354, — N.E. 2d —, 2004 Ohio App. LEXIS 2104 (May 10, 2004).

Where a mother argued that a trial court erred in awarding temporary custody to a father and grandmother because there was no motion pending and no finding of suitability was determined, the appellate court was without jurisdiction to address the argument because the order was granted "until further order" of the court, and, as such, was merely a temporary order, not a final order. In re S.M., 2004 Ohio 1243, 2004 Ohio App. LEXIS 1101 (2004).

Appeal

A temporary order of a juvenile court changing custody under JuvR 13 or 29, is not a dispositional order under JuvR 34, and

hence is not a final appealable order: *Morrison v. Morrison*, 45 Ohio App. 2d 299, 74 Ohio Op. 2d 441, 344 N.E.2d 144, 1973 Ohio App. LEXIS 784 (1973).

Contempt

Magistrate's continuation of the proceedings on the contempt charge avoided any possible prejudice resulting from the short notice provided. Pursuant to JuvR 13(D), the magistrate was authorized to take evidence on the issue of temporary custody "summarily and without prior notice": In re Kepperling, 166 Ohio App. 3d 257, 2006 Ohio 1856, 850 N.E.2d 119, 2006 Ohio App. LEXIS 1710 (2006).

Custody

There was no evidence before the juvenile court to justify the issuance of an ex parte order because nothing in the parents' motion for emergency custody of their child or supporting affidavit showed that the child's interest and welfare required immediate action. To the contrary, the parents' motion was not filed until 20 days after the fire; the guardian ad litem and the court were aware of the fire; the juvenile court's finding that it did not constitute a change of circumstances sufficient to warrant a change of custody was not an abuse of discretion; and the juvenile court could easily have determined that the emergency motion was simply another attempt to relitigate custody, which the parents were not entitled to do. *Hempen v. Bailey* (In re Bailey), 2005 Ohio 3039, 2005 Ohio App. LEXIS 2830 (2005).

When an emergency situation exists, the juvenile court may grant temporary custody of a child to the local Children Services Board in an ex parte proceeding: *Parker v. Children Services Bd. of Trumbull Cty.*, 21 Ohio App. 3d 115, 487 N.E.2d 341, 21 Ohio B. 123, 1984 Ohio App. LEXIS 12668 (1984).

Notice

A temporary custody order will be declared invalid where the affected person is not given notice or opportunity to be heard where such is possible, unless the record reflects circumstances justifying an ex parte hearing: *Williams v. Williams*, 44 Ohio St. 2d 28, 73 Ohio Op. 2d 121, 336 N.E.2d 426, 1975 Ohio LEXIS 573 (1975).

Opinions of Attorney General

Hearings

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

RULE 14. Termination, extension or modification of temporary custody orders

(A) **Termination.** Any temporary custody order issued shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. A temporary custody order shall extend beyond a year and until the court issues another dispositional order, where any public or private agency with temporary custody, not later than thirty days prior to the earlier of the date for the termination of the custody order or the date set at the dispositional hearing for the hearing to be held pursuant to Division (A) of section 2151.415 of the Revised Code, files a motion requesting that any of the following orders of disposition be issued:

- (1) An order that the child be returned home with custody to the child's parents, guardian, or custodian without any restrictions;
- (2) An order for protective supervision;
- (3) An order that the child be placed in the legal custody of a relative or other interested individual;
- (4) An order terminating parental rights;
- (5) An order for long term foster care;

(6) An order for the extension of temporary custody.

(B) **Extension.** Upon the filing of an agency's motion for the extension of temporary custody, the court shall schedule a hearing and give notice to all parties in accordance with these rules. The agency shall include in the motion an explanation of the progress on the case plan and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court may extend the temporary custody order for a period of up to six months. Prior to the end of the extension period, the agency may request one additional extension of up to six months. The court shall grant either extension upon finding that it is in the best interest of the child, that there has been significant progress on the case plan, and that there is reasonable cause to believe that the child will be reunited with one of the child's parents or otherwise permanently placed within the period of extension. Prior to the end of either extension, the agency that received the extension shall file a motion and the court shall issue one of the orders of disposition set forth in division (A) of this rule. Upon the agency's motion or upon its own motion, the court shall conduct a hearing and issue an appropriate order of disposition.

(C) **Modification.** The court, upon its own motion or that of any party, shall conduct a hearing with notice to all parties to determine whether any order issued should be modified or terminated, or whether any other dispositional order set forth in division (A) should be issued. The court shall so modify or terminate any order in accordance with the best interest of the child.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 14 TERMINATION, EXTENSION OR MODIFICATION OF TEMPORARY ORDERS

S.B. 89 required new time periods to be established for the termination of abuse, neglect, and dependency cases; for the timing of possible final orders to terminate a case; and for the conditions, procedures, and limitations for seeking an extension. Juv. R. 14, previously reserved, has been written in accordance with the requirements of Revised Code 2151.353 and 2151.415.

Cross-References to Related Statutes

Disposition of abused, neglected or dependent child, RC § 2151.35.3.

Motion requesting disposition order upon expiration of temporary custody order; extension, RC § 2151.41.5.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care. OAC ch. 5101:2-42.

Acceptance of temporary custody by agreement and court-approved extensions. OAC 5101:2-42-08.

"Agreement for Temporary Custody of a Child," form 01645. OAC 5101:2-42-06.

Extension of "Agreement for Temporary Custody of Child." OAC 5101:2-42-07.

Termination of custody of a child. OAC 5101:2-42-94.

NOTES TO DECISIONS

Discretion of court

Competent, credible evidence supported the trial court's decision to place the children in the legal custody of the uncle and his

wife because the trial court had discretion to make a dispositional order in the best interests of the children as it retained jurisdiction over the children. The problems that led to the original grant of temporary custody had not been resolved by the time the trial court made its dispositional order since the treatment of the children and the medical "diagnosis" of Munchausen Syndrome by Proxy and its applicability were still very much in issue. In re McCallum, — Ohio App. 3d —, 2007 Ohio 995, — N.E. 2d —, 2007 Ohio App. LEXIS 905 (Mar. 1, 2007).

RULE 15. Process: issuance, form

(A) **Summons: issuance.** After the complaint has been filed, the court shall cause the issuance of a summons directed to the child, the parents, guardian, custodian, and any other persons who appear to the court to be proper or necessary parties. The summons shall require the parties to appear before the court at the time fixed to answer the allegations of the complaint. A child alleged to be abused, neglected, or dependent shall not be summoned unless the court so directs.

(B) **Summons: form.** The summons shall contain:

(1) The name of the party or person with whom the child may be or, if unknown, any name or description by which the party or person can be identified with reasonable certainty.

(2) A summary statement of the complaint and in juvenile traffic offense and delinquency proceedings the numerical designation of the applicable statute or ordinance.

(3) A statement that any party is entitled to be represented by an attorney and that upon request the court will appoint an attorney for an indigent party entitled to appointed counsel under Juv. R. 4(A).

(4) An order to the party or person to appear at a stated time and place with a warning that the party or person may lose valuable rights or be subject to court sanction if the party or person fails to appear at the time and place stated in the summons.

(5) An order to the parent, guardian, or other person having care of a child alleged to be an unruly or delinquent child for being an habitual or chronic truant, to appear personally at the hearing and all proceedings, and an order directing the person having the physical custody or control of the child to bring the child to the hearing, with a warning that if the child fails to appear, the parent, guardian, or other person having care of the child may be subject to court sanction, including a finding of contempt.

(6) A statement that if a child is adjudicated abused, neglected, or dependent and the complaint seeks an order of permanent custody, an order of permanent custody would cause the parents, guardian, or legal custodian to be divested permanently of all parental rights and privileges.

(7) A statement that if a child is adjudicated abused, neglected, or dependent and the complaint seeks an order of temporary custody, an order of temporary custody will cause the removal of the child from the legal custody of the parents, guardian, or other custodian until the court terminates the order of temporary custody or permanently divests the parents of their parental rights.

(8) A statement that if the child is adjudicated abused, neglected, or dependent and the complaint seeks an order for a planned permanent living arrangement, an order for a planned permanent living arrangement will cause the removal of the child from the legal custody of the parent, guardian, or other custodian.

(9) A statement, in a removal action, of the specific disposition sought.

(10) The name and telephone number of the court employee designated by the court to arrange for the prompt appointment of counsel for indigent persons.

(C) **Summons: endorsement.** The court may endorse upon the summons an order directed to the parents, guardian, or other person with whom the child may be, to appear personally and bring the child to the hearing.

(D) **Warrant: issuance.** If it appears that the summons will be ineffectual or the welfare of the child requires that the child be brought forthwith to the court, a warrant may be issued against the child. A copy of the complaint shall accompany the warrant.

(E) **Warrant: form.** The warrant shall contain the name of the child or, if that is unknown, any name or description by which the child can be identified with reasonable certainty. It shall contain a summary statement of the complaint and in juvenile traffic offense and delinquency proceedings the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant. The warrant shall command that the child be taken into custody and be brought before the court that issued the warrant without unnecessary delay.

History: Amended, eff 7-1-94; 7-1-98; 7-1-01; 7-1-02.

STAFF NOTES

7-1-02 AMENDMENT

RULE 15(B) SUMMONS: FORM

The July 1, 2002, amendment to Juv. R. 15(B)(8) substituted the language of "planned permanent living arrangement" for the former language of "long term foster care," to conform to the new legislative designation for these child-placing arrangements.

The amendment to Juv. R. 15(B)(8) conforms to sections 2151.28(D) and 2151.353(B) of the Revised Code. Juvenile Rules 2, 10, and 34 also were amended effective July 1, 2002 to reflect this change in terminology.

7-1-01 AMENDMENT

RULE 15(B) SUMMONS: FORM

Rule 15(B) was amended to add new division (5), which deals with orders to be placed on a summons to parents or other responsible adults when a child or adult is summoned to court pursuant to a complaint of chronic or habitual truancy. The new section tracks the language of Revised Code section 2151.28 (E)(2), as amended by Sub. Sen. Bill 181 (effective September 4, 2000), and makes clear that the parent or responsible adult must bring the child to truancy hearings or be subject to court sanction, including a finding of contempt. Adding this language to the summons alerts responsible adults to the need to ensure not only his or her own appearance, but that of the child as well. Prior divisions (B)(5) through (B)(9) were renumbered (B)(6) through (B)(10) to reflect this interpolation.

7-1-98 AMENDMENT

RULE 15 PROCESS: ISSUANCE, FORM

The 1998 amendment to the first paragraph of Juv. R. 15(A) was intended to clarify the requirement that summons must be issued to the child and to all of the following persons: the parents, guardian, custodian, and any other persons who appear to the court to be proper or necessary parties. Under the prior version of the rule, the use of the word "or" made it unclear whether summons was required to be issued to all of

the listed persons. The 1998 amendment also deleted the phrase "other person with whom the child may be living," because this person would be covered by the remaining list of designated persons.

Pursuant to section 2151.55 of the Revised Code, which first created removal actions, the written notice issued to the school superintendent and to the entity that placed the child in the foster home must include an explanation of the purpose of the removal hearing. In furtherance of this notification objective, the 1998 addition of Juv. R. 15(B)(8) requires that those persons receiving a summons for the removal hearing also be notified of the purpose of the hearing and possible disposition.

7-1-94 AMENDMENT

RULE 15 PROCESS: ISSUANCE, FORM

Pursuant to Revised Code 2151.28 (S.B. 89), Juv. R. 15 now sets forth the form of the summons issued in juvenile court. The revised statute requires the summons in an abuse, neglect, or dependency case to state precisely the potential consequences of an unfavorable adjudication, including permanent loss of parental rights. Therefore, those requirements are listed in divisions (B)(5), (6), (7), and (8).

Cross-References to Related Statutes

Issuance of warrant, RC § 2151.30.

Service of summons, RC § 2151.29.

Summons, RC § 2151.28.

Ohio Constitution

Style of process, prosecution, and indictment, Ohio Const. art. IV, § 20.

NOTES TO DECISIONS

Parties

There was no error in denying the mother's motion to dismiss the stepfather, her husband, as a party in the permanent custody hearing because he was a vital part of the case; he contributed to the initiation of the agency's proceedings with his behavior, interacted with the children as a parent, and was included in the case plans and services, among other things. Several witnesses testified that the dynamics of the mother's relationship with the stepfather was an important factor in determining her ability to parent and the mother's decision to file for divorce from him a mere two weeks prior to the permanent custody hearing did not erase those facts, particularly in light of the stepfather's assertion that the divorce filing was a sham and their history of separating and reconciling. In re J.P., — Ohio App. 3d —, 2007 Ohio 1903, — N.E. 2d —, 2007 Ohio App. LEXIS 1755 (Apr. 23, 2007).

RULE 16. Process: service

(A) **Summons: service, return.** Except as otherwise provided in these rules, summons shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6. The summons shall direct the party served to appear at a stated time and place. Where service is by certified mail, the time shall not be less than seven days after the date of mailing.

Except as otherwise provided in this rule, when the residence of a party is unknown and cannot be ascertained with reasonable diligence, service shall be made by publication. Service by publication upon a non-custodial parent is not required in delinquent child or unruly child cases when the person alleged to have legal custody of the child has been served with summons pursuant to this rule, but the court may not enter any order or judgment against any person who has not been served with process or served by publication unless that person appears. Before service by publication can be made, an affidavit of a party or party's counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be

made because the residence of the person is unknown to the affiant and cannot be ascertained with reasonable diligence and shall set forth the last known address of the party to be served.

Service by publication shall be made by newspaper publication, by posting and mail, or by a combination of these methods. The court, by local rule, shall determine which method or methods of publication shall be used. If service by publication is made by newspaper publication, upon the filing of the affidavit, the clerk shall serve notice by publication in a newspaper of general circulation in the county in which the complaint is filed. If no newspaper is published in that county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown. The publication shall also contain a summary statement of the object of the complaint and shall notify the person to be served that the person is required to appear at the time and place stated. The time stated shall not be less than seven days after the date of publication. The publication shall be published once and service shall be complete on the date of publication.

After the publication, the publisher or the publisher's agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service.

If service by publication is made by posting and mail, upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse in which the division of the common pleas court exercising jurisdiction over the complaint is located and in additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The number of additional public places to be designated shall be either two places or the number of state representative districts that are contained wholly or partly in the county in which the courthouse is located, whichever is greater. The notice shall contain the same information required to be contained in a newspaper publication. The notice shall be posted in the required locations for seven consecutive days. The clerk also shall cause the summons and accompanying pleadings to be mailed by ordinary mail, address correction requested, to the last known address of the party to be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the party to be served within the seven day period that notice is posted pursuant to this rule, the clerk shall cause the summons and accompanying pleadings to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing in the docket.

After the seven days of posting, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

(B) Warrant: execution; return.

(1) By whom. The warrant shall be executed by any officer authorized by law.

(2) Territorial limits. The warrant may be executed at any place within this state.

(3) Manner. The warrant shall be executed by taking the party against whom it is issued into custody. The officer is not required to have possession of the warrant at

the time it is executed, but in such case the officer shall inform the party of the complaint made and the fact that the warrant has been issued. A copy of the warrant shall be given to the person named in the warrant as soon as possible.

(4) Return. The officer executing a warrant shall make return thereof to the issuing court. Unexecuted warrants shall upon request of the issuing court be returned to that court.

A warrant returned unexecuted and not cancelled or a copy thereof may, while the complaint is pending, be delivered by the court to an authorized officer for execution.

An officer executing a warrant shall take the person named therein without unnecessary delay before the court which issued the warrant.

History: Amended, eff 7-1-94; 7-1-98.

STAFF NOTES

7-1-98 AMENDMENT

RULE 16(A) SUMMONS: SERVICE, RETURN

The amendments to division (A) address the issue of service by publication where the residence of a party is unknown. Prior to the amendment, the rule only provided for publication in a newspaper of general circulation. This amendment changed the nature of service by publication in juvenile court cases.

Under this amendment, which is modeled partly on Civ. R. 4.4(A)(2), service by publication in all cases governed by the Juvenile Rules would be accomplished either by the traditional method of newspaper publication, by posting and mail, or by a combination of these methods. The court, by local rule, determines which method of service to select. Civ. R. 4.4(A)(2) mandates posting and mail publication in divorce, annulment, or legal separation actions where the plaintiff is proceeding in forma pauperis. Because most juvenile court cases are initiated by a complaint being filed by a parent (e.g., custody and unruly cases) or by an agency of the state (e.g., delinquency and unruly complaints filed by police departments and boards of education; neglect, dependency, and abuse complaints filed by children's services boards), the rationale which apparently supports Civ. R. 4.4(A)(2) would equally apply to juvenile court cases. Moreover, since the type of case and the status of the complainant should have no bearing on the method of service, the posting and mail form of publication should be permitted in all cases governed by the Juvenile Rules.

Another amendment relates to time frames. The prior rule provided that the publication had to occur not less than fourteen days prior to the scheduled hearing date. The amendment reduced the publication time frame to seven days. This amendment was based on several reasons. First, a 1994 amendment to Juv. R. 16(A) reduced the requisite waiting period for service by certified mail from twenty-one to seven days. Thus, the change to seven days for publication is consistent with the 1994 amendment. Second, Juv. R. 29(A) requires an adjudicatory hearing within ten days of the filing of a complaint when a child is in detention or shelter care. Although this hearing may be continued upon a showing of good cause, the amendment to Juv. R. 16(A) eliminated the potential conflict between the two rules. Third, Juv. R. 29(A) requires an adjudicatory hearing within thirty days after the filing of a complaint in all cases of abuse, neglect, or dependency. Although this hearing may be continued for a reasonable time beyond thirty days to obtain service on all parties, under no circumstances may the hearing be held later than sixty days after the complaint is filed. The condensed time frame for perfecting service by publication would facilitate conducting the hearing within the mandated time periods. Finally, section 2151.29 of the Revised Code, which has been in effect since 1969 (and which conflicts with both the prior

and new versions of Juv. R. 16(A)), provides for a one week time frame for service by publication.

7-1-94 AMENDMENT

RULE 16 PROCESS: SERVICE

Juv. R. 29(A) requires that, when a child is in detention or shelter care, an adjudicatory hearing be set no later than ten days after the filing of the complaint. Certified mail service must, therefore, be completed prior to the ten day period. Juv. R. 16(A) now requires that a hearing shall be held not less than seven days after the date of mailing.

Service by publication permits fourteen days notice prior to the date of the hearing; however, new language has been added to Juv. R. 16(A) to eliminate the necessity of serving a non-custodial parent whose address is unknown, so long as the person with legal custody has been served with summons. Further safeguards have been added to the rule in that the court may not enter an order against any person who has not been served with process or served by publication unless that person appears.

Cross-References to Related Statutes

Issuance of warrant, RC § 2151.30.

Service of summons, RC § 2151.29.

Summons, RC § 2151.28.

Ohio Constitution

Style of process, prosecution, and indictment, Ohio Const. art. IV, § 20.

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Generally

When read in connection with JuvR 16 and 2(16) and RC § 2151.28, the statute's anonymity provisions are insufficient, in that they would require the minor's parent to be notified of the impending bypass procedure because Ohio courts would construe the provisions so that the specific would govern the general, and thus any conflict would be avoided: *Akron Center for Reproductive Health v. Slaby*, 854 F.2d 852, 1988 U.S. App. LEXIS 11151 (6th Cir. 1988).

Due process

In a case involving the termination of parental rights, due process required an attempt to serve a father in accordance with Ohio R. Civ. P. 4(A), (C), and (D), 4.1, 4.2, 4.3, 4.5, and 4.6, at a Columbus address, including an attempt to serve the father by ordinary mail at that address, as a certified mail attempt to serve the father was returned with the notation "Attempted Not Known," which was the only notation that could apply where a mailing was unclaimed. In *re Thompkins*, — Ohio App. 3d —, 2005 Ohio 7073, — N.E. 2d —, 2005 Ohio App. LEXIS 6366 (Dec. 27, 2005).

Notice

Where the mother asserted on appeal in the permanent custody case that she received insufficient notice, the claim failed; notice of the permanent custody hearing was given in compliance with RC § 2151.414(A)(1), as the mother received personal service of the motion for permanent custody and notice of the initial permanent custody hearing in accordance with RC § 2151.29, Ohio R. Juv. P. 16(A), and Ohio R. Juv. P. 12(A), (B), and the mother's counsel gave the mother notice of the final permanent custody hearing. In *re Keith Lee P.*, 2004 Ohio 1976,

2004 Ohio App. LEXIS 1719 (2004).

Juvenile court erred in denying the father's motion to vacate judgment because the father did not receive notice of the hearing on the motion to set support as the docket sheet clearly showed that the father was served with the motion to set child support by ordinary mail only and thus, the service requirements of Ohio R. Juv. P. 35(A) were not satisfied; therefore, the continuing jurisdiction of the juvenile court was not invoked. In *re Brandon P.*, — Ohio App. 3d —, 2003 Ohio 1861, — N.E. 2d —, 2003 Ohio App. LEXIS 1782 (Apr. 11, 2003).

Paternity

The social services agency used reasonable diligence in trying to identify the natural father of the child before resorting to service by publication on anyone who might claim that status: In *re Mullenax*, 108 Ohio App. 3d 271, 670 N.E.2d 551, 1996 Ohio App. LEXIS 8 (1996).

Service by publication

Juvenile Rule 16(A) provides for service by publication when the residence of a party is unknown and cannot with reasonable diligence be discovered. However, once there is a challenge to a party's exercise of reasonable diligence, that party must support his claim that he used reasonable diligence to locate the party served by publication: In *re Miller*, 33 Ohio App. 3d 224, 515 N.E.2d 635, 1986 Ohio App. LEXIS 10269 (1986).

Service by publication, under JuvR 16(A), requires that any notice published in a newspaper of general circulation include, among other things, the last known address of the party whose present whereabouts are unknown and a summary statement of the object of the complaint. Service by publication is a method of last resort and the requirements therefor, as specified in JuvR 16(A), are mandatory and will be strictly enforced. A failure to include such information in the publication-notice will result in defective service (JuvR 16[A], construed.): In *re Wilson*, 21 Ohio App. 3d 36, 486 N.E.2d 152, 21 Ohio B. 38, 1984 Ohio App. LEXIS 12640 (1984).

Waiver of error

As publication on a father in a neglect and dependency proceeding regarding his children was made by publication pursuant to Ohio R. Juv. P. 16 in the county wherein the complaint was filed, and counsel appeared on behalf of the mother and father of the children and did not contest the trial court's jurisdiction, any claims on appeal regarding insufficiency of process were deemed waived. In *re Hill*, — Ohio App. 3d —, 2007 Ohio 1727, — N.E. 2d —, 2007 Ohio App. LEXIS 1574 (Apr. 11, 2007).

RULE 17. Subpoena

(A) Form; issuance.

(1) Every subpoena shall do all of the following:

(a) State the name of the court from which it is issued, the title of the action, and the case number;

(b) Command each person to whom it is directed, at a time and place specified in the subpoena, to do one or more of the following:

(i) Attend and give testimony at a trial, hearing, proceeding, or deposition;

(ii) Produce documents or tangible things at a trial, hearing, proceeding, or deposition;

(iii) Produce and permit inspection and copying of any designated documents that are in the possession, custody, or control of the person;

(iv) Produce and permit inspection and copying, testing, or sampling of any tangible things that are in the possession, custody, or control of the person.

(c) Set forth the text of divisions (D) and (E) of this rule.

A command to produce and permit inspection may be joined with a command to attend and give testimony, or may be issued separately.

(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney who has filed an appearance on behalf of a party in an action also may sign and issue a subpoena on behalf of the court in which the action is pending.

(3) If the issuing attorney modifies the subpoena in any way, the issuing attorney shall give prompt notice of the modifications to all other parties.

(B) **Parties unable to pay.** The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a party and upon a satisfactory showing that the presence of the witness is necessary and that the party is financially unable to pay the witness fees required by division (C) of this rule. If the court orders the subpoena to be issued, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner that similar costs and fees are paid in case of a witness subpoenaed in behalf of the state in a criminal prosecution.

(C) **Service.** A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, probation officer, or a deputy of any, by an attorney or the attorney's agent, or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by the law. The person serving the subpoena shall file a return of the subpoena with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service or otherwise.

(D) **Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under division (A)(1)(b)(ii), (iii), or (iv) of this rule is not required to appear in person at the place of production or inspection unless commanded to attend and give testimony at a trial, hearing, proceeding, or deposition.

(b) Subject to division (E)(2) of this rule, a person commanded to produce under division (A)(1)(b)(ii), (iii), or (iv) of this rule may serve upon the party or attorney designated in the subpoena written objections to production. The objections must be served within fourteen days after service of the subpoena or before the time specified for compliance if that time is less than fourteen days after service. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court that issued the subpoena. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (D)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (D)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (D)(3)(c) or (D)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(E) **Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce the documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(F) **Sanctions.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (D)(1) of this rule an appropriate sanction, that may include, but is not limited to, lost earnings and reasonable attorney's fees.

(G) **Privileges.** Nothing in this rule shall be construed to authorize a party to obtain information protected by any privilege recognized by law or to authorize any person to disclose such information.

(H) **Time.** Nothing in this rule shall be construed to expand any other time limits imposed by rule or statute. All issues concerning subpoenas shall be resolved prior to the time otherwise set for hearing or trial.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 17 SUBPOENA

Juv. R. 17 has been revised to control the issuance and enforcement of subpoenas. Because of the special nature of juvenile proceedings, Juv. R. 17 must be read in conjunction with Juv. R. 24 and 25. Juv. R. 25 provides that the court may grant authority to take a deposition only upon good cause shown. Juv. R. 24 governs the scope of discovery, which is subject to the assertion of privilege.

Cross-References to Related Statutes

Criminal cases; subpoenas, RC § 2945.45 et seq.
Employee may not be penalized for being subpoenaed in delinquency case, RC § 2151.21.1.
Jurisdiction in contempt, RC § 2151.21.

Ohio Constitution

Right of attorney to secure attendance of witnesses, Ohio Const. art. I, § 10.

NOTES TO DECISIONS

GAL fee

Trial court's award of a fee to a guardian ad litem who represented three minor children of parents who were involved in a custody dispute was error, as the husband was denied his opportunity to be heard pursuant to Ohio Const. art. I, § 16 where he was not given an opportunity to challenge her fee request through a hearing or submission of opposition. Her fee rate was excessive under Ohio R. Juv. P. 17(D)(3) and 19(D)(1) where it was not based on the rates provided by the Juvenile Division of the Court of Common Pleas and she had not applied for extraordinary fees under Ohio R. Juv. P. 17(D)(5). In re J.C., — Ohio App. 3d —, 2006 Ohio 6446, — N.E. 2d —, 2006 Ohio App. LEXIS 6395 (Dec. 7, 2006).

Opinions of Attorney General

Authority of court

In juvenile court cases in which the Ohio Rules of Juvenile Procedure apply, JuvR 17(B) grants a juvenile court the authority to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, pursuant to RC § 2151.54, such fees may not be taxed as costs and collected by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except when specifically ordered by the court. (1997 OAG No. 97-024, approved and followed; 1989 OAG No. 89-086, clarified); OAG No. 98-021 (1998).

RULE 18. Time

(A) **Time: computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a legal holiday. Such extension of time includes, but is not limited to, probable cause, shelter care, and detention hearings.

Except in the case of probable cause, shelter care, and detention hearings when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in computation.

(B) **Time: enlargement.** When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefore is made before expiration of the period originally prescribed or of that period as extended by a previous order, or (2) upon motion permit the act to be done after expiration of the specified period if the failure to act on time was the result of excusable neglect or would result in injustice to a party, but the court may not extend the time for taking any action under Rule 7(F)(1), Rule 22(F), Rule 29(A) and Rule 29(F)(2)(b), except to the extent and under the conditions stated in them.

(C) **Time: unaffected by expiration of term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a juvenile proceeding.

(D) **Time: for motions; affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than seven days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(E) **Time: additional time after service by mail.** Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the person and the notice or other paper is served upon the person by mail, three days shall be added to the prescribed period. This division does not apply to service of summonses.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 18 TIME

Juv. R. 18(A) now clarifies that the computation of time allowed or prescribed by rules or statutes for probable cause, shelter care, and detention hearings shall not exclude intermediate Saturdays, Sundays, and legal holidays.

Cross-References to Related Statutes

First day excluded and last day included in computing time; exceptions; legal holiday defined, RC § 1.14.

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Generally

Trial court's September 9, 2003, hearing on a motion for permanent child custody did not violate the time limits of Ohio R. Civ. P. 6(D), as the father was aware as early as July 21, 2003, that a trial would take place on the motion for permanent custody and he had ample time prior to the day of trial to properly move the court for a continuance of the trial date in accordance with Ohio

R. Juv. P. 18. In re Gibby, — Ohio App. 3d —, 2004 Ohio 2708, — N.E. 2d —, 2004 Ohio App. LEXIS 2413 (May 24, 2004).

Appeal

As a father's objections to a magistrate's decision involving the date that child support was to commence were clearly untimely under Ohio R. Juv. P. 40(E)(3)(a) and Ohio R. Civ. P. 53(E)(3), warranting dismissal thereof by the juvenile court, and the father he did not seek to enlarge the time within which to file objections pursuant to Ohio R. Juv. P. 18(B) and Ohio R. Civ. P. 6(B), this time to appeal was not extended by the objections. His failure to appeal within 30 days of the juvenile court's adoption of the magistrate's decision did not preserve his merit issue for appellate review under Ohio R. App. P. 4(A). In re D.K.K., — Ohio App. 3d —, 2006 Ohio 5576, — N.E. 2d —, 2006 Ohio App. LEXIS 5590 (Oct. 20, 2006).

Jurisdiction

Juvenile court did not err by dismissing the father's custody motion, under Ohio R. Juv. P. 18(D), because it unambiguously lacked jurisdiction pursuant to Ohio Rev. Code Ann. § 2151.353(J), since no action had been taken on the matter for over one year. Also, Ohio Rev. Code Ann. § 2151.353(J)(1) applied to vest jurisdiction in the juvenile court in the county in which the legal custodians now resided, and thus, the juvenile court did not have jurisdiction under the Uniform Child Custody Jurisdiction Act, Ohio Rev. Code Ann. § 3109.22 (repealed and replaced with Ohio Rev. Code Ann. § 3127.15). In re N.W., 2005 Ohio 2466, 2005 Ohio App. LEXIS 2348 (2005).

RULE 19. Motions

An application to the court for an order shall be by motion. A motion other than one made during trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority and may be supported by an affidavit.

To expedite its business, unless otherwise provided by statute or rule, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 19 MOTIONS

Revised Code 2151.353, as amended by S.B. 89, mandates that an oral hearing be held, with notice to all parties and the guardian ad litem, on any motion to extend an original order for protective supervision. The language "unless otherwise provided by statute or law" is designed to prohibit the court from deciding, without an oral hearing, a motion for extension of protective supervision.

Cross-References to Related Statutes

Motion to invoke adult portion of dispositional sentence, RC § 2152.14.

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Generally

Juvenile court's order granting legal custody in the absence of a motion violated the mandatory statutory and procedural requirements of Ohio Rev. Code Ann. § 2151.353 and Ohio R. Juv. P. 34, and also was in direct contravention of Ohio R. Juv. P. 19, mandating that requests for relief be made by motion, Ohio R. Juv. P. 22(E), requiring that prehearing motions be filed at least seven days prior to the proceeding, Ohio R. Juv. P. 20, establishing filing and service requirements for written motions and other papers, and Ohio R. Civ. P. 5(D), imposing a proof of service requirement. In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

It was an abuse of discretion to treat the grandmother's letter as anything other than a letter and to use it as the basis for granting permanent custody to the grandmother because the letter was neither in the form of a motion, nor was it served on any of the parties. In re D.D., 2004 Ohio 4243, 2004 Ohio App. LEXIS 3856 (2004).

Implicit in the requirement under [Rules of juvenile procedure] 19 that a motion shall state with particularity the grounds upon which it is made is that the grounds alleged are grounds that presently exist and are based on facts that have already occurred. A child services agency could not base a motion for permanent custody of children and termination of parents' rights on grounds that did not exist when the motion was filed. In re K.G., — Ohio App. 3d —, 2004 Ohio 1421, — N.E. 2d —, 2004 Ohio App. LEXIS 1290 (Mar. 24, 2004).

Revised Code § 2151.41.7 and JuvR 36(A) allow a court to review a child's placement or custody arrangement at any time. However, a party with current custody of the child is entitled to prior notice that a change of custody will be considered at a hearing ostensibly concerning visitation rights: In re Bowman, 101 Ohio App. 3d 599, 656 N.E.2d 355, 1995 Ohio App. LEXIS 872 (1995).

Grounds for motion

Any failure to state the grounds for the motion was immaterial where the opposing party was fully aware of the grounds and was given a continuance to prepare: In re Robert S., 98 Ohio App. 3d 84, 647 N.E.2d 869, 1994 Ohio App. LEXIS 5465 (1994).

GAL fee

Trial court's award of a fee to a guardian ad litem who represented three minor children of parents who were involved in a custody dispute was error, as the husband was denied his opportunity to be heard pursuant to Ohio Const. art. I, § 16 where he was not given an opportunity to challenge her fee request through a hearing or submission of opposition. Her fee rate was excessive under Ohio R. Juv. P. 17(D)(3) and 19(D)(1) where it was not based on the rates provided by the Juvenile Division of the Court of Common Pleas and she had not applied for extraordinary fees under Ohio R. Juv. P. 17(D)(5). In re J.C., — Ohio App. 3d —, 2006 Ohio 6446, — N.E. 2d —, 2006 Ohio App. LEXIS 6395 (Dec. 7, 2006).

RULE 20. Service and filing of papers when required subsequent to filing of complaint.

(A) **Service: when required.** Written notices, requests for discovery, designation of record on appeal and written motions, other than those which are heard ex parte, and similar papers shall be served upon each of the parties.

(B) **Service: how made.** Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service is ordered by the court upon the party. Service upon the attorney or upon the party shall be made in the manner provided in Civ. R. 5(B).

(C) **Filing.** All papers required to be served upon a party shall be filed simultaneously with or immediately

after service. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and the manner of service and shall be signed and filed in the manner provided in Civil Rule 5(D).

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 20 SERVICE AND FILING OF PAPERS WHEN REQUIRED SUBSEQUENT TO FILING OF COMPLAINT

The words "when required subsequent to filing of complaint" have been added to the title of Juv. R. 20 to distinguish it from the requirements of initial service of process described under Juv. R. 16. Otherwise, the only changes to the rule are to render it gender neutral.

Cross-References to Related Statutes

Service of summons, RC § 2151.29.

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Generally

Juvenile court's order granting legal custody in the absence of a motion violated the mandatory statutory and procedural requirements of Ohio Rev. Code Ann. § 2151.353 and Ohio R. Juv. P. 34, and also was in direct contravention of Ohio R. Juv. P. 19, mandating that requests for relief be made by motion, Ohio R. Juv. P. 22(E), requiring that prehearing motions be filed at least seven days prior to the proceeding, Ohio R. Juv. P. 20, establishing filing and service requirements for written motions and other papers, and Ohio R. Civ. P. 5(D), imposing a proof of service requirement. In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Notice of permanent custody hearing

Where the mother asserted on appeal in the permanent custody case that the mother received insufficient notice, the claim failed; notice of the permanent custody hearing was given in compliance with RC § 2151.414(A)(1), as the mother received personal service of the motion for permanent custody and notice of the initial permanent custody hearing in accordance with RC § 2151.29, Ohio R. Juv. P. 16(A), and Ohio R. Juv. P. 12(A), (B), and the mother's counsel gave the mother notice of the final permanent custody hearing. In re Keith Lee P., 2004 Ohio 1976, 2004 Ohio App. LEXIS 1719 (2004).

RULE 21. Preliminary conferences

At any time after the filing of a complaint, the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious proceeding.

RULE 22. Pleadings and motions; defenses and objections

(A) **Pleadings and motions.** Pleadings in juvenile proceedings shall be the complaint and the answer, if any, filed by a party. A party may move to dismiss the complaint or for other appropriate relief.

(B) **Amendment of pleadings.** Any pleading may be amended at any time prior to the adjudicatory hearing. After the commencement of the adjudicatory hearing, a

pleading may be amended upon agreement of the parties or, if the interests of justice require, upon order of the court. A complaint charging an act of delinquency may not be amended unless agreed by the parties, if the proposed amendment would change the name or identity of the specific violation of law so that it would be considered a change of the crime charged if committed by an adult. Where requested, a court order shall grant a party reasonable time in which to respond to an amendment.

(C) **Answer.** No answer shall be necessary. A party may file an answer to the complaint, which, if filed, shall contain specific and concise admissions or denials of each material allegation of the complaint.

(D) **Prehearing motions.** Any defense, objection or request which is capable of determination without hearing on the allegations of the complaint may be raised before the adjudicatory hearing by motion. The following must be heard before the adjudicatory hearing, though not necessarily on a separate date:

(1) Defenses or objections based on defects in the institution of the proceeding;

(2) Defenses or objections based on defects in the complaint (other than failure to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence on the ground that it was illegally obtained;

(4) Motions for discovery;

(5) Motions to determine whether the child is eligible to receive a sentence as a serious youthful offender.

(E) **Motion time.** Except for motions filed under division (D)(5) of this rule, all prehearing motions shall be filed by the earlier of:

(1) seven days prior to the hearing, or

(2) ten days after the appearance of counsel.

Rule 22(D)(5) motions shall be filed by the later of:

(1) Twenty days after the date of the child's initial appearance in juvenile court; or

(2) Twenty days after denial of a motion to transfer.

The filing of the Rule 22(D)(5) motion shall constitute notice of intent to pursue a serious youthful offender disposition.

The court in the interest of justice may extend the time for making prehearing motions.

The court for good cause shown may permit a motion to suppress evidence under division (D)(3) of this rule to be made at the time the evidence is offered.

(F) **State's right to appeal upon granting a motion to suppress.** In delinquency proceedings the state may take an appeal as of right from the granting of a motion to suppress evidence if, in addition to filing a notice of appeal, the prosecuting attorney certifies that (1) the appeal is not taken for the purpose of delay and (2) the granting of the motion has rendered proof available to the state so weak in its entirety that any reasonable possibility of proving the complaint's allegations has been destroyed.

Such appeal shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the juvenile court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal which may be taken under this rule shall be diligently prosecuted.

A child in detention or shelter care may be released pending this appeal when the state files the notice of appeal and certification.

This appeal shall take precedence over all other appeals.

History: Amended, eff 7-1-77; 7-1-94; 7-1-01.

STAFF NOTES

7-1-01 AMENDMENT

RULE 22(D) PREHEARING MOTIONS

Rule 22(D) was amended to add a fifth category of prehearing motions, the motion of the prosecuting attorney to have the court hold a probable cause hearing to determine whether or not a child is eligible under Revised Code sections 2152.11 or 2152.13 to receive a sentence as a serious youthful offender. These motions provide a timely opportunity for the needed probable cause determination of eligibility for treatment as a serious youthful offender, in circumstances in which the prosecuting attorney does not have sufficient time to seek a grand jury determination of such eligibility.

RULE 22(E) MOTION TIME

Rule 22(E) was amended to conform to Sub. Sen. Bill 179 (effective date January 1, 2002) by reflecting that motions for determination of eligibility for treatment as a serious youthful offender are subject to a different time frame than other prehearing motions. It is important for the prosecuting attorney to have sufficient time to investigate before making the significant charging decision to pursue serious youthful offender sentencing. Revised Code section 2152.13(B) provides that the prosecuting attorney has twenty days after a child's initial appearance within which to file a notice of intent to pursue a serious youthful offender dispositional sentence. Juvenile rule time frames applicable in all other cases would truncate this statutory latitude. For instance, Juvenile Rule 29(A) contemplates that ordinarily the adjudicatory hearing of a child held in detention must occur within ten days. Since these are the most serious cases, it is not unlikely that the child will be in detention. Thus, the ordinary time frames of Rule 22(E) would require the motion to be filed well before the statutory period of twenty days has elapsed. Amended Rule 22(E) also clarifies that the prosecuting attorney has the statutory twenty-day time period for filing a notice of intent to pursue serious youthful offender dispositional sentencing after a transfer is denied.

Finally, Rule 22(E) as amended specifically provides that a Rule 22(D)(5) motion shall serve as the statutory "notice of intent" to pursue serious youthful offender dispositional sentencing. This serves to create a recognized procedural mechanism for the notice and to clarify that a motion is indeed the required notice. It also clarifies that the motion starts the speedy trial time clock running [see also Revised Code section 2152.13(D)(1)].

Other changes to Rule 22(E) were in form only, and were not intended to be substantive.

7-1-94 AMENDMENT

RULE 22 PLEADINGS AND MOTIONS; DEFENSES AND OBJECTIONS

The revision to Juv. R. 22(B) prohibits the amendment of a pleading after the commencement or termination of the adjudicatory hearing unless the amendment conforms to the evidence presented and also amounts to a lesser included offense of the crime charged. Because juveniles can be bound over as adults and become subject to the jurisdiction of the criminal division of the common pleas courts, it is important that Juv. R. 22(B) conform with Crim. R. 7(D), which similarly prohibits any amendment which would result in a change in the identity of the crime charged.

Cross-References to Related Statutes

Complaint, RC § 2151.27.

Rules governing practice and procedure, RC § 2151.17.

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Generally

Juvenile court's order granting legal custody in the absence of a motion violated the mandatory statutory and procedural requirements of Ohio Rev. Code Ann. § 2151.353 and Ohio R. Juv. P. 34, and also was in direct contravention of Ohio R. Juv. P. 19, mandating that requests for relief be made by motion, Ohio R. Juv. P. 22(E), requiring that prehearing motions be filed at least seven days prior to the proceeding, Ohio R. Juv. P. 20, establishing filing and service requirements for written motions and other papers, and Ohio R. Civ. P. 5(D), imposing a proof of service requirement. In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Inasmuch as JuvR 22(A) provides that a party may move "for other appropriate relief," a juvenile presumably may move to limit the court's use of social histories before and during the adjudication. If it does not authorize such relief, then JuvR 45 provides the procedure when no procedure is specifically prescribed: J. P. v. DeSanti, 653 F.2d 1080, 1981 U.S. App. LEXIS 11411 (6th Cir. 1981).

Amendment of complaint

Juvenile Rule 22(B) prohibits amendment of a pleading after commencement or termination of the adjudicatory hearing unless the amendment conforms to the evidence presented and also amounts to a lesser included offense of the crime charged: In re Reed, 147 Ohio App. 3d 182, 2002 Ohio 43, 769 N.E.2d 412, 2002 Ohio App. LEXIS 113 (2002).

Where a juvenile was charged with delinquency, the court did not err by finding that unruliness was a lesser included offense and then amending the complaint accordingly: In re Felton, 124 Ohio App. 3d 500, 706 N.E.2d 809, 1997 Ohio App. LEXIS 5827 (1997).

The court abused its discretion by amending a complaint charging a violation of RC § 4301.63.2 at the end of trial and finding the juvenile to be "unruly" instead: State v. Aller, 82 Ohio App. 3d 9, 610 N.E.2d 1170, 1992 Ohio App. LEXIS 4004 (1992).

Appeal by state

Pursuant to RC § 2945.67 and JuvR 22(F), the state may appeal the granting of a motion to suppress as a matter of right. However, double jeopardy protections preclude a retrial where the court held a combined proceeding, ending in a dismissal of charges: In re Mojica, 107 Ohio App. 3d 461, 669 N.E.2d 35, 1995 Ohio App. LEXIS 4995 (1995).

The state is not barred from prosecution following an unsuccessful appeal from the sustaining of a motion to suppress so long as the state's certification upon appeal pursuant to JuvR 22(F) [or CrimR 12(J)], that the evidence suppressed was of such nature that the prosecution could not be successful without it, was made in good faith. If such certification were not made in good faith, the time consumed in determining the appeal from the motion to suppress must be charged to the state as undue delay in prosecution of the accused with respect to a determination of whether there has been a violation of the accused's right to a speedy trial: In re Hester, 3 Ohio App. 3d 458, 446 N.E.2d 202, 3 Ohio B. 539, 1982 Ohio App. LEXIS 10942 (1982).

Where the state has timely filed a notice of appeal from the granting of a motion to suppress, but has failed to make a proper certification as required by JuvR 22(F), a court of appeals may, pursuant to AppR 3(E), allow the amendment of the timely filed notice of appeal and certification so that there may be full compliance with JuvR 22(F): In re Hester, 1 Ohio App. 3d 24, 437 N.E.2d 1218, 1 Ohio B. 85, 1981 Ohio App. LEXIS 9852 (1981).

Defects in complaint

Pursuant to Ohio R. Juv. P. 22(D), any defects in a complaint must be raised before the adjudicatory hearing by motion; a father failed to raise challenges to the complaint to adjudicate his child as neglected, and therefore, the trial court properly denied his challenge to the proceedings. In re I.M., 2003 Ohio 7069, 2003 Ohio App. LEXIS 6437 (2003).

An objection based on a defect in the complaint must be heard before the adjudicatory hearing by a pre-hearing motion. Failure to make a timely objection constitutes a waiver: In re Dukes, 81 Ohio App. 3d 145, 610 N.E.2d 513, 1991 Ohio App. LEXIS 4735 (1991).

Jurisdiction

When, in a juvenile delinquency proceeding, appellant did not contest, either before or at the beginning of his adjudicatory hearing, the trial court's personal jurisdiction over him, he waived any defense based on personal jurisdiction, under Ohio R. Juv. P. 22(D), so his motion to dismiss, claiming the State did not submit evidence of his age, was properly denied. In re C.W., 2005 Ohio 3905, 2005 Ohio App. LEXIS 3579 (2005).

In a juvenile proceeding an objection, raised after trial and submission, based on a failure of the testimony to establish the age of the accused juvenile relates to jurisdiction over the person and not to jurisdiction in the court, and is waived under JuVR 22(D)(2): In re Fudge, 59 Ohio App. 2d 129, 392 N.E.2d 1262, 13 Ohio Op. 3d 176, 1977 Ohio App. LEXIS 7107 (1977).

Motion to dismiss

There was no error in refusing to dismiss the case because the father waived his right to an adjudication hearing and a dispositional hearing within the applicable statutory time periods, pursuant to Ohio Rev. Code Ann. § 2151.28, and failed to file his motion to dismiss in compliance with Ohio R. Juv. P. 22(E) since he did not file his motion to dismiss until the day of the hearing. In re A.P., — Ohio App. 3d —, 2006 Ohio 2717, — N.E. 2d —, 2006 Ohio App. LEXIS 2551 (May 30, 2006).

Motion to suppress

Sustaining of magistrate's decision not to suppress defendant's waiver of rights and statement to officers was proper since defendant knew his rights and his waiver of them was voluntarily. In re Hill, 2003 Ohio 6185, 2003 Ohio App. LEXIS 5504 (2003).

RULE 23. Continuance

Continuances shall be granted only when imperative to secure fair treatment for the parties.

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Denial

Mother's prior failures to appear at court hearings and the fact that she was represented by counsel compelled the conclusion that the trial court did not err in denying the mother's motions for a continuance of a permanent custody hearing under Ohio R. Juv. P. 23. In re Distafano, — Ohio App. 3d —, 2006 Ohio 4430, — N.E. 2d —, 2006 Ohio App. LEXIS 4347 (Aug. 28, 2006).

Discretion of court

There was no error in failing to grant a continuance as the trial court struck an appropriate balance between the mother's right to a fair hearing and its interest in timely disposing of the case. The trial court noted that the case, a petition for permanent custody, had been pending for two and a half years and that the mother bore some fault for her attorney not being as prepared as he would have liked. In re Brown, — Ohio App. 3d —, 2006 Ohio 2863, — N.E. 2d —, 2006 Ohio App. LEXIS 2719 (May 26, 2006).

When, in a custody proceeding before the Franklin County, Ohio, Court of Common Pleas, Domestic Relations Division, Juvenile Branch, a non-appearing mother's counsel sought a continuance after the proceedings started, it was not an abuse of discretion to deny the motion because no good cause was shown, as the mother had notice of the hearing, her counsel had made diligent efforts to contact her in the months before the hearing, which had been continued at least five times, and no explanation for the mother's non-appearance was offered. In re I.R., — Ohio App. 3d —, 2005 Ohio 6622, — N.E. 2d —, 2005 Ohio App. LEXIS 5937 (Dec. 13, 2005).

Trial court's denial of a continuance on the basis of its busy docket, the child's detention, and defense counsel's failure to pursue other remedies for the state's delay in providing discovery was not an abuse of discretion: In re Fortney, 162 Ohio App. 3d 170, 2005 Ohio 3618, 832 N.E.2d 1257, 2005 Ohio App. LEXIS 3341 (2005).

Time limitation

Where the continuances granted by the trial court in the dependency case caused the temporary custody hearing to be pushed beyond the 90-day period for such a hearing under Ohio Rev. Code Ann. § 2151.28(B)(3) and Ohio Rev. Code Ann. § 2151.35(B)(1), the mother waived the statutory limitations period claim by failing to raise the claim before the trial court, and the trial court was within its discretion in granting continuances pursuant to Ohio R. Juv. P. 23. In re Jessica M.B., 2004 Ohio 1040, 2004 Ohio App. LEXIS 926 (2004).

RULE 24. Discovery

(A) **Request for discovery.** Upon written request, each party of whom discovery is requested shall, to the extent not privileged, produce promptly for inspection, copying, or photographing the following information, documents, and material in that party's custody, control, or possession:

(1) The names and last known addresses of each witness to the occurrence that forms the basis of the charge or defense;

(2) Copies of any written statements made by any party or witness;

(3) Transcriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel;

(4) Any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;

(5) Photographs and any physical evidence which a party intends to introduce at the hearing;

(6) Except in delinquency and unruly child proceedings, other evidence favorable to the requesting party and relevant to the subject matter involved in the pending action. In delinquency and unruly child proceedings, the prosecuting attorney shall disclose to respondent's counsel all evidence, known or that may become known to the prosecuting attorney, favorable to the respondent and material either to guilt or punishment.

(B) **Order granting discovery: limitations; sanctions.** If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery shall certify that a request for discovery has been made and refused. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery. Notwithstanding the provisions of subdivision (A), the court may deny, in whole or part, or otherwise limit or set conditions on the discovery authorized by such subdivision, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may jeopardize the safety

of a party or, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, or impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence.

(C) **Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a person has failed to comply with an order issued pursuant to this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 24 DISCOVERY

Juv. R. 24 governs the scope of discovery. It adds a new category under Juv. R. 24(A)(6) permitting the requesting party to discover relevant evidence which is favorable to the requesting party, except that in delinquency and unruly child proceedings, the requirement imposed upon prosecuting attorneys is to disclose only such favorable evidence which is material to guilt or punishment of the respondent. All categories of discovery are subject to the assertion of a privilege.

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Generally

Because a surviving cohabiting partner agreed to a discovery order allowing the trial court to determine which of a child's records to release in a custody case, she was not allowed to complain that it was contrary to law. Nothing indicated that the trial court erred in releasing the records, and the denial of the partner's request for release of additional records pursuant to Ohio R. Juv. P. 24 was proper. In re J.W., — Ohio App. 3d —, 2006 Ohio 3753, — N.E. 2d —, 2006 Ohio App. LEXIS 3719 (July 21, 2006).

Trial court properly denied a father's motion to compel the release of a mother's psychological records as the father knew that the mother took anti-anxiety medication before the parties' daughter was conceived; further, the father was a pharmacist and was aware of the conditions for which the medication was prescribed and the potential side effects of the drug. *Steven D.C. v. Carrie Anne P.*, 2005 Ohio 3858, 2005 Ohio App. LEXIS 3548 (2005).

Full discovery is necessary to meet the "best interests of the child" standard in matters involving children. The restrictive nature of JuvR 24 does not obviate the necessity or right of liberal discovery in permanent custody cases. RC § 5153.17 does not preclude discovery in such a case. Parties have a right to access and copy original children services agency documents, rather than a computer disc containing the documents: In re Jeter Children, 118 Ohio Misc. 2d 101, 2001 Ohio 4362, 769 N.E.2d 911, 2001 Ohio Misc. LEXIS 44 (CP 2001).

Motions for discovery are to be filed in accord with JuvR 22 prior to the adjudicatory hearing. A probable cause hearing pursuant to RC § 2151.26 and JuvR 30 is not an adjudicatory

hearing as defined in JuvR 2: In re Hunter, 99 Ohio Misc. 2d 107, 716 N.E.2d 802, 1999 Ohio Misc. LEXIS 25 (CP 1999).

Juvenile Rule 24(B) provides that discovery may be limited where it may impede criminal prosecution of a minor as an adult or of an adult involved in the same occurrence: *National Am. Ins. Co. v. Clermont County Bd. of Comm'rs*, 65 Ohio Misc. 2d 5, 640 N.E.2d 616, 1993 Ohio Misc. LEXIS 84 (CP 1994).

Access of media, public

Prohibition will not issue to require the court to exclude the media and the public from a hearing on transfer of jurisdiction: *State ex rel. Fyffe v. Pierce*, 40 Ohio St. 3d 8, 531 N.E.2d 673, 1988 Ohio LEXIS 391 (1988).

Bindover for prosecution

The discovery provisions of JuvR 24 apply to bindover proceedings: In re A.M., 92 Ohio Misc. 2d 4, 699 N.E.2d 574, 1998 Ohio Misc. LEXIS 7 (CP 1998).

In a case involving, as a preliminary matter, the question of the transfer of a juvenile proceeding to a common pleas court for the purpose of trying a juvenile as an adult for an alleged criminal offense, a juvenile court may limit discovery in the juvenile court to evidence relevant to the probable cause hearing. *State v. Gilbert*, — Ohio App. 3d —, 2005 Ohio 2350, — N.E. 2d —, 2005 Ohio App. LEXIS 2239 (May 13, 2005).

In the absence of an order limiting discovery pursuant to JuvR 24(B), a juvenile facing a bindover hearing is entitled to discovery coextensive with the issues to be determined at that hearing: In re A.M., 139 Ohio App. 3d 303, 743 N.E.2d 937, 2000 Ohio App. LEXIS 3811 (2000).

Discretion of court

In a juvenile court proceeding in which both a child's aunt and uncle and the child's foster parents had filed competing petitions for the child's custody, and the aunt and uncle's discovery request was not complied with, it was not an abuse of discretion to refuse to exclude the evidence that was not provided pursuant to this request, as the discovery request was filed 14 days before the hearing, and the aunt and uncle did not move to compel or seek any sanction prior to moving in limine to exclude the evidence. In re Halstead, 2005 Ohio 403, 2005 Ohio App. LEXIS 902 (2004).

Duties of state

Juvenile court did not abuse its discretion in failing to dismiss a termination of parental rights proceeding due to the State's failure to turn over all relevant discovery in light of the potential harm that could occur to the children. The mother did not request dismissal and all of the relevant records were provided without redaction shortly after the juvenile court ordered that the records be produced and stated that if another motion to compel was filed, the keeper of the records would be required to appear and to show cause as to why he or she should not be held in contempt. In re Nelson, — Ohio App. 3d —, 2005 Ohio 6600, — N.E. 2d —, 2005 Ohio App. LEXIS 5926 (Dec. 9, 2005).

A prosecutor violates JuvR 24 by failing to provide defense counsel with a summary of the victim's oral statement to the police on the date of the incident: In re Johnson, 61 Ohio App. 3d 544, 573 N.E.2d 184, 1989 Ohio App. LEXIS 967 (1989).

A prosecutor is under a duty imposed by the due process clauses of the Ohio and United States Constitutions and JuvR 24 to disclose to a juvenile respondent all evidence in the state's possession favorable to the juvenile respondent and material either to guilt or punishment that is known at the time of a mandatory bindover hearing held pursuant to RC § 2151.26 and that may become known to the prosecuting attorney after the bindover: *State v. Iacona*, 93 Ohio St. 3d 83, 2001 Ohio 1292, 752 N.E.2d 937, 2001 Ohio LEXIS 2169 (2001).

Motion in limine

Trial court did not abuse its discretion in denying an aunt and uncle's (relatives) motion in limine seeking to exclude the admission of evidence not produced in the foster parents' response to their discovery request as the request was filed 14 days before the hearing and the relatives did not seek to compel production or any other sanction before filing her motion in limine. In re Halstead, 2005 Ohio 403, 2005 Ohio App. LEXIS 902 (2004).

Motion to intervene

Trial court did not err in denying the motion to intervene based on its finding that the grandparents had not stood in loco parentis because they had never been in a position where they were required to make medical, dental, or other parental decisions on behalf of the children; they did not have care and control of the children before the agency's intervention existed in the absence of supervision by the mother; and the children's services agency retained temporary custody of the children, including access to medical and educational records. In re I. S., — Ohio App. 3d —, 2007 Ohio 47, — N.E. 2d —, 2007 Ohio App. LEXIS 42 (Jan. 10, 2007).

Sanctions

Plain language of Ohio R. Juv. P. 24 only allows a juvenile court to impose discovery sanctions after a party has obtained an order compelling that discovery. In re Halstead, 2005 Ohio 403, 2005 Ohio App. LEXIS 902 (2004).

RULE 25. Depositions

The court upon good cause shown may grant authority to take the deposition of a party or other person upon such terms and conditions and in such manner as the court may fix.

Cross-References to Related Statutes

Deposition of child victim; videotaping, RC § 2152.81.

Employee may not be penalized for being subpoenaed in delinquency case, RC § 2151.21.1.

NOTES TO DECISIONS**Out-of-state witnesses**

In delinquency proceeding, where proffered testimony of out-of-state alibi witnesses would have been merely cumulative, it was not error to deny motion to depose witnesses in New York at state expense: In re Vaughn, 1990 Ohio App. LEXIS 3456 (12th Dist. 1990).

RULE 26. [Reserved]**RULE 27. Hearings: general**

(A) **General Provisions.** Unless otherwise stated in this rule, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time.

The court may excuse the attendance of the child at the hearing in neglect, dependency, or abuse cases.

(1) Public access to hearings. In serious youthful offender proceedings, hearings shall be open to the public. In all other proceedings, the court may exclude the general public from any hearing, but may not exclude either of the following:

- (a) Persons with a direct interest in the case;
- (b) Persons who demonstrate, at a hearing, a countervailing right to be present.

(2) Separation of juvenile and adult cases. Cases involving children shall be heard separate and apart from the trial of cases against adults, except for cases involving chronic or habitual truancy.

(3) Jury trials. The court shall hear and determine all cases of children without a jury, except for the adjudication of a serious youthful offender complaint, indictment, or information in which trial by jury has not been waived.

(B) **Special provisions for abuse, neglect, and dependency proceedings.**

(1) In any proceeding involving abuse, neglect, or dependency at which the court removes a child from the

child's home or continues the removal of a child from the child's home, or in a proceeding where the court orders detention, the court shall determine whether the person who filed the complaint in the case and removed the child from the child's home has custody of the child or will be given custody and has made reasonable efforts to do any of the following:

(a) Prevent the removal of the child from the child's home;

(b) Eliminate the continued removal of the child from the child's home;

(c) Make it possible for the child to return home.

(2) In a proceeding involving abuse, neglect, or dependency, the examination made by the court to determine whether a child is a competent witness shall comply with all of the following:

(a) Occur in an area other than a courtroom or hearing room;

(b) Be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well being of the child;

(c) Be recorded in accordance with Juv. R. 37 or Juv. R. 40. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

(3) In a proceeding where a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition in the presence of a judge or a magistrate. On motion of the prosecuting attorney, guardian ad litem, or a party, or in its own discretion, the court may order that the deposition be videotaped. All or part of the deposition is admissible in evidence where all of the following apply:

(a) It is filed with the clerk;

(b) Counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination;

(c) The judge or magistrate determines there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of the child's participation at the hearing.

History: Amended, eff 7-1-76; 7-1-94; 7-1-96; 7-1-01.

STAFF NOTES**7-1-01 AMENDMENT****RULE 27(A) GENERAL PROVISIONS**

Rule 27(A) was completely rewritten and reorganized to conform to changes necessitated by Sub. Sen. Bill 179 (serious youthful offenders) (effective date January 1, 2002), and Sub. Sen. Bill 181 (chronic and habitual truants) (effective date September 4, 2000).

Rule 27(A) as amended deals separately with the informality of hearings [division (A)], public access to hearings [division (A)(1)], separation of juvenile and adult cases [division (A)(2)], and jury trials [division (A)(3)].

Division (A)(1) clarifies that in serious youthful offender proceedings, adult rules about public access shall apply, and thus a qualified presumption of public access is appropriate. The rule seeks to conform to the Supreme Court's ruling in State ex rel. New World Communications of Ohio, Inc. v. Geauga County Court of Common Pleas, Juvenile Division, (2000) 90 Ohio St.3d 79, 734 N.E.2d 1214. In juvenile proceedings, there is no qualified right of public access, and no presumption that the proceedings be either open or closed.

The amended rule recognizes that the policies of confidentiality and rehabilitation important in juvenile proceedings may justify closure to those without a direct interest after a hearing. In that hearing, the party seeking closure bears the burden of proof, but Rule 27(A)(1)(b) clarifies that closure is justified unless there is a "comparable competing interest" for public access, which the rule describes as a countervailing right. The amendment also conforms to Revised Code section 2151.35(A) as amended by Sub. Sen. Bill 179.

Rule 27(A)(2) conforms to Revised Code section 2151.35(A)(1), which provides that in cases in which both a child and an adult are charged for chronic or habitual truancy, the cases need not be heard separately, while preserving separate proceedings in all other cases.

Rule 27(A)(3) conforms to Revised Code section 2152.13(D) providing for a jury determination in cases seeking a serious youthful offender dispositional sentence, while preserving nonjury proceedings in all other cases.

RULE 27(B) SPECIAL PROVISIONS FOR ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS

Rule 27(B) was not amended, but was recaptioned to clarify that its provisions apply to abuse, neglect and dependency proceedings.

7-1-96 AMENDMENT

RULE 27(B) SPECIAL PROVISIONS

The amendment changed the rule's reference from "referee" to "magistrate" in divisions (B)(3) and (B)(3)(c) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 27 HEARINGS: GENERAL

S.B. 89 set forth several additional criteria to be observed in the course of hearings in juvenile court. The revisions to Juv. R. 27 reflect the general policy of that legislation to protect children and to assure that all reasonable measures have been taken to keep children with their original families.

Juv. R. 27(B)(1) specifies the "reasonable efforts" determination necessary to assure that, as much as possible, children can remain with their families or return to them without undue trauma. Revised Code 2151.419.

Juv. R. 27(B)(1) sets forth the requirements of the court's determination as to whether a child is a competent witness. Revised Code 2317.01.

Juv. R. 27(B)(3) details a procedure to permit a child's testimony to be taken by deposition in the presence of a judge or a referee. Revised Code 2151.35(G).

Cross-References to Related Statutes

Hearing procedure; findings; record, RC § 2151.35.

Separate room for hearings, RC § 2151.24.

Ohio Administrative Code

Department of job and family services, division of social services—

Supportive services, OAC ch. 5101:2-39.

Reasonable efforts by public children services agency (PCSA) or private child placing agency (PCPA). OAC 5101:2-39-05.

NOTES TO DECISIONS

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Generally

Where a county children service agency filed a dependency complaint, and a dispositional hearing was held by a magistrate within 90 days thereof, the time requirements of Ohio R. Juv. P. 34(A) and Ohio Rev. Code Ann. § 2151.35(B)(1) were met. The mother's claim on appeal that she did not present evidence at the hearing was waived where she stipulated to her daughters' dispositions, and she did not object to her son's disposition, nor did she attempt to present witnesses, and the magistrate had the right to conduct an informal hearing, pursuant to § 2151.35(A)(1) and Ohio R. Juv. P. 27(A). In re Ohm, 2005 Ohio 3500, 2005 Ohio App. LEXIS 3245 (2005).

Juvenile Rule 27 and RC § 2151.35 state that a juvenile hearing may, but need not be, held in an informal manner. In re Corcoran, 68 Ohio App. 3d 213, 587 N.E.2d 957, 1990 Ohio App. LEXIS 2547 (1990).

Access of media, public

When appellant, a juvenile, moved a trial court to exclude the press, close the courtroom, order non-disclosure of information from the police to the press, and non-disclosure of personal information of the juvenile parties to appellant's trial for gross sexual imposition and unlawful restraint, it was not an abuse of discretion, under Ohio R. Juv. P. 27 and Ohio Rev. Code Ann. § 2151.35, for the trial court to deny the motion because it properly considered potential harm to appellant, the benefits of public access, and ordered a reasonable alternative when it ordered that the media could not disclose the identities of appellant or his parents and barred the use of video or photographs of appellant. In re K.J.B., — Ohio App. 3d —, 2007 Ohio 1677, — N.E. 2d —, 2007 Ohio App. LEXIS 1533 (Apr. 9, 2007).

The court abused its discretion by closing a detention hearing to the media without a motion for closure and without holding a hearing or making the required findings: State ex rel. Dispatch Printing Co. v. Loudon, 91 Ohio St. 3d 61, 2001 Ohio 268, 741 N.E.2d 517, 2001 Ohio LEXIS 228 (2001).

The public does not have a qualified constitutional right of access to juvenile delinquency proceedings. Such proceedings are not presumed open or presumed closed. The burden of proof is on a party seeking closure: State ex rel. Plain Dealer Publishing Co. v. Geauga Cty. Court of Common Pleas, Juv. Div., 90 Ohio St. 3d 79, 2000 Ohio 35, 734 N.E.2d 1214, 2000 Ohio LEXIS 1999 (2000).

A juvenile court should not summarily deny closure of a hearing where no party objects to closure and evidence is likely to be presented that will be psychologically damaging to an abused child if made public: In re Joanne M., 103 Ohio App. 3d 447, 659 N.E.2d 864, 1995 Ohio App. LEXIS 1977 (1995).

A two-stage proceeding is required where a motion to transfer a child for prosecution as an adult is filed. The preliminary hearing is presumptively open to the public, while the amenability hearing is presumptively closed: In re D.R., 63 Ohio Misc. 2d 273, 624 N.E.2d 1120, 1993 Ohio Misc. LEXIS 53 (CP 1993).

The public has an interest in access to delinquency proceedings which corresponds to the public's interest in criminal matters. However, the public's right of access must be weighed against the unique confidentiality concerns of a juvenile court. Any limitations on access must be narrowly drawn: In re N.H., 63 Ohio Misc. 2d 285, 626 N.E.2d 697, 1992 Ohio Misc. LEXIS 79 (CP 1992).

Proceedings in juvenile court to determine if a child is abused, neglected, or dependent, or to determine custody of a minor child, are neither presumptively open nor presumptively closed to the public. The juvenile court may restrict public access to these proceedings pursuant to JuvR 27 and RC § 2151.35 if the court finds, after hearing evidence and argument on the issue, (1) that there exists a reasonable and substantial basis for believing that public access could harm the child or endanger the fairness of the adjudication, and (2) the potential for harm outweighs the benefits of public access: In re T.R., 52 Ohio St. 3d 6, 556 N.E.2d 439, 1990 Ohio LEXIS 248 (1990).

Oath of witness

Although a juvenile court may conduct a hearing in an informal manner, witnesses should be placed under oath before testifying:

In re Ramsey Children, 102 Ohio App. 3d 168, 656 N.E.2d 1311, 1995 Ohio App. LEXIS 1510 (1995).

Presence of juvenile

When a magistrate took the disposition of a juvenile delinquency case under advisement, after conducting adjudicatory and dispositional hearings, and then issued a sentencing decision without holding a hearing, Ohio R. Juv. P. 27 did not require that the juvenile who was the subject of the delinquency petition be physically present when the dispositional order was entered as the Rule only required that persons with a direct interest in a case could not be excluded from any hearing. In re Gibson, — Ohio App. 3d —, 2006 Ohio 5145, — N.E. 2d —, 2006 Ohio App. LEXIS 5109 (Oct. 2, 2006).

A juvenile's right to be present at a dispositional hearing may be waived by a deliberate failure to appear: In re Jason R., 77 Ohio Misc. 2d 37, 666 N.E.2d 666, 1995 Ohio Misc. LEXIS 93 (CP 1995).

Public access

Prohibition may be granted to prevent a judge from closing juvenile court proceedings without conducting an evidentiary hearing and without making the required findings. When a party requests that a juvenile court proceeding be closed, but the court fails to hold an appropriate evidentiary hearing and make the required findings before closing the proceeding, a person or entity successfully challenging that practice is not automatically entitled to release of the transcript of the improperly closed proceeding. Instead, the person or entity challenging the improper closure is entitled to a writ of mandamus to compel the judge to conduct the closure hearing that should have been held in order to determine if release of the transcript is warranted. Mandamus may be granted to compel a juvenile court to make publicly available notice of (1) motions to close proceedings, (2) when hearings on closure motions will be held, and (3) court rulings on closure motions: State ex rel. Plain Dealer Publ. Co. v. Floyd, 111 Ohio St. 3d 56, 2006 Ohio 4437, 855 N.E.2d 35, 2006 Ohio LEXIS 2573, 34 Media L. Rep. (BNA) 2325 (2006).

Termination of parental rights

RC § 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to RC § 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time. The trial court satisfied its duty under RC § 2151.414(D) and properly exercised its discretion to consider the wishes of the children as expressed through their guardian ad litem. The statute does not impose the additional requirement that the trial court also consider whether the children want to testify or whether testifying would be detrimental to them: In re C.F., 113 Ohio St. 3d 73, 2007 Ohio 1104, 862 N.E.2d 816, 2007 Ohio LEXIS 673 (2007).

Testimony by child

Record supported the trial court's decision to quash the mother's subpoena of her daughter to testify at the permanent custody hearing because the trial court conducted in camera interviews of the children at mother's request and informed the mother of their statements; the mother's desire to make the daughter testify after the in camera interview would defeat its purpose. Additionally, the daughter's therapist, attorney, and guardian ad litem all stated that she was frightened to testify in front of everyone, did not wish to testify, and would be traumatized and stressed if made to do so. In re J.P., — Ohio App. 3d —, 2007 Ohio 1903, — N.E. 2d —, 2007 Ohio App. LEXIS 1755 (Apr. 23, 2007).

Opinions of Attorney General

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

RULE 28. [Reserved]

RULE 29. Adjudicatory hearing

(A) **Scheduling the hearing.** The date for the adjudicatory hearing shall be set when the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint alleging a violation of a section of the Revised Code that may be violated by an adult and that does not request a serious youthful offender sentence, and if the child is in detention or shelter care, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.

The prosecuting attorney's filing of either a notice of intent to pursue or a statement of an interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention or shelter care.

The hearing of a removal action shall be scheduled in accordance with Juv. R. 39(B).

If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or for a reasonable time beyond thirty days to obtain service on all parties or complete any necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days after the complaint is filed.

The failure of the court to hold an adjudicatory hearing within any time period set forth in this rule does not affect the ability of the court to issue any order otherwise provided for in statute or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of any order of the court.

(B) **Advisement and findings at the commencement of the hearing.** At the beginning of the hearing, the court shall do all of the following:

(1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;

(2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under Juv. R. 30 where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;

(3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;

(4) Appoint counsel for any unrepresented party under Juv. R. 4(A) who does not waive the right to counsel;

(5) Inform any unrepresented party who waives the right to counsel of the right to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

(C) **Entry of admission or denial.** The court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial, except in cases where the court consents to entry of a plea of no contest.

(D) Initial procedure upon entry of an admission.

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

(E) Initial procedure upon entry of a denial. If a party denies the allegations, the court shall:

(1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;

(2) Order the separation of witnesses, upon request of any party;

(3) Take all testimony under oath or affirmation in either question-answer or narrative form; and

(4) Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings; by clear and convincing evidence in dependency, neglect, and abuse cases, and in a removal action; and by a preponderance of the evidence in all other cases.

(F) Procedure upon determination of the issues.

Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to Civ. R. 52.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in Juv. R. 27(B)(1) and to relative placement in accordance with Juv. R. 7(F)(3).

History: Amended, eff 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-04.

The provisions of § 3 of HB 180 (149 v —) read as follows:

SECTION 3. The General Assembly hereby requests the Supreme Court to promptly modify Rule 29 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments of this act to section 2151.28 of the Revised Code.

The General Assembly further requests the Supreme Court to promptly modify Rule 7 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that

rule consistent with the amendments of this act to section 2151.31 of the Revised Code.

STAFF NOTES**7-1-04 AMENDMENT**

Juvenile Rule 29(A) Scheduling the hearing

Division (A) was amended to conform the language of the rule to R.C. 2151.28, as amended effective May 16, 2002.

Juvenile Rule 29(B) Adversement and findings at the commencement of the hearing

Division (C) was amended to conform the language of the rule to R.C. 2151.10 and 2151.12, which allow the transfer of juveniles age fourteen and over to adult court for trial.

7-1-01 AMENDMENT

RULE 29(A) SCHEDULING THE HEARING

Rule 29(A) was amended to conform to Revised Code section 2152.13(B), which provides that the prosecuting attorney has twenty days after a child's initial appearance in juvenile court within which to file a notice of intent to pursue a serious youthful offender dispositional sentence. The rule preserves the ten-day time period within which to hold an adjudicatory hearing for all other cases in which the child is in detention or shelter care. However, because the rule contemplates a hearing within ten days, but the statute grants a twenty-day time period for making the charging decision, the amended rule also provides a mechanism by which a prosecuting attorney can preserve the twenty-day time period by filing a "statement of interest in pursuing a serious youthful offender sentence". The amended rule states that either the notice of intent (i.e., a Rule 22(D)(5) motion) or a statement of interest shall be good cause for extending both the date for an adjudicatory hearing and detention or shelter care. If the prosecuting attorney does not file a notice of intent to pursue a serious youthful offender sentence before the twenty-day time period lapses, the ordinary juvenile time frames again become operative. If the prosecuting attorney does not obtain an indictment or information, or the court denies the Rule 22(D)(5) motion, the ordinary juvenile time frames will again become operative. If the child is determined to be eligible for a serious youthful offender sentence, the ordinary juvenile time frames do not apply. Instead, adult time frames, i.e., speedy trial provisions, become operative [Revised Code section 2152.13(D)(1)].

RULE 29(C) ENTRY OF ADMISSION OR DENIAL

Rule 29(C) was amended in response to Section 3 of Sub. Sen. Bill 179 (effective January 1, 2002), in which the General Assembly encouraged the Supreme Court to amend Rule 29(C) to permit "no contest" pleas with the consent of the court, similar to the provisions in Criminal Rule 11.

RULE 29(F) PROCEDURE UPON DETERMINATION OF THE ISSUES

Rule 29(F) was amended in response to both the chronic and habitual truancy act and the serious youthful offender act. Divisions (F)(1) and (2) include recognition that a serious youthful offender case will proceed by indictment or information. Division (F)(2) also recognizes that certain dispositions within the power of the juvenile court may be precluded by statute for certain types of cases. The amendment removes any perception of conflict between statutorily authorized dispositions and those authorized in the rule. Specifically, the division conforms to Revised Code section 2152.13(E), which controls the dispositions in serious youthful offender cases. The division also recognizes that chronic or habitual truant dispositions are heavily regulated by statute.

7-1-98 AMENDMENT

RULE 29 ADJUDICATORY HEARING

The 1998 amendment to Juv. R. 29(A) makes reference to Juv. R. 39(B), which governs service of process and the scheduling of hearings in removal actions.

The 1998 amendment to Juv. R. 29(E)(4) establishes a clear and convincing standard in removal actions for determining whether the child is causing a significant and unreasonable disruption to the educational process. This standard recognizes the significant consequences that will result if the allegations of the complaint are established.

7-1-94 AMENDMENT

RULE 29 ADJUDICATORY HEARING

The 1994 amendment revised Juv. R. 29(A) to require specific time deadlines for holding the adjudicatory hearing in abuse, neglect, and dependency cases. Specifically in abuse, neglect, and dependency cases, an adjudicatory hearing is to be conducted no later than thirty days after the complaint is filed, with the possibility of a ten day extension for obtaining counsel, and a reasonable time extension to perfect service of process. In any event, the time for the adjudicatory hearing is not to exceed ninety days from the filing of a complaint. Revised Code 2151.28 (amended by S.B. 89).

Masculine references have been replaced by gender neutral language.

Cross-References to Related Statutes

Delinquent child defined, RC § 2152.02.
Detention hearing, RC § 2151.31.4.
Hearing procedure; findings; record, RC § 2151.35.
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Constitutionality

Trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement: *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647, 1971 U.S. LEXIS 26 (1971).

Generally

When, in an adjudicatory hearing held pursuant to JuvR 29, the only evidence of guilt utilized by the court is testimony presented

at the preliminary hearing, where the accused exercised adequate rights of cross-examination, he is denied no constitutional right: *In re Gantt*, 61 Ohio App. 2d 44, 398 N.E.2d 800, 15 Ohio Op. 3d 67, 1978 Ohio App. LEXIS 7661 (1978).

Abused child, generally

Minor child properly was adjudicated as having suffered "serious physical harm" despite the child's happy disposition where the trial court had photographs of the child's bruised body, a physician's affidavit opining that the child was abused, and medical records indicating extensive bruising. *In re K.B.*, 2003 Ohio 3784, 2003 Ohio App. LEXIS 3402 (2003).

Acceptance of admissions

Juvenile court's failure to personally address a juvenile in order to determine whether he understood the nature of charges against him of delinquency arising from gross sexual imposition against his younger siblings was not substantial compliance with Ohio R. Juv. P. 29(D), such that the denial of the juvenile's motion to set aside his admissions thereto required reversal. The juvenile's affirmative response to the juvenile court's query as to whether he understood the nature of the charges against him was alone insufficient to constitute substantial compliance. *In re J. T. C.*, — Ohio App. 3d —, 2007 Ohio 436, — N.E. 2d —, 2007 Ohio App. LEXIS 375 (Feb. 2, 2007).

Appellant, who failed to file objections to a magistrate's decision as required by Ohio R. Juv. P. 40(D)(3)(b)(iv), failed to demonstrate that the magistrate committed plain error in accepting appellant's admission in a juvenile delinquency proceeding without first informing appellant that he had the right to subpoena witnesses; instead, the magistrate substantially complied with the requirements of Ohio R. Juv. P. 29(D) by informing appellant of the consequences of his plea and advising him that he was giving up the opportunity to question witnesses, to remain silent, and to call his own witnesses. Ohio R. Juv. P. 29(D) does not require a magistrate to inform an appellant of his right to subpoena witnesses. *In re T.K.W.*, — Ohio App. 3d —, 2007 Ohio 1205, — N.E. 2d —, 2007 Ohio App. LEXIS 1026 (Mar. 13, 2007).

Trial court substantially complied with the requirements of Ohio R. Juv. P. 29(D) when it accepted appellant's admission and waiver of counsel because both were made voluntarily, knowingly, and intelligently, as (1) the elements and category of each charge filed against appellant were explained to him, (2) he was informed of the possible consequences of being found delinquent or admitting to the charges, (3) he was informed that he had the right to a lawyer and that, if he could not afford a lawyer, one would be appointed for him if he qualified, (4) he was told he had the right to remain silent and the right to go to trial to present evidence in his defense, (5) he was told he had the right to cross-examine witnesses and that the State had the burden of proving beyond a reasonable doubt that he committed the offenses, (6) he said there had been no promises or threats made to coerce him into pleading guilty, (7) he was told that by entering an admission the court would proceed directly to decide what punishment he should receive, (8) he said he understood what the Department of Youth Services was and that by entering an admission he could be committed there for at least six months and as long as until his 21st birthday, (9) he said he understood all the rights he was advised of, (10) he was days short of his 14th birthday when he entered the admissions, (11) he had a previous record in juvenile court, (12) his mother was present when his rights were explained, and she concurred in his decision to waive counsel, (13) she and appellant were both informed of the right to object to the magistrate's decision, under Ohio R. Juv. P. 40, and both acknowledged receipt of the magistrate's decision and waived the right to file written objections to that decision, and (14) both appellant and his mother signed a written waiver of rights form before the plea. *In re Spears*, — Ohio App. 3d —, 2006 Ohio 1920, — N.E. 2d —, 2006 Ohio App. LEXIS 1761 (Apr. 17, 2006).

Juvenile did not make his admission to charges knowingly, voluntarily, and intelligently pursuant to Ohio R. Juv. P. 29(D) because the juvenile court failed to inform him, on the record, why he was required to enter new admissions and pleas under Ohio R. Crim. P. 11, based on the fact that he had been previously

misinformed as to the consequences for the entry of his pleas and admissions pursuant to Ohio Rev. Code Ann. § 2152.13(D)(2). There was no indication given to the juvenile upon his second set of admissions and pleas as to why the first set were considered null and void. In re Smith, — Ohio App. 3d —, 2006 Ohio 2788, — N.E.2d —, 2006 Ohio App. LEXIS 2625 (June 5, 2006).

Defendant was improperly adjudicated a juvenile delinquent based on an admission for, inter alia, fleeing and eluding as the trial court conducted an insufficient allocation under Ohio R. Juv. P. 29(D)(2). The trial court failed to explain that defendant would be waiving his rights to challenge the witnesses and evidence against him, to remain silent, and to introduce evidence at the adjudicatory hearing. In re Higgins, — Ohio App. 3d —, 2006 Ohio 6826, — N.E. 2d —, 2006 Ohio App. LEXIS 6735 (Dec. 22, 2006).

Juvenile court properly conducted an amenability hearing to determine whether defendant, a juvenile, was amenable to the juvenile court system or whether he should be bound over to the general trial court for criminal charges, and the fact that defendant stipulated to the admission of his psychological evaluation and his family records did not constitute admissions or error by the juvenile court, pursuant to Ohio R. Juv. P. 29(D) and 30. State v. Goodwin, 166 Ohio App. 3d 709, 2006 Ohio 2311, 852 N.E. 2d 1282, 2006 Ohio App. LEXIS 2176 (May 11, 2006).

Juvenile admission under Ohio R. Juv. P. 29 was analogous to a guilty plea and a juvenile offender who entered an admission to an offense waived the right to challenge evidentiary issues on appeal, including a motion to suppress; defendant waived his right to contest the denial of his motion to suppress when he entered his plea of true to a drug possession charge. In re S.L., — Ohio App. 3d —, 2006 Ohio 1895, — N.E. 2d —, 2006 Ohio App. LEXIS 1748 (Apr. 17, 2006).

Magistrate's explanation of the potential consequences of the admission was insufficient: In re William B., 163 Ohio App. 3d 201, 2005 Ohio 4428, 837 N.E.2d 414, 2005 Ohio App. LEXIS 4019 (2005).

Mother's claim that her admission that the children were abused or dependent violated Ohio R. Juv. P. 29 was rejected as the mother failed to file a transcript of the hearing in which the admission was made and there was no Ohio R. App. P. 9 equivalent. Without the transcript or Rule 9 equivalent, the regularity of the juvenile court proceedings had to be presumed. In re Nelson, — Ohio App. 3d —, 2005 Ohio 6600, — N.E. 2d —, 2005 Ohio App. LEXIS 5926 (Dec. 9, 2005).

Trial court committed plain error as it did not sufficiently comply with the requirements of Ohio R. Juv. P. 29(D) in accepting the admissions to the amended complaint, alleging that the child was neglected (for the purpose of permanent custody), because neither admission was made with an understanding of the nature of the allegations and the consequences of the admission. The trial judge did not ascertain that the mother or the grandmother understood that the purpose of the hearing was to determine whether the child was neglected, the trial judge did not inform them that, by entering an admission, they were admitting to the truth of the allegations in the amended complaint and to a finding of neglect by the court, and the trial judge told both the mother and the grandmother that their rights applied at the dispositional hearing and at no time informed them that they were giving up their rights at the adjudicatory hearing by entering an admission to the amended complaint. In re M.C., — Ohio App. 3d —, 2005 Ohio 1968, — N.E. 2d —, 2005 Ohio App. LEXIS 1916 (Apr. 28, 2005).

Prior to accepting defendant juvenile's admission to grand theft auto (Ohio Rev. Code Ann. § 2913.02), the trial court failed to advise him of his eligibility for a commitment to the Ohio Department of Youth Services for a minimum period of six months, and a maximum period of his 21st birthday. Therefore, it was not found that the trial court substantially complied with Ohio R. Juv. P. 29, by personally engaging in a discussion with defendant to make sure that he understood the consequences of making an admission and the potential penalty before finding defendant had waived his rights knowingly, voluntarily, or intelligently. In re Stone, — Ohio App. 3d —, 2005 Ohio 1831, — N.E. 2d —, 2005 Ohio App. LEXIS 1741 (Apr. 13, 2005).

Trial court did not err by accepting defendant juvenile's knowing and voluntary admission to assault as it complied with

Ohio R. Juv. P. 29. The trial court informed defendant of the charge against him, advised him of the rights he would be waiving by entering an admission, and conducted a comprehensive inquiry to establish that he understood the nature of the charge against him and the consequences of an admission. In re C.P., — Ohio App. 3d —, 2005 Ohio 1819, — N.E. 2d —, 2005 Ohio App. LEXIS 1743 (Apr. 20, 2005).

Trial court's failure to comply with JuvR 29(D), concerning admissions, constitutes plain error in cases involving termination of parental rights: In re A.C., 160 Ohio App. 3d 457, 2005 Ohio 1742, 827 N.E.2d 824, 2005 Ohio App. LEXIS 1669 (2005).

Because a magistrate failed to ask a juvenile defendant whether defendant understood that defendant was waiving constitutional rights in pleading guilty, and the transcript was so poor that the appellate court could not determine the sufficiency of the allocation, the trial court failed to comply with Ohio R. Juv. P. 29(D)(2), 37. In re Dawson, — Ohio App. 3d —, 2005 Ohio 2088, — N.E. 2d —, 2005 Ohio App. LEXIS 1984 (Apr. 29, 2005).

Where a juvenile's remorse was questionable and the juvenile was informed of the maximum penalty under RC § 2152.16(A)(1)(e) for gross sexual imposition, the trial court complied with Ohio R. Juv. P. 29(D); there was no indication that the juvenile was prejudiced by the failure to be informed of the penalties for disorderly conduct. In re Wisdom, 2005 Ohio 930, 2005 Ohio App. LEXIS 949 (2005).

Because the trial court, before accepting the parents' admissions that their children were dependent, did not address them to ensure that they understood the nature of the allegations or the consequences of the admissions as required by Ohio R. Juv. P. 29(A), it committed plain error in finding the children to be dependent based on those admissions. In re Elliott, 2004 Ohio 2770, 2004 Ohio App. LEXIS 2461 (2004).

Where the trial court engaged in a lengthy colloquy with appellant mother at the adjudication phase, read the allegations of abuse to her, asked her if she understood what each allegation and subsequent admission meant, and she acknowledged that by admitting to the allegations of abuse, she was waiving her right to challenge the witnesses and evidence on that issue, waiving her right to remain silent, and waiving her right to introduce evidence on that issue, because the trial court followed the mandates of Ohio R. Juv. P. 29(D) in accepting appellant's admissions at the adjudication phase, it did not violate her due process rights. In re K.P., 2004 Ohio 1674, 2004 Ohio App. LEXIS 1494 (2004).

Magistrate complied with the juvenile rule by determining whether defendant was making the admissions voluntarily with a complete understanding of the consequences before accepting the admission to rape and gross sexual imposition. In re J.W., — Ohio App. 3d —, 2003 Ohio 5096, — N.E. 2d —, 2003 Ohio App. LEXIS 4604 (Sept. 26, 2003).

Where a juvenile was informed only that if he entered an admission to an assault charge he would not have the right to a trial, and it was not explained to him that by entering a plea he would be waiving the other constitutional rights referenced in Ohio R. Juv. P. 29(D)(2), his entry of an admission to that charge had to be vacated. In re Adams, 2003 Ohio 4112, 2003 Ohio App. LEXIS 3664 (2003).

Juvenile court did not err in accepting defendant's admission to two charges against him and ordering his placement in the Ohio Department of Youth Services, as the juvenile court followed the mandates of Ohio R. Juv. P. 29 regarding the proper way to conduct an adjudicatory hearing. State v. D.M., 2003 Ohio 3228, 2003 Ohio App. LEXIS 2901 (2003).

Juvenile court's colloquy with the juvenile was inadequate to inform the juvenile of the juvenile's rights under Ohio R. Juv. P. 29(D)(1), as the juvenile court failed to determine that the juvenile fully understood the consequences of the juvenile's admission to a charge of gross sexual imposition since it did not inform the juvenile of the maximum potential term of commitment available. In re A.H., — Ohio App. 3d —, 2003 Ohio 1953, — N.E. 2d —, 2003 Ohio App. LEXIS 1861 (Apr. 17, 2003).

Juvenile court properly accepted the juvenile's admissions to two charges and ordered that he be placed with the Ohio Department of Youth Services, as the record showed that the juvenile court determined personally that the juvenile's admissions were voluntarily made, and with an understanding of the

nature of the allegations and the consequences of the admissions. *State v. D.M.*, 2003 Ohio 3228, 2003 Ohio App. LEXIS 2901 (2003).

Juvenile's admissions to two charges were properly accepted and the juvenile was properly placed in the Ohio Department of Youth Services, as the juvenile court properly informed him of the purpose of the juvenile's adjudicatory hearing, its substance, and the possible consequences of the hearing. *State v. D.M.*, 2003 Ohio 3228, 2003 Ohio App. LEXIS 2901 (2003).

That a juvenile only answered "yes" or "yeah" to questions from the trial court as to whether he understood the constitutional rights he was waiving by entering an admission did not oblige the trial court to make a further inquiry to determine that he was making a knowing, intelligent, and voluntary waiver of his constitutional rights, as the court had no reason to doubt the juvenile's answers that he understood the rights he was waiving. *In re Adams*, 2003 Ohio 4112, 2003 Ohio App. LEXIS 3664 (2003).

The court failed to comply with JuvR 29(D) prior to accepting the admission: *In re Graham*, 147 Ohio App. 3d 452, 2002 Ohio 2407, 770 N.E.2d 1123, 2002 Ohio App. LEXIS 2435 (2002).

The court did not substantially comply with JuvR 29(D)(1) where it failed to inform the juvenile of the term of his possible commitment: *In re Holcomb*, 147 Ohio App. 3d 31, 2002 Ohio 2042, 768 N.E.2d 722, 2002 Ohio App. LEXIS 191 (2002).

The court violated JuvR 29(B) and (D) by failing to sufficiently explain the juvenile's rights and the effect of an admission: *In re Royal*, 132 Ohio App. 3d 496, 725 N.E.2d 685, 1999 Ohio App. LEXIS 854 (1999).

The court's failure to comply with JuvR 29(D) constituted prejudicial error: *In re Fulk*, 132 Ohio App. 3d 470, 1999 Ohio 840, 725 N.E.2d 357, 1999 Ohio App. LEXIS 3600 (1999).

Noncompliance with JuvR 29(D) rendered the termination of parental rights invalid: *In re Etter*, 134 Ohio App. 3d 484, 731 N.E.2d 694, 1998 Ohio App. LEXIS 2571 (1998).

The court failed even to minimally comply with JuvR 29(D): *In re West*, 128 Ohio App. 3d 356, 714 N.E.2d 988, 1998 Ohio App. LEXIS 2404 (1998).

The court's initial questions prior to accepting the admissions were proper. Subsequent questions revealed the juvenile was contesting an element of an offense, and defense counsel should not have elicited incriminating information from the juvenile: *In re Terrace P.*, 129 Ohio App. 3d 418, 717 N.E.2d 1160, 1998 Ohio App. LEXIS 3686 (1998).

The court's failure to address the juvenile personally concerning waiver of the privilege against self-incrimination before accepting the admission constituted prejudicial error. Substantial compliance with JuvR 29(D) is not sufficient where a constitutional right is concerned: *In re Onion*, 128 Ohio App. 3d 498, 715 N.E.2d 604, 1998 Ohio App. LEXIS 2762 (1998).

The court did not comply with JuvR 4 and 29 when it adopted the referee's report and proposed entry without sufficient findings to enable the court to make an independent determination that the juvenile properly waived counsel and entered an admission: *In re Montgomery*, 117 Ohio App. 3d 696, 691 N.E.2d 349, 1997 Ohio App. LEXIS 35 (1997).

The juvenile's rights to counsel and due process were violated where the court accepted her admissions while addressing almost all of its remarks to the juvenile's mother: *In re Rogers*, 124 Ohio App. 3d 392, 706 N.E.2d 390, 1997 Ohio App. LEXIS 5471 (1997).

Collectively advising a group of juveniles of the effect of an admission did not satisfy JuvR 29(D): *In re Miller*, 119 Ohio App. 3d 52, 694 N.E.2d 500, 1997 Ohio App. LEXIS 1399 (1997).

The court violated JuvR 29(B) and (D) by not advising defendant of his constitutional rights and of the effect of the admission: *In re Kimble*, 114 Ohio App. 3d 136, 682 N.E.2d 1066, 1996 Ohio App. LEXIS 4306 (1996).

Without substantial compliance with JuvR 29(D), a juvenile's admissions are invalid: *In re Brooks*, 112 Ohio App. 3d 54, 677 N.E.2d 1229, 1996 Ohio App. LEXIS 2656 (1996).

Juvenile Rule 29(D)(1) requires that a juvenile be apprised of the dispositional options. Advising a juvenile that an admission waived the right to trial did not satisfy JuvR 29(D)(2): *In re Hendrickson*, 114 Ohio App. 3d 290, 683 N.E.2d 76, 1996 Ohio App. LEXIS 4240 (1996).

The court's noncompliance with JuvR 29(D)(1) in accepting a plea from a mentally handicapped thirteen-year-old required reversal: *In re Beechler*, 115 Ohio App. 3d 567, 685 N.E.2d 1257, 1996 Ohio App. LEXIS 3215 (1996).

The requirements of CrimR 11(C)(2) do not apply to JuvR 29(D)(2). The referee's failure to comply was neither prejudicial nor plain error: *In re Harris*, 104 Ohio App. 3d 324, 662 N.E.2d 34, 1995 Ohio App. LEXIS 1827 (1995).

The failure of a juvenile court to substantially comply with the requirements of JuvR 29(D) has the same prejudicial effect as does failure to substantially comply with CrimR 11(C)(2), necessitating a reversal of the adjudication so that the juvenile may plead anew: *In re Christopher R.*, 101 Ohio App. 3d 245, 655 N.E.2d 280, 1995 Ohio App. LEXIS 2422 (1995).

The failure of a juvenile court to substantially comply with the requirements of JuvR 29(D) has the same prejudicial effect as does failure to substantially comply with CrimR 11(C)(2), necessitating a reversal of the adjudication so that the juvenile may plead anew: *In re Jenkins*, 101 Ohio App. 3d 177, 655 N.E.2d 238, 1995 Ohio App. LEXIS 518 (1995).

Juvenile Rule 29(D) requires the court to apprise the juvenile of the rights being waived by an admission. The duty may not be delegated to defense counsel: *In re Flynn*, 101 Ohio App. 3d 778, 656 N.E.2d 737, 1995 Ohio App. LEXIS 2158 (1995).

The failure of the juvenile court to substantially comply with JuvR 29(D) by personally addressing the juvenile defendant to ensure the validity of a waiver, necessitates a reversal of the adjudication so that the juvenile may plead anew: *In re Robert Meyer*, 1992 Ohio App. LEXIS 109 (1st Dist. 1992).

The court failed to comply with JuvR 29(D) when it accepted the parents' admissions of neglect without advising them of their rights or of the effects of the admissions: *In re Smith*, 77 Ohio App. 3d 1, 601 N.E.2d 45, 1991 Ohio App. LEXIS 4120 (1991).

Admission of dependency

When parents entered dependency admissions as to two children, and then, years later, after a third child was born and an agency sought permanent custody of all three children, the parents filed pleas of deny, this effectively withdrew the prior admissions, where the trial court did not adjudicate the children to be dependent when the prior admissions were entered, so, once the pleas of deny were entered, the trial court could not adjudicate the children to be dependent and/or abused based on the withdrawn pleas, and, as it did not otherwise adjudicate the children, its subsequent grant of their permanent custody to an agency without an adjudication was contrary to Ohio Rev. Code Ann. ch. 2151 and Ohio R. Juv. P. 29(F) and 34. *In re J.H.*, — Ohio App. 3d —, 2006 Ohio 3237, — N.E. 2d —, 2006 Ohio App. LEXIS 3151 (June 26, 2006).

Admissions

Defendant juvenile's admission in a delinquency proceeding was not knowingly, intelligently, and voluntarily entered where the juvenile court failed to substantially comply with the requirements of Ohio R. Juv. P. 29(D), in that it failed to engage in any meaningful exchange with defendant to ascertain whether he understood the nature of the charge against him or the rights he was waiving by admitting the charge. *In re M.T.*, — Ohio App. 3d —, 2007 Ohio 2446, — N.E. 2d —, 2007 Ohio App. LEXIS 2258 (May 21, 2007).

JuvR 29(D) was violated where the magistrate failed to determine whether the juvenile understood the nature of the rape allegation and also misinformed the juvenile as to the consequences of the admission: *In re B.M.S.*, 165 Ohio App. 3d 609, 2006 Ohio 981, 847 N.E.2d 506, 2006 Ohio App. LEXIS 906 (2006).

Alford plea

Ohio bars juvenile offenders from entering an Alford plea simultaneously admitting to criminal conduct and maintaining their innocence: *In re Kirby*, 101 Ohio St. 3d 312, 2004 Ohio 970, 804 N.E.2d 476, 2004 Ohio LEXIS 475 (2004).

Appeal

Where children are found to be neglected and dependent and temporary custody is then awarded to the children services board,

the custody order is appealable under RC § 2501.02: Smith, 61 Ohio App. 3d 788, 573 N.E.2d 1170, 1989 Ohio App. LEXIS 2111 (1989).

Clear and convincing evidence

Weight of the evidence supported the trial court's determination that a father's minor child was an abused and dependent child pursuant to Ohio Rev. Code Ann. §§ 2151.031 and 2151.04(C), as she was a credible witness who testified that her father beat her with an extension cord and that he touched her "private parts"; although there was no physical evidence, such would have only strengthened the child's testimony but the lack of it did not require a conclusion that she was not credible where there was clear and convincing evidence to support the findings pursuant to Ohio R. Juv. P. 29(E)(4). In re A.R., — Ohio App. 3d —, 2006 Ohio 1548, — N.E. 2d —, 2006 Ohio App. LEXIS 1444 (Mar. 31, 2006).

There was sufficient evidence to allow the trial court to find by clear and convincing evidence that the elements of Ohio Rev. Code Ann. § 2151.04(D)(1) were met for a finding that the child was dependent. The mother had substance abuse problems, mental problems, and used sex offenders as caregivers and the child's three siblings had been adjudicated abused, neglected, and dependent. In re C.M., — Ohio App. 3d —, 2006 Ohio 1908, — N.E. 2d —, 2006 Ohio App. LEXIS 1752 (Apr. 19, 2006).

Clear and convincing evidence pursuant to Ohio Rev. Code Ann. § 2151.35 and Ohio R. Juv. P. 29(E)(4) supported a trial court's determination that a child was dependent pursuant to Ohio Rev. Code Ann. § 2151.04(C), as she was diagnosed with mental health issues, she had homicidal and suicidal tendencies, and had run away from home to avoid auditory hallucinations telling her to kill herself and her family. The parents' conduct adversely impacted the child and the severity of her condition, and it created a risk to her safety. In re E. R., — Ohio App. 3d —, 2006 Ohio 4816, — N.E. 2d —, 2006 Ohio App. LEXIS 4745 (Sept. 18, 2006).

Clear and convincing evidence, as required by Ohio Rev. Code Ann. § 2151.35(A)(1) and Ohio R. Juv. P. 29(E)(4), supported a trial court's decision that a child was dependent, under Ohio Rev. Code Ann. § 2151.04(B) and (C) because (1) the child's mother admitted that her mental state prevented her from adequately caring for the child, (2) she testified that the child's father was inconsistent in being willing to help her care for the child, (3) she testified the father's epilepsy caused him to "zone out" at times, (4) she accused the father of physically abusing the child but did not seek proper treatment for the child for weeks, (5) her claims of physical abuse, if true, showed the child suffered actual harm in the home and was not given appropriate treatment, and, if false, showed the mother's inability to make appropriate decisions about the child's care. In re S.J.J., — Ohio App. 3d —, 2006 Ohio 6354, — N.E. 2d —, 2006 Ohio App. LEXIS 6318 (Dec. 4, 2006).

Child was properly adjudicated a dependent child under Ohio Rev. Code Ann. § 2151.04(D) and adjudication was supported by clear and convincing evidence under Ohio R. Juv. P. 29(E)(4). Although the caseworker for the children services board had never observed the parent's home or their interactions with the week-old child prior to removal, the magistrate's finding that the child was dependent on the ground that the conditions of the household rendered the child in danger of being abused and neglected was not against the manifest weight of the evidence because the mother's parental rights to her other four children had been terminated, and the father had been convicted of child endangering, in that he had shaken a seven-month old child. The child was in danger of being abused, and the father's presence in the household constituted a condition in the household, which placed the child in danger. In re W.C., 2005 Ohio 2968, 2005 Ohio App. LEXIS 2767 (2005).

Adjudications of abuse and dependence were affirmed because the uncontested expert testimony that a child's injury was not accidental and that disciplinary methods used on the child were concerning was sufficient to support a finding that the youngest child was abused and the oldest child was dependent as defined by RC § 2151.031 by clear and convincing evidence under Ohio R. Juv. P. 29(E)(4). In re Anthony, — Ohio App. 3d —, 2003 Ohio 5712, — N.E. 2d —, 2003 Ohio App. LEXIS 5075 (Oct. 24, 2003).

Competency of child

While a child may be incompetent to stand trial in adult court, he or she may be competent to enter an admission and stand for adjudication in juvenile court because of the differences in the complexities of adult criminal proceedings versus juvenile proceedings: In re Bailey, 150 Ohio App. 3d 664, 2002 Ohio 6792, 782 N.E.2d 1177, 2002 Ohio App. LEXIS 6577 (2002).

Delinquency proceedings generally

Juvenile court's determination that defendant, a juvenile, was a delinquent pursuant to Ohio Rev. Code Ann. § 2151.35(A) and Ohio R. Juv. P. 29(E)(4) for committing a robbery, in violation of Ohio Rev. Code Ann. § 2911.02(A)(2), was not against the manifest weight of the evidence, as the identification of defendant as the perpetrator was supported by testimony from the victim which was deemed reliable, and there was sufficient evidence that money was taken from the victim's pocket during the criminal incident. In re Lower, — Ohio App. 3d —, 2007 Ohio 1735, — N.E. 2d —, 2007 Ohio App. LEXIS 1581 (Apr. 5, 2007).

In a delinquency proceeding, a trial judge had to find, based on the evidence produced at an adjudicatory hearing, whether the State proved delinquency beyond a reasonable doubt, under Ohio Rev. Code Ann. § 2151.35(A) and Ohio R. Juv. P. 29(E), so it was error for him to consider, in a rape trial, comments made by his wife about feminine hygiene. In re K.B., — Ohio App. 3d —, 2007 Ohio 1647, — N.E. 2d —, 2007 Ohio App. LEXIS 1501 (Apr. 9, 2007).

Although a juvenile failed to object to a magistrate's determination in his delinquency matter, as required by Ohio R. Juv. P. 40(D)(3)(b)(i), the exception to waiver under Rule 40(D)(4) applied, as the magistrate committed prejudicial, plain error under Ohio R. Crim. P. 52 when she failed to personally address the juvenile to ascertain that he voluntarily, knowingly, and intelligently waived his rights as required by Ohio R. Juv. P. 29(D). The magistrate's reliance on counsel's statement that he had explained the waiver of rights to the juvenile was improper, as was reliance on the juvenile's written waiver form, such that there was no substantial compliance with Rule 29(D). In re Tabler, — Ohio App. 3d —, 2007 Ohio 411, — N.E. 2d —, 2007 Ohio App. LEXIS 366 (Jan. 29, 2007).

Defendant juvenile's adjudication of delinquency for the act of arson (Ohio Rev. Code Ann. § 2909.02(A)) was against the manifest weight of the evidence as the State failed to prove that defendant knowingly (Ohio Rev. Code Ann. § 2901.22(B)) started or accelerated the fire. The conclusion was based on the improbability of the timeline for the sequence of events that the State presented; the illogical conclusions of the State's expert testimony; and statements and omissions by defendant's step-mother, which logically could only have been construed to support defendant's contention that the fire was accidental. In re Horton, 2005 Ohio 3502, 2005 Ohio App. LEXIS 3249 (2005).

Juvenile was improperly found guilty of domestic violence under RC § 2919.25(C), and a trial court erred in denying his motion to dismiss pursuant to Ohio R. Juv. P. 29(F), where his threat was a conditional one and there was no threat of imminent harm to a family member; the word "imminent" meant "about to occur at any moment." In re Jenkins, 2004 Ohio 2657, 2004 Ohio App. LEXIS 2360 (2004).

Though the trial court did not explain the elements of burglary to appellant, the record showed he gained an understanding of the factual circumstances surrounding the charges from his counsel; therefore, the court was not required to go through a superfluous explanation of the elements of burglary or the alleged factual circumstances surrounding the charge. In re Adams, 2003 Ohio 4112, 2003 Ohio App. LEXIS 3664 (2003).

Where a juvenile enters a no contest plea to a delinquency complaint apparently on the basis that she would be able to appeal the juvenile court's ruling on the pretrial motion to suppress, as would be true in an adult criminal case, the court erroneously disposes of the case on such plea (JuvR 29, construed): In re Green, 4 Ohio App. 3d 196, 447 N.E.2d 129, 4 Ohio B. 300, 1982 Ohio App. LEXIS 10984 (1982).

The due process clause protects a juvenile against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged: In re

Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368, 1970 U.S. LEXIS 56, 51 Ohio Op. 2d 323 (1970).

Due process in a juvenile proceeding must include: adequate written notice; advice as to the right to counsel, retained or appointed; confrontation and cross-examination of witnesses; and the privilege against self-incrimination: *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, 1967 U.S. LEXIS 1478, 40 Ohio Op. 2d 378 (1967).

Denial, generally

Failure of the court to seek an admission or denial to each allegation is not prejudicial where a party's prior conduct makes a denial obvious: *In re Dukes*, 81 Ohio App. 3d 145, 610 N.E.2d 513, 1991 Ohio App. LEXIS 4735 (1991).

The no contest plea in a juvenile proceeding is not the unequivocal admission of the allegations of the complaint contemplated by JuvR 29(D). Being something less than an admission, it must be construed as a denial and the prosecuting attorney must prove the issues of delinquency beyond a reasonable doubt (JuvR 29(E)): *In re Green*, 4 Ohio App. 3d 196, 447 N.E.2d 129, 4 Ohio B. 300, 1982 Ohio App. LEXIS 10984 (1982).

Dependent child, generally

Where the mother had few financial resources, had been unable to find employment, did not get routine medical treatment for her children, depended upon others for her own maintenance and was on the verge of losing her residence, and psychological tests indicated a lack of efficacy and a lack of independence, there was sufficient evidence presented to the trial court from which it could find by clear and convincing evidence that the minor child was a dependent child. *In re Barker*, 2003 Ohio 6406, 2003 Ohio App. LEXIS 5758 (2003).

Double jeopardy

In cases where a juvenile court fails to hold an adjudicatory hearing within ten days as required by JuvR 29(A), dismissal of the complaint with prejudice may be required where double jeopardy provisions are applicable: *In re Carlos O.*, 96 Ohio App. 3d 252, 644 N.E.2d 1084, 1994 Ohio App. LEXIS 3307 (1994).

Subsequent criminal prosecution on the same charges was barred where jeopardy had already attached in the delinquency proceeding: *State v. Penrod*, 62 Ohio App. 3d 720, 577 N.E.2d 424, 1989 Ohio App. LEXIS 1637 (1989).

An appeal by the state from a finding of not guilty, on a charge of "delinquency by reason of murder," by the juvenile division of the Court of Common Pleas is barred by the constitutional protection against former jeopardy. A court proceeding which may result in incarceration places a person, adult or juvenile in jeopardy: *In re Gilbert*, 45 Ohio App. 2d 308, 74 Ohio Op. 2d 480, 345 N.E.2d 79, 1974 Ohio App. LEXIS 2759 (1974).

Evidence

—Sufficient

Judgment that newborn child was dependent under Ohio Rev. Code Ann. §2151.04(D) was supported by clear and convincing evidence as required by Ohio Rev. Code Ann. § 2151.35(A)(1) and Ohio R. Juv. P. 29(E)(4), which established that if allowed to live with his parents, the child would be living in a household where at least one of the four caretakers had committed acts of abuse on the child's sibling that resulted in the sibling's adjudication as dependent. *In re S.M.*, — Ohio App. 3d —, 2007 Ohio 2297, — N.E. 2d —, 2007 Ohio App. LEXIS 2153 (May 14, 2007).

Evidence generally

Where there are no requests for findings of fact and conclusions of law pursuant to JuvR 29(F)(3), or where the trial court did not refer to the challenged testimony in its entry or explicitly limit evidence, there can be no evidence that a trial court improperly utilized any hearsay evidence: *In re Stackhouse*, 1991 Ohio App. LEXIS 1175 (4th Dist. 1991).

Despite the mandate of JuvR 29 that juvenile proceedings be conducted in an informal manner, otherwise inadmissible hearsay evidence is not admissible at the adjudicatory stage of a neglect and dependency proceeding, because the importance of the parental interests involved demand an accurate determination of

the facts surrounding a complaint alleging neglect or dependency and requires substantial compliance with the Rules of Evidence: *In re Sims*, 13 Ohio App. 3d 37, 468 N.E.2d 111, 13 Ohio B. 40, 1983 Ohio App. LEXIS 11369 (1983).

Eyewitness identification

There was no plain error under Ohio R. Crim. P. 52(B), based on defendant's failure to object at trial pursuant to Ohio R. Evid. 103(A)(1), in a juvenile court's admission of a victim's identification of defendant, a juvenile, as the perpetrator of a criminal offense, as the victim indicated that he knew defendant by his face although he did not immediately know his name and the victim had an adequate amount of time to observe defendant during commission of the crime. Although the one man "show-up" identification procedure at the police station was unduly suggestive pursuant to U.S. Const. amend. V, Ohio Const. art. I, §§ 10 and 16, and Ohio R. Juv. P. 29(E)(4), it did not present a very substantial likelihood of irreparable misidentification. *In re Lower*, — Ohio App. 3d —, 2007 Ohio 1735, — N.E. 2d —, 2007 Ohio App. LEXIS 1581 (Apr. 5, 2007).

Hearings

When an agency filed a complaint which both alleged that a child was dependent and sought permanent custody of the child, Ohio R. Juv. P. 29 and 34 required the trial court to bifurcate proceedings as to dependency from dispositional proceedings as to permanent custody, so the trial court committed reversible error because it held one evidentiary hearing on both issues, with no clear demarcation between its considerations of each issue. *In re J.H.*, — Ohio App. 3d —, 2006 Ohio 3237, — N.E. 2d —, 2006 Ohio App. LEXIS 3151 (June 26, 2006).

Insanity defense

In delinquency proceedings, a juvenile may not raise the defense of insanity: *In re Chambers*, 116 Ohio App. 3d 312, 688 N.E.2d 25, 1996 Ohio App. LEXIS 5686 (1996).

Jurisdiction

The juvenile court has exclusive original jurisdiction, pursuant to RC § 2151.23(A), concerning any child who is alleged in a proper complaint to be neglected, and the court does not lose jurisdiction by failing to adhere to the time limits set forth in JuvR 29(A) and JuvR 34(A): *Linger v. Weiss*, 57 Ohio St. 2d 97, 386 N.E.2d 1354, 11 Ohio Op. 3d 281, 1979 Ohio LEXIS 373 (1979).

Modification of custody order

A party seeking to modify a dispositional custody order must prove by clear and convincing evidence that the modification is in the best interests of the child: *In re Patterson*, 16 Ohio App. 3d 214, 475 N.E.2d 160, 16 Ohio B. 229, 1984 Ohio App. LEXIS 12343 (1984).

Neglected child, generally

Where a trial court failed to advise a mother of any of the rights she would be waiving in exchange for her admission that her children were neglected, the trial court did not substantially comply with Ohio R. Juv. P. 29(D)(2); as satisfaction with both subsections of Rule 29(D) was required before substantial compliance could be found, a mother's admission to allegations involving neglect were not deemed voluntarily or knowingly entered, requiring reversal. *In re S.G.*, — Ohio App. 3d —, 2005 Ohio 1163, — N.E. 2d —, 2005 Ohio App. LEXIS 1147 (Mar. 17, 2005).

Pleadings

When the complaint charges the child with being "delinquent," the court cannot sua sponte amend the complaint after the adjudicatory hearing and find the child to be a "juvenile traffic offender": *In re Elliott*, 87 Ohio App. 3d 816, 623 N.E.2d 217, 1993 Ohio App. LEXIS 3596 (1993).

Where a complaint is filed alleging that a child is dependent or neglected in violation of RC § § 2151.03(B) and 2151.04(A), (B) and (C), JuvR 29(D)(2) does not prohibit the child's mother from participating in the adjudicatory hearing just because she entered a plea of "admitted" to the allegations in the complaint: *In re Sims*, 13 Ohio App. 3d 37, 468 N.E.2d 111, 13 Ohio B. 40, 1983 Ohio App. LEXIS 11369 (1983).

The procedure for pleas in Juvenile Court in relation to a delinquency complaint differs substantially from the pleas provided by CrimR 11 in an adult criminal proceeding. There is no statement in CrimR 11 that a no contest plea results in a waiver of a defendant's right to challenge evidence against him as is specifically provided for by JuvR 29(D)(2) in relation to an admission of allegations of the complaint: *In re Green*, 4 Ohio App. 3d 196, 447 N.E.2d 129, 4 Ohio B. 300, 1982 Ohio App. LEXIS 10984 (1982).

Probation revocation

When, at a probation revocation hearing, appellant was informed that he waived the right to cross-examination and his right to appeal if he admitted the charge against him, but the trial court did not mention that he waived the right to present evidence and call witnesses and the right to remain silent, *Ohio R. Juv. P. 29(D)* was applied, and it was found that appellant did not receive the required advisement. *In re Lohr*, — Ohio App. 3d —, 2007 Ohio 1130, — N.E. 2d —, 2007 Ohio App. LEXIS 1046 (Mar. 7, 2007).

Juvenile Rule 35(B), not 29(D), governs probation revocation proceedings: *In re Motley*, 110 Ohio App. 3d 641, 674 N.E.2d 1268, 1996 Ohio App. LEXIS 1785 (1996).

Right to counsel

Trial court erred in failing to determine whether appellant child knowingly and voluntarily waived his right to an attorney. The trial court should have explained the elements and seriousness of the charge against him and should have determined that appellant child was not being coerced or pressured into waiving his right to counsel, addressed his parents to ensure there was no conflict of interest and that the parents also understood the proceedings. *In re Mills*, — Ohio App. 3d —, 2007 Ohio 924, — N.E. 2d —, 2007 Ohio App. LEXIS 882 (Mar. 5, 2007).

Juvenile court violated defendant juvenile's right to counsel in his delinquency proceeding pursuant to U.S. Const. amends. V, VI, and XIV, Ohio Const. art. I, § 16, Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4 and 29 where a valid waiver of counsel was not obtained during the adjudicatory and disposition hearings and counsel was not appointed. Although defendant and his adoptive mother signed a standard form regarding his rights, the form was not accurately filled out and the court failed to review it to ascertain that defendant fully understood the rights therein. *In re M.T.*, — Ohio App. 3d —, 2007 Ohio 2446, — N.E. 2d —, 2007 Ohio App. LEXIS 2258 (May 21, 2007).

Juvenile's constitutional right to counsel was violated where he indicated at the arraignment that he wanted an attorney, but the issue was never raised or considered again in the proceedings: *In re R.B.*, 166 Ohio App. 3d 626, 2006 Ohio 264, 852 N.E.2d 1219, 2006 Ohio App. LEXIS 212 (2006).

When, at the arraignment of appellant, a juvenile, he responded affirmatively to a question asking if he wanted counsel, and the issue was not further discussed throughout his proceedings before the trial court, his constitutional right to counsel, also provided in Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 29(B)(3), was violated, as it could not be inferred from the record that appellant, at any time, knowingly and intelligently waived his right to counsel. *In re R.B.*, — Ohio App. 3d —, 2006 Ohio 264, — N.E. 2d —, 2006 Ohio App. LEXIS 212 (Jan. 13, 2006).

Based on a review of the record as a whole, and in consideration of the affirmations of the minor and her mother that they wished to proceed without counsel on her delinquency charge for drug possession, the requirements of Ohio R. Juv. P. 29(B) were met and the minor's waiver of counsel was voluntarily, knowingly and understandingly given. The trial court explained to the minor her right to counsel, the nature, elements, and category of the charge, her right to a trial, the possible commitment, her right to remain silent, her right to present evidence in her defense and her right to cross-examine witnesses and, as each right was explained, the minor answered that she understood the right and then the minor and her mother agreed to proceed without counsel. *In re Loos*, — Ohio App. 3d —, 2006 Ohio 3932, — N.E. 2d —, 2006 Ohio App. LEXIS 3891 (July 31, 2006).

Record did not support a conclusion that defendant, a juvenile, waived his right to legal counsel, pursuant to Ohio Rev. Code Ann. § 2151.352, at either the adjudicatory hearing or the sexual offender classification hearing because defendant was never

afforded the opportunity to request the assistance of legal counsel in connection with the hearing at which his admission was tendered and accepted, and he never indicated that he was waiving that right and, at the sexual classification hearing, the trial court elicited a waiver of counsel from defendant's mother, but never ascertained whether defendant, himself, was willing to waive his right to legal counsel. *In re C.A.C.*, — Ohio App. 3d —, 2006 Ohio 4003, — N.E. 2d —, 2006 Ohio App. LEXIS 3934 (Aug. 4, 2006).

Although the trial court substantially complied with Ohio R. Juv. P. 29(D) when it accepted defendant juvenile's waiver of counsel during the adjudication hearing, the trial court failed to reiterate defendant's right to counsel during disposition or allow him either to invoke or to waive his right to counsel at that stage as required by Ohio R. Juv. P. 34. *In re S. J.*, — Ohio App. 3d —, 2006 Ohio 4467, — N.E. 2d —, 2006 Ohio App. LEXIS 4395 (Aug. 30, 2006).

As a magistrate substantially complied with the requirements of Ohio R. Juv. P. 29(B)(1) and (4), although he erroneously notified the juvenile in a probation revocation proceeding that he had a right to be represented by a lawyer if he wished and if his family could not afford a lawyer, such was not plain error under Ohio R. Crim. P. 52(B), as the magistrate carefully outlined the rights and responsibilities of the juvenile, and he made sure he understood the rights and the implications of his waiver; as the juvenile's waiver of his right to counsel was deemed knowing, voluntary, and intelligent, there was no violation of his right to counsel pursuant to Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4. *In re J-M*, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 6131 (Nov. 22, 2006).

Because the hearing on the motion to modify temporary custody to permanent custody was a dispositional hearing, rather than an adjudicatory hearing, Ohio R. Juv. P. 29 did not apply; rather, the hearing was governed by Ohio R. Juv. P. 34(I) where there was no obligation to inform the mother of her right to counsel. *In re Williams*, 2004 Ohio 678, 2004 Ohio App. LEXIS 592 (2004).

Although Ohio R. Juv. P. 29(B)(3) requires a court to inform unrepresented parties of their right to counsel, there was no plain error in a magistrate's failure to inform a juvenile defendant of her right to counsel where she had already obtained counsel; likewise, there was no plain error stemming from defendant's appearance with substitute counsel. *In re Harper*, 2003 Ohio 6666, 2003 Ohio App. LEXIS 5962 (2003).

An adjudication proceeding cannot go forward unless the juvenile is represented by counsel or there has been a valid waiver. Delegating the task of hiring counsel to the juvenile is inappropriate: *In re Johnston*, 142 Ohio App. 3d 314, 755 N.E.2d 457, 2001 Ohio App. LEXIS 1937 (2001).

Juvenile Rules 4(A) and 29(B) and RC § 2151.35.2 entitle a juvenile to be represented by counsel at all stages of the proceedings. However, that right may be waived: *In re East*, 105 Ohio App. 3d 221, 663 N.E.2d 983, 1995 Ohio App. LEXIS 2851 (1995).

Standard of proof

Appellate court did not have to determine whether the proper standard for granting legal custody of a child to a maternal great grandmother was clear and convincing evidence under Ohio R. Juv. P. 29(E)(4) or a preponderance of the evidence under Ohio R. Juv. P. 29(E)(4), 34 where a substantial amount of evidence that was competent and credible under either standard supported the trial court's judgment. *In re Rowe*, — Ohio App. 3d —, 2003 Ohio 6062, — N.E. 2d —, 2003 Ohio App. LEXIS 5403 (Nov. 13, 2003).

A finding of dependency should be made only upon the presentation of clear and convincing evidence. However, if the parties agree to waive such a hearing and stipulate to certain facts, then JuvR 29(D) must be fully complied with and the facts set forth in the record must sufficiently support a finding of dependency: *Elmer v. Lucas Cty. Children Serv. Bd.*, 36 Ohio App. 3d 241, 523 N.E.2d 540, 1987 Ohio App. LEXIS 10553 (1987).

In an action seeking temporary custody of a child who is alleged to be a "dependent child" pursuant to RC § 2151.04(C), the standard of proof in the adjudicatory portion of the proceedings is by clear and convincing evidence and the standard of proof in the

dispositional portion of the proceedings is by a preponderance of the evidence: In re Willmann, 24 Ohio App. 3d 191, 493 N.E.2d 1380, 24 Ohio B. 313, 1986 Ohio App. LEXIS 7370 (1986).

Stipulations

Juvenile court's acceptance of the juvenile's stipulations to his psychological evaluation and his family records during the amenability hearing did not take the place of the required hearing. The stipulations did not constitute "admissions" under JuvR 29: State v. Goodwin, 166 Ohio App. 3d 709, 2006 Ohio 2311, 852 N.E.2d 1282, 2006 Ohio App. LEXIS 2176 (2006).

Temporary custody

Evidence that mother used prescription drugs heavily and provided drugs to minors, was arrested four times in three years, placed her children at risk, and did not comply with court-ordered drug testing or use social services appropriately supported the trial court's award of temporary custody of the children to social services. In re Barnosky, — Ohio App. 3d —, 2004 Ohio 1127, — N.E. 2d —, 2004 Ohio App. LEXIS 994 (Mar. 9, 2004).

Where a mother argued that a trial court erred in awarding temporary custody to a father and grandmother because there was no motion pending and no finding of suitability was determined, the appellate court was without jurisdiction to address the argument because the order was granted "until further order" of the court, and, as such, was merely a temporary order, not a final order. In re S.M., 2004 Ohio 1243, 2004 Ohio App. LEXIS 1101 (2004).

A temporary order of a juvenile court changing custody under JuvR 13 or 29, is not a dispositional order under JuvR 34, and hence is not a final appealable order: Morrison v. Morrison, 45 Ohio App. 2d 299, 74 Ohio Op. 2d 441, 344 N.E.2d 144, 1973 Ohio App. LEXIS 784 (1973).

Termination of parental rights

Although a mother failed to raise as an error that a trial court failed to comply with Ohio R. Juv. P. 29(D) in the trial court proceeding, the appellate court chose to review it under a plain error standard in the mother's termination of parental rights proceeding due to the fundamental nature of the right to raise one's children; the mother's appeal of the trial court's adjudication of neglect and temporary disposition order was timely filed under Ohio R. App. P. 4(B)(5) where the order was not entered under Ohio R. Civ. P. 54(B), and the fact that she did not include a copy of the order of adjudication in her notice of appeal did not preclude that review, pursuant to Ohio R. App. P. 3(D), as such failure was not a jurisdictional defect. In re S.G., — Ohio App. 3d —, 2005 Ohio 1163, — N.E. 2d —, 2005 Ohio App. LEXIS 1147 (Mar. 17, 2005).

Trial court improperly awarded permanent custody (Ohio Rev. Code Ann. § 2151.414 and Ohio Rev. Code Ann. § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In re Nibert, 2005 Ohio 2797, 2005 Ohio App. LEXIS 2641 (2005).

Father's stipulation to terminate his parental rights did not violate his due process rights as the stipulation did comply with Ohio R. Juv. P. 29(D) where such was executed while he was represented by counsel, he was apprised of all his rights set out in Rule 29(D), his initials were printed next to each of his rights, and he indicated that he understood the nature and effect of the proceedings and the rights he had with respect to them. In re Foresha/Kinkel Children, — Ohio App. 3d —, 2004 Ohio 578, — N.E.2d —, 2004 Ohio App. LEXIS 547 (Feb. 9, 2004).

Juvenile Rule 34 does not require the court to engage in a colloquy with a parent in a RC § 2151.41.4 proceeding. A parent's admission in a dispositional hearing that a child's best interest would be served by permanent placement elsewhere than with the parent is not a matter that requires protections similar to JuvR 29(D): In re Lakes, 149 Ohio App. 3d 128, 2002 Ohio 3917, 776 N.E.2d 510, 2002 Ohio App. LEXIS 3991 (2002).

In proceedings where parental rights are subject to termination, both the Juvenile Rules and the Revised Code prescribe that such proceedings be bifurcated into separate adjudicatory and dispositional hearings (RC § 2151.35 and JuvR 29 and 34,

construed and applied.): In re Baby Girl Baxter, 17 Ohio St. 3d 229, 479 N.E.2d 257, 17 Ohio B. 469, 1985 Ohio LEXIS 345 (1985).

A juvenile court does not err in failing to bifurcate a hearing on a motion for permanent custody into adjudicatory and dispositional stages where no dispositional option is available, i.e., either the motion is granted, in which case the mother's parental rights are terminated, or else the motion is denied: In re Jones, 29 Ohio App. 3d 176, 504 N.E.2d 719, 29 Ohio B. 206, 1985 Ohio App. LEXIS 10399 (1985).

Hearings for permanent custody under RC § 2151.41.4 must conform to the Rules of Juvenile Procedure. Hence, pursuant to JuvR 29 and 34, the proceedings should be bifurcated into separate adjudicatory and dispositional stages: In re Vickers Children, 14 Ohio App. 3d 201, 470 N.E.2d 438, 14 Ohio B. 228, 1983 Ohio App. LEXIS 11449 (1983).

Time limitations

Because the mother moved to dismiss the dependency complaint due to untimeliness, but never petitioned for an extraordinary writ, any failure by the trial court to complete the dispositional hearing within 90 days was waived. In re Matsko, — Ohio App. 3d —, 2007 Ohio 2060, — N.E. 2d —, 2007 Ohio App. LEXIS 1919 (Apr. 27, 2007).

The ten-day period of limitations in JuvR 29(A) is procedural only and such rule confers no substantive right upon an accused to have his case dismissed if he is not tried within the designated time: In re Therkliden, 54 Ohio App. 2d 195, 376 N.E.2d 970, 8 Ohio Op. 3d 335, 1977 Ohio App. LEXIS 7034 (1977).

The time limits of RC § 2945.71 et seq., for the prosecution of criminal offenders do not apply to an adjudicatory hearing on a complaint alleging a child to be a juvenile traffic offender. The only applicable time limit, outside JuvR 29, is the six months limitation for prosecution of a minor misdemeanor stated in RC § 2901.13(A)(3): In re TLK, 2 Ohio Op. 3d 324 (JC 1976).

Waiver of counsel

When appellant was charged with offenses in juvenile court, Ohio Rev. Code Ann. § 2151.352 did not require that counsel be appointed to represent him because the statute, as well as Ohio R. Juv. P. 4(A) and 29(B), allowed him to waive counsel, which he knowingly, intelligently, and voluntarily did. In re Spears, — Ohio App. 3d —, 2006 Ohio 1920, — N.E. 2d —, 2006 Ohio App. LEXIS 1761 (Apr. 17, 2006).

Where a trial court determined that defendant, a juvenile, waived his right to counsel in his juvenile delinquency proceeding without having conducted the type of dialogue contemplated by the Ohio Juvenile Procedure Rules, the waiver was insufficient and defendant's admission of true should not have been accepted; defendant, as a juvenile, had a right to counsel under Ohio Rev. Code Ann. § 2151.352, and Ohio R. Juv. P. 4(A) and 29(B), and the trial court was required to make a sufficient inquiry as to his knowing, intelligent, and voluntary waiver of that right in order to avoid violating defendant's right to due process under U.S. Const. amends. V and XIV and Ohio Const. art. I, § 16. In re Christner, 2004 Ohio 4252, 2004 Ohio App. LEXIS 3864 (2004).

In determining whether a juvenile's waiver of counsel is knowing, intelligent and voluntary, a court is required to give close scrutiny to such factors as the juvenile's age, emotional stability, mental capacity, and prior criminal experience: In re Kindred, 2004 Ohio 3647, 2004 Ohio App. LEXIS 3281 (2004).

Colloquy in a juvenile proceeding was insufficient to establish a knowing waiver of the right to counsel since it failed to ascertain whether defendant understood the nature of the right he was waiving; the conviction based on an admission made without counsel was reversed. In re Ofa, — Ohio App. 3d —, 2003 Ohio 5496, — N.E. 2d —, 2003 Ohio App. LEXIS 4937 (Oct. 16, 2003).

Pursuant to the 1996 amendment to JuvR 37, a notation in a journal entry that the juvenile waived counsel at a dispositional hearing is no longer sufficient: In re Solis, 124 Ohio App. 3d 547, 706 N.E.2d 839, 1997 Ohio App. LEXIS 5527 (1997).

The waiver of counsel was not valid where the magistrate's explanation seemed to state that the right to counsel was triggered only if the juvenile elected to proceed to trial. A waiver of rights

form signed after the charge was admitted was not effective: In re Doyle, 122 Ohio App. 3d 767, 702 N.E.2d 970, 1997 Ohio App. LEXIS 4471 (1997).

The court erred by accepting the thirteen-year-old's waiver of counsel without fully explaining his rights and inquiring into the circumstances of the waiver. JuvR 29(B) protects the rights of juveniles and the court from second-guessing after the adjudication: In re Johnson, 106 Ohio App. 3d 38, 665 N.E.2d 247, 1995 Ohio App. LEXIS 3418 (1995).

The statements by the prosecutor that the youth had discussed the admission with his attorney and the concurrence in this statement by appellant's attorney were not sufficient to demonstrate a knowing and voluntary waiver in compliance with JuvR 29(D): In re McKenzie, 102 Ohio App. 3d 275, 656 N.E.2d 1377, 1995 Ohio App. LEXIS 1187 (1995).

Withdrawal of admission

Trial court did not err when it denied the juvenile's motion to withdraw his admission of guilt to rape because it conducted a comprehensive inquiry in substantial compliance with Rule 29(D). The trial court questioned the juvenile concerning his awareness of the charge against him, the possible penalties stemming from his admission, and the rights that he would be waiving by entering an admission, and there was nothing in the record to support the juvenile's contention that he did not understand the implications of entering a guilty plea. In re J.J., 2004 Ohio 1429, 2004 Ohio App. LEXIS 1286 (2004).

Opinions of Attorney General

Commitment to youth commission

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

RULE 30. Relinquishment of jurisdiction for purposes of criminal prosecution

(A) **Preliminary hearing.** In any proceeding where the court considers the transfer of a case for criminal prosecution, the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that the act would be an offense if committed by an adult. The hearing may be upon motion of the court, the prosecuting attorney, or the child.

(B) **Mandatory transfer.** In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.

(C) **Discretionary transfer.** In any proceeding in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court shall continue the proceeding for full investigation. The investigation shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing shall be held to determine whether to transfer jurisdiction. The criteria for transfer shall be as provided by statute.

(D) **Notice.** Notice in writing of the time, place, and purpose of any hearing held pursuant to this rule shall be given to the state, the child's parents, guardian, or other custodian and the child's counsel at least three days prior to the hearing, unless written notice has been waived on the record.

(E) **Retention of jurisdiction.** If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

(F) **Waiver of mental examination.** The child may waive the mental examination required under division (C) of this rule. Refusal by the child to submit to a mental and physical examination or any part of the examination shall constitute a waiver of the examination.

(G) **Order of transfer.** The order of transfer shall state the reasons for transfer.

(H) **Release of child.** With respect to the transferred case, the juvenile court shall set the terms and conditions for release of the child in accordance with Crim. R. 46.

History: Amended, eff 7-1-76; 7-1-94; 7-1-97.

STAFF NOTES

7-1-97 AMENDMENT

RULE 30 RELINQUISHMENT OF JURISDICTION FOR PURPOSES OF CRIMINAL PROSECUTION

With the passage of 1995 H1, effective January 1, 1996, major conflicts resulted between the statute governing bindover proceedings (Revised Code 2151.26) and the provisions of Juv. R. 30. The 1997 amendment to Juv. R. 30 eliminates these conflicts by removing from the rule all provisions governing substantive law, thus confining the rule to procedural matters. A significant amendment to Juv. R. 30(A) is the deletion of any reference to a minimum age at which a juvenile could be subject to bindover, since age jurisdiction is more appropriately covered by statute.

Revisions to Juv. R. 30(B) and (C) recognize the statutory distinctions between mandatory and discretionary bindover. Once probable cause has been established for mandatory bindover under Juv. R. 30(B), the only procedural step remaining is to enter the order of transfer. All references to the investigation contained in the former version of Juv. R. 30(B) have been removed from the current version. Similarly, Juv. R. 30(C) provides that the transfer of jurisdiction with respect to discretionary bindover shall be governed by statute.

The notice requirements of Juv. R. 30(D) (formerly Juv. R. 30(C)) have been changed to clarify that the three-day notice is required before any hearing held under Juv. R. 30. This language is consistent with similar language contained in Revised Code 2151.26(D).

In conformity with the decision to remove substantive law language from the rule, the amenability factors included in the former version of Juv. R. 30(F) have been deleted in their entirety, and the jurisdictional language in the former Juv. R. 30(I) has been eliminated from the new version of Juv. R. 30(H).

H. B. 1 also deleted the requirement for a physical examination of the juvenile as part of the background investigation in connection with a discretionary bindover. Accordingly, the requirement was deleted from divisions (C) and (F) of this rule (formerly divisions (B) and (G)).

7-1-94 AMENDMENT

RULE 30 RELINQUISHMENT OF JURISDICTION FOR PURPOSES OF CRIMINAL PROSECUTION

Juv. R. 30 deals with bindover proceedings to determine whether or not to transfer a juvenile to the adult criminal justice system. The revision to Juv. R. 30(C) clarifies that written notice of the time, place, and purpose of any hearing under this rule be given in writing at least three days prior to the hearing to the state, the child's parents, guardian or other custodian, and the child's counsel, as required by Revised Code 2151.26(D), unless notice is waived on the record.

Revisions to Juv. R. 30(F) present an additional criterion for the court to consider in determining if the juvenile is amenable to rehabilitation. Juvenile courts may now consider the specific facts relating to the offense for which probable cause was found, to the extent relevant to the child's mental or physical condition, along with the other criteria specified in Juv. R. 30. While there is a danger that taking note of the facts surrounding a particularly heinous crime could prejudice a court's

deliberations on the rehabilitation question, the Supreme Court of Ohio approved a court's ability to consider the totality of the circumstances which have brought the juvenile before the court in *State v. Watson* (1989), 47 Ohio St.3d 93.

Cross-References to Related Statutes

Children eligible for mandatory or discretionary transfer, RC § 2152.10.

Disposition of —

Juvenile traffic offender, RC § 2152.21.

Unruly child, RC § 2151.35.4.

Request for copies of records concerning child alleged to be abused, neglected or dependent, RC § 2151.14.1.

Transfer of case, RC § 2152.12.

Use of evidence, RC § 2151.35.8.

NOTES TO DECISIONS

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Time for trial
Vacation of judgment

Constitutionality

Revised Code § 2151.26 and JuvR 30 are constitutional in that they impose a burden on the state, do not use the terms "reasonable grounds" in a constitutionally vague way, and do not violate due process in the way they determine the needs of the safety of the community: *State v. Parsons*, 1991 Ohio App. LEXIS 1008 (9th Dist. 1991).

A juvenile court's reliance on facts and information not formally introduced into evidence at the bindover hearing does not violate a defendant's constitutional rights: *Oviedo v. Jago*, 809 F.2d 326, 1987 U.S. App. LEXIS 1202 (6th Cir. 1987).

The latitude a juvenile court possesses within which to determine whether it should retain or waive jurisdiction "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirements of a 'full investigation': *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84, 1966 U.S. LEXIS 2015, 11 Ohio Misc. 53, 40 Ohio Op. 2d 270 (1966).

Generally

Where there was no indication in a juvenile court bindover order that a juvenile's waiver of a probable cause and amenability hearing was knowingly, competently, and intelligently made, a later delinquency charge against him on a new criminal matter required an appropriate bindover proceeding under Ohio Rev. Code Ann. § 2152.12 and Ohio R. Juv. P. 3. The hearing on the bindover issue was a critical phase that was mandatory under Ohio Rev. Code Ann. ch. 2152 and Ohio R. Juv. P. 30. *State v. Brown*, — Ohio App. 3d —, 2006 Ohio 4393, — N.E. 2d —, 2006 Ohio App. LEXIS 4330 (Aug. 25, 2006).

Trial court was not required to find that the juvenile was guilty of the charged offense, only that the evidence presented supported a finding of probable cause. Juvenile court's acceptance of

the juvenile's stipulations to his psychological evaluation and his family records during the amenability hearing did not take the place of the required hearing. The stipulations did not constitute "admissions" under JuvR 29: *State v. Goodwin*, 166 Ohio App. 3d 709, 2006 Ohio 2311, 852 N.E.2d 1282, 2006 Ohio App. LEXIS 2176 (2006).

Juvenile court did not err in finding that there were sufficient facts to establish probable cause that defendant, a juvenile, committed offenses charged against him, arising from a car-jacking incident and a subsequent attempt to escape from the police, such that the bind-over to the trial court was proper pursuant to Ohio Rev. Code Ann. § 2151.26(B) and Ohio R. Juv. P. 30; the juvenile court did not have to find that defendant was guilty of the charged offenses to support its bind-over determination. *State v. Goodwin*, 166 Ohio App. 3d 709, 2006 Ohio 2311, 852 N.E. 2d 1282, 2006 Ohio App. LEXIS 2176 (May 11, 2006).

Where a juvenile court treated the offenses of carrying concealed weapons and aggravated robbery, in violation of RC §§ 2923.12(A) and 2911.01(A)(1) respectively, as mandatory bind-over offenses per RC §§ 2152.01(A) and 2152.12(A), although the weapons charge was a non-mandatory bind-over offense that required that findings be made pursuant to RC § 2152.12(B)(3) and Ohio R. Juv. P. 30(C), a meritorious issue on appeal was raised as to whether the error deprived the trial court of jurisdiction to convict defendant of the weapons charge; accordingly, the court set aside defendant's counsel's Anders brief, which had pointed out that potential issue, and indicated that new counsel would be appointed for purposes of pursuing the appeal. *State v. Washington*, 2005 Ohio 58, 2005 Ohio App. LEXIS 41 (2005).

Since a bindover proceeding is not adjudicative of guilt or innocence, statutory and constitutional questions as to admissibility of evidence are premature and need not be addressed. A juvenile is not entitled to appointment of an independent psychologist to assist in determining whether the juvenile should submit to or waive a mental examination: *State v. Whisenant*, 127 Ohio App. 3d 75, 711 N.E.2d 1016, 1998 Ohio App. LEXIS 1541 (1998).

The mandatory bindover provisions of RC § 2151.26(B) are substantive and control over JuvR 30: *In re Langston*, 119 Ohio App. 3d 1, 694 N.E.2d 468, 1997 Ohio App. LEXIS 1038 (1997).

Any evidence that reasonably supports a juvenile court's decision to relinquish jurisdiction will suffice to sustain the judgment: *State v. Hopper*, 112 Ohio App. 3d 521, 679 N.E.2d 321, 1996 Ohio App. LEXIS 3063 (1996).

For purposes of honesty and appellate review, a juvenile court deciding whether or not to transfer jurisdiction should articulate its findings and rationale. The violent nature of an offense may compel transfer: *In re Snitzky*, 73 Ohio Misc. 2d 52, 657 N.E.2d 1379, 1995 Ohio Misc. LEXIS 42 (CP 1995).

The notice requirements of RC § 2151.26(D) are satisfied when the notice described therein is given to the child's counsel and to the child's "custodian." The juvenile court does not err in finding that the child's grandmother is the child's "custodian" where the record contains evidence that the grandmother stated to police that she had legal custody of the child: *State v. Parks*, 51 Ohio App. 3d 194, 555 N.E.2d 671, 1988 Ohio App. LEXIS 2985 (1988).

In a bindover proceeding, the court may consider the violent nature of the offense: *State v. Lopez*, 112 Ohio App. 3d 659, 679 N.E.2d 1155, 1996 Ohio App. LEXIS 3082 (1996).

In ordering a bindover, a juvenile court is not required to make written findings as to the factors listed in JuvR 30(E): *State v. Douglas*, 20 Ohio St. 3d 34, 485 N.E.2d 711, 20 Ohio B. 282, 1985 Ohio LEXIS 542 (1985).

Once a juvenile is bound over in any county in Ohio pursuant to RC § 2151.26 and JuvR 30, that juvenile is bound over for all felonies committed in other counties of this state, as well as for future felonies he may commit: *State v. Adams*, 69 Ohio St. 2d 120, 431 N.E.2d 326, 1982 Ohio LEXIS 548 (1982).

The duty upon the juvenile court before ordering a relinquishment of jurisdiction for purposes of criminal prosecution is, after investigation, to find there are reasonable grounds to believe that the child is one who will not be readily brought to yield, submit and respond to care, supervision and rehabilitation in any facility designed for such care of delinquent children and that the

requirement as to legal restraint exists: *State v. Whiteside*, 6 Ohio App. 3d 30, 452 N.E.2d 332, 6 Ohio B. 140, 1982 Ohio App. LEXIS 11077 (1982).

Pursuant to JuvR 30(G), an order of transfer is sufficient if it demonstrates that the statutory requirement of "full investigation" has been met and that the issue has received the full attention of the juvenile court: *State v. Oviedo*, 5 Ohio App. 3d 168, 450 N.E.2d 700, 5 Ohio B. 351, 1982 Ohio App. LEXIS 11043 (1982).

Prohibition will not issue to prevent a common pleas court from trying a juvenile who has been transferred for prosecution as an adult. Any error complained of in a transfer order must be raised in an appeal from the judgment of the Court of Common Pleas: *State ex rel. Torres v. Simmons*, 68 Ohio St. 2d 118, 428 N.E.2d 862, 1981 Ohio LEXIS 631 (1981).

Appeal

In cases involving challenges to certification of juveniles to adult courts, counsel is required to include specific language in the text of the praecipe to the clerk of courts requesting all pertinent documents from both the juvenile division and the general division of the court of common pleas to establish that the case is a final appealable order: *State v. Houston*, 70 Ohio App. 3d 152, 590 N.E.2d 839, 1990 Ohio App. LEXIS 4636 (1990).

An order by a juvenile court, pursuant to RC § 2151.26, transferring a child to the court of common pleas for criminal prosecution, is not a final appealable order: *In re Becker*, 39 Ohio St. 2d 84, 68 Ohio Op. 2d 50, 314 N.E.2d 158, 1974 Ohio LEXIS 401 (1974).

Bail

A juvenile court may admit a juvenile to bail in a case where the state has moved for a bindover. RC § 2151.31 and JuvR 7, taken together, amount to a presumption against detention: *In re K.C.*, 89 Ohio Misc. 2d 16, 693 N.E.2d 1186, 1998 Ohio Misc. LEXIS 1 (CP 1997).

Discovery

In a case involving, as a preliminary matter, the question of the transfer of a juvenile proceeding to a common pleas court for the purpose of trying a juvenile as an adult for an alleged criminal offense, a juvenile court may limit discovery in the juvenile court to evidence relevant to the probable cause hearing. *State v. Gilbert*, — Ohio App. 3d —, 2005 Ohio 2350, — N.E. 2d —, 2005 Ohio App. LEXIS 2239 (May 13, 2005).

During a probable cause hearing held in juvenile court to determine, under Ohio R. Juv. P. 30(A), if there was probable cause to believe defendant committed an alleged crime, before determining if, under Ohio R. Juv. P. 30(C), defendant was amenable to rehabilitation in the juvenile system, defendant moved for discovery, pursuant to Ohio R. Juv. P. 24. While the probable cause hearing was not an adjudicatory hearing, under Ohio R. Juv. P. 2(B), in the sense that evidence was put to the trier of fact or that jeopardy attached, it was "critically important," and had to measure up to the essentials of due process and fair treatment. Defendant had the right to discover evidence the prosecutor would offer to establish probable cause. As the juvenile court had discretion to limit discovery, under Ohio R. Juv. P. 24(B), when the juvenile court merely deleted discovery of evidentiary materials the prosecution intended to use at trial, this was not an abuse of discretion. *State v. Gilbert*, — Ohio App. 3d —, 2005 Ohio 2350, — N.E. 2d —, 2005 Ohio App. LEXIS 2239 (May 13, 2005).

In the absence of an order limiting discovery pursuant to JuvR 24(B), a juvenile facing a bindover hearing is entitled to discovery coextensive with the issues to be determined at that hearing: *In re A.M.*, 139 Ohio App. 3d 303, 743 N.E.2d 937, 2000 Ohio App. LEXIS 3811 (2000).

Motions for discovery are to be filed in accord with JuvR 22 prior to the adjudicatory hearing. A probable cause hearing pursuant to RC § 2151.26 and JuvR 30 is not an adjudicatory hearing as defined in JuvR 2: *In re Hunter*, 99 Ohio Misc. 2d 107, 716 N.E.2d 802, 1999 Ohio Misc. LEXIS 25 (CP 1999).

The discovery provisions of JuvR 24 apply to bindover proceedings: *In re A.M.*, 92 Ohio Misc. 2d 4, 699 N.E.2d 574, 1998 Ohio Misc. LEXIS 7 (CP 1998).

Juvenile Rule 24(B) provides that discovery may be limited where it may impede criminal prosecution of a minor as an adult or of an adult involved in the same occurrence: *National Am. Ins. Co. v. Clermont County Bd. of Comm'rs*, 65 Ohio Misc. 2d 5, 640 N.E.2d 616, 1993 Ohio Misc. LEXIS 84 (CP 1994).

Discretion

Trial court did not abuse its discretion by transferring jurisdiction to the adult court. The court-appointed psychologists did not provide a specific diagnosis of the juvenile's mental condition. There would be no course of medication or treatment without a diagnosis, and the juvenile could not be forced to participate in treatment. Due to the 14-year-old's resistance to treatment and the brutality of the murder, the court reasonably found that there was insufficient time for rehabilitation in the juvenile system: *State v. West*, 167 Ohio App. 3d 598, 2006 Ohio 3518, 856 N.E.2d 285, 2006 Ohio App. LEXIS 3477 (2006).

Discretionary transfer

Juvenile court abused its discretion in overruling the State's motions to relinquish jurisdiction because it failed to consider whether a discretionary transfer was warranted, pursuant to Ohio Rev. Code Ann. § 2152.12(B), Ohio Rev. Code Ann. § 2152.10(B), and Ohio R. Juv. P. 30, because the juveniles met the requirements for the court to consider discretionary transfers since all five were 14 years or older at the time of the acts charged and they were all charged with acts that would be felonies if committed by an adult. The juvenile court erred in failing to make a finding as to probable cause and, if it made such a finding, it should have then proceeded with an investigation and amenability hearing pursuant to Ohio R. Juv. P. 30(C). *In re Stanley*, 165 Ohio App. 3d 726, 2006 Ohio 1279, 848 N.E. 2d 540, 2006 Ohio App. LEXIS 1174 (Mar. 14, 2006).

Juvenile court enjoys wide latitude in determining whether to relinquish jurisdiction of a juvenile, and its ultimate decision will not be reversed absent an abuse of discretion. *State v. E.C.*, — Ohio App. 3d —, 2005 Ohio 2967, — N.E. 2d —, 2005 Ohio App. LEXIS 2769 (June 15, 2005).

Juvenile court's decision to waive its jurisdiction over appellant, who was charged with aggravated burglary, escape, disrupting public service, felonious assault, kidnapping, receiving stolen property, and aggravated robbery, was not an abuse of discretion because it followed the proper procedural requirements of Ohio R. Juv. P. 30 and Ohio Rev. Code Ann. § 2151.26(F) (repealed) and gave its reasons, which were that (1) she had been adjudicated a delinquent and was awaiting disposition; (2) her relationship with the victims facilitated her alleged acts; (3) the victims suffered physical and psychological harm; (4) the results of her prior juvenile sanctions showed rehabilitations would not occur in the juvenile system; (5) she was emotionally, physically, and psychologically mature enough for transfer; and (6) there was insufficient time for her rehabilitation in the juvenile system. *State v. E.C.*, — Ohio App. 3d —, 2005 Ohio 2967, — N.E. 2d —, 2005 Ohio App. LEXIS 2769 (June 15, 2005).

Binding over of juvenile for trial as an adult was proper where the court considered all relevant factors, including the seriousness of his shooting of two people and then following one to a back room to kill him; as well, abundant and competent evidence including juvenile's long-term behavior problems and escalating inability to control his actions demonstrated that he was not amenable to rehabilitation. *State v. Moorer*, — Ohio App. 3d —, 2003 Ohio 5698, — N.E. 2d —, 2003 Ohio App. LEXIS 5081 (Oct. 24, 2003).

In determining a juvenile's amenability to rehabilitation, a juvenile court may consider the nature and seriousness of the alleged act: *State v. Campbell*, 74 Ohio App. 3d 352, 598 N.E.2d 1244, 1991 Ohio App. LEXIS 2473 (1991).

In deciding whether to relinquish jurisdiction over a child, a juvenile court may consider the seriousness of the alleged offense when determining, pursuant to JuvR 30(C)(1), if the juvenile is "not amenable to care or rehabilitation" in the juvenile justice system: *State v. Watson*, 47 Ohio St. 3d 93, 547 N.E.2d 1181, 1989 Ohio LEXIS 315 (1989).

When the juvenile court makes a determination as to a juvenile offender's amenability to rehabilitation, it must consider the five factors set forth in JuvR 30(E); however, the juvenile court need

not resolve all of these factors against the juvenile to warrant the court in relinquishing its jurisdiction and transferring him for prosecution as an adult: *State v. Oviedo*, 5 Ohio App. 3d 168, 450 N.E.2d 700, 5 Ohio B. 351, 1982 Ohio App. LEXIS 11043 (1982).

Double jeopardy

Where a juvenile court adjudicatory hearing had already begun and the juvenile admitted the allegations, double jeopardy protections prevented a bindover for prosecution: *State v. Reddick*, 113 Ohio App. 3d 788, 682 N.E.2d 38, 1996 Ohio App. LEXIS 3838 (1996).

A juvenile court judge's opinion as to whether a juvenile committed the alleged offense is not related to whether the juvenile is amenable to rehabilitation. Jeopardy does not attach to a probable cause determination at a JuvR 30 preliminary hearing: *State v. Payne*, 118 Ohio App. 3d 699, 693 N.E.2d 1159, 1997 Ohio App. LEXIS 1144 (1997).

Subsequent criminal prosecution on the same charges was barred where jeopardy had already attached in the delinquency proceeding: *State v. Penrod*, 62 Ohio App. 3d 720, 577 N.E.2d 424, 1989 Ohio App. LEXIS 1637 (1989).

A bindover decision must be made prior to an adjudication of delinquency in order to avoid double jeopardy problems: *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346, 1975 U.S. LEXIS 66 (1975).

Due process

Juvenile Rule 30 does not violate the due process clause of U.S. Const. amend. XIV by permitting juvenile courts to relinquish jurisdiction over a child 15 or more years of age and transfer said child to adult court: *Deel v. Jago*, 967 F.2d 1079, 1992 U.S. App. LEXIS 14010 (6th Cir. 1992).

Hearings

Juvenile court properly conducted an amenability hearing to determine whether defendant, a juvenile, was amenable to the juvenile court system or whether he should be bound over to the general trial court for criminal charges, and the fact that defendant stipulated to the admission of his psychological evaluation and his family records did not constitute admissions or error by the juvenile court, pursuant to Ohio R. Juv. P. 29(D) and 30. *State v. Goodwin*, 166 Ohio App. 3d 709, 2006 Ohio 2311, 852 N.E. 2d 1282, 2006 Ohio App. LEXIS 2176 (May 11, 2006).

Under JuvR 30, a preliminary probable cause hearing is mandatory if the juvenile court believes that it might want to relinquish its jurisdiction over the child: *State v. Smith*, 29 Ohio App. 3d 194, 504 N.E.2d 1121, 29 Ohio B. 237, 1985 Ohio App. LEXIS 10402 (1985).

Magistrate's report

Pro se objections to magistrate's report, which restated defendant's position that juvenile court judgment entry clearly establishes that hearing was delinquency adjudication, should be broadly construed as an objection on the ground that his case falls within the exception to the correctness presumption, i.e., that the presumption is not fairly supported by the record: *Sellers v. Morris*, 840 F.2d 352, 1988 U.S. App. LEXIS 2430 (6th Cir. 1988).

Motion for reconsideration

Until the juvenile court either begins to hear evidence in an adjudicatory hearing or divests itself of jurisdiction by transferring the child for prosecution as an adult, the determination of the child's amenability is subject to reconsideration upon motion filed by a party: *In re K.W.*, 73 Ohio Misc. 2d 20, 657 N.E.2d 611, 1995 Ohio Misc. LEXIS 46 (CP 1995).

No contest plea

A plea of no contest to the charges of assault and aggravated robbery when defendant was tried as an adult does not constitute waiver of his right to assert that his conviction was obtained in violation of U.S. Const. amend. V and amend XIV prohibition of double jeopardy: *Sellers v. Morris*, 840 F.2d 352, 1988 U.S. App. LEXIS 2430 (6th Cir. 1988).

Physical examination of child

The juvenile court failed to accomplish a legal transfer of jurisdiction where there was no evidence in the record that the

physical examination of the juvenile required by former RC § 2151.26 and JuvR 30 was performed: *State v. Golphin*, 81 Ohio St. 3d 543, 1998 Ohio 336, 692 N.E.2d 608, 1998 Ohio LEXIS 1197 (1998).

Remand to juvenile court

There is no procedure in Ohio to remand a juvenile back to the juvenile court subsequent to the bindover from that court: *State v. Jacobsen*, 1995 Ohio App. LEXIS 3589 (5th Dist. 1995).

Psychiatric examinations

In relinquishment proceedings in the juvenile court pursuant to JuvR 30, a juvenile is not entitled to the appointment of a private psychiatric examiner of the court's choosing and at the state's expense, instead of the court's psychologist: *State ex rel. A Juvenile v. Hoose*, 43 Ohio App. 3d 109, 539 N.E.2d 704, 1988 Ohio App. LEXIS 1632 (1988).

Recording of proceedings

Where the juvenile court complied with RC § 2152.12 and JuvR 30 in transferring a juvenile for criminal prosecution, the trial court had subject matter jurisdiction to hear the case despite the juvenile court's failure to record the proceeding pursuant to JuvR 37(A): *State v. Mock*, 136 Ohio Misc. 2d 21, 2005 Ohio 7142, 846 N.E.2d 108, 2005 Ohio Misc. LEXIS 603 (2005).

Time for trial

When a minor is held by the juvenile court for acts which would be a felony, and the juvenile court relinquishes jurisdiction over the minor, the 90-day time limit of RC § 2945.71 for bringing him to trial as an adult felon starts to run at the time the juvenile court relinquishes jurisdiction: *State ex rel. Williams v. Court of Common Pleas of Lucas County*, 42 Ohio St. 2d 433, 71 Ohio Op. 2d 410, 329 N.E.2d 680, 1975 Ohio LEXIS 511 (1975).

Vacation of judgment

A juvenile court lacks jurisdiction to consider a CivR 60(B) motion where it has transferred a case for criminal prosecution, even where an indictment has not yet issued: *In re Williams*, 111 Ohio App. 3d 120, 675 N.E.2d 1254, 1996 Ohio App. LEXIS 1986 (1996).

RULE 31. [Reserved]

RULE 32. Social history; physical examination; mental examination; investigation involving the allocation of parental rights and responsibilities for the care of children

(A) **Social history and physical or mental examination: availability before adjudication.** The court may order and utilize a social history or physical or mental examination at any time after the filing of a complaint under any of the following circumstances:

(1) Upon the request of the party concerning whom the history or examination is to be made;

(2) Where transfer of a child for adult prosecution is an issue in the proceeding;

(3) Where a material allegation of a neglect, dependency, or abused child complaint relates to matters that a history or examination may clarify;

(4) Where a party's legal responsibility for the party's acts or the party's competence to participate in the proceedings is an issue;

(5) Where a physical or mental examination is required to determine the need for emergency medical care under Juv. R. 13; or

(6) Where authorized under Juv. R. 7(1).

(B) **Limitations on preparation and use.** Until there has been an admission or adjudication that the child who is the subject of the proceedings is a juvenile traffic offender, delinquent, unruly, neglected, dependent, or

abused, no social history, physical examination or mental examination shall be ordered except as authorized under subdivision (A) and any social history, physical examination or mental examination ordered pursuant to subdivision (A) shall be utilized only for the limited purposes therein specified. The person preparing a social history or making a physical or mental examination shall not testify about the history or examination or information received in its preparation in any juvenile traffic offender, delinquency, or unruly child adjudicatory hearing, except as may be required in a hearing to determine whether a child should be transferred to an adult court for criminal prosecution.

(C) **Availability of social history or investigation report.** A reasonable time before the dispositional hearing, or any other hearing at which a social history or physical or mental examination is to be utilized, counsel shall be permitted to inspect any social history or report of a mental or physical examination. The court may, for good cause shown, deny such inspection or limit its scope to specified portions of the history or report. The court may order that the contents of the history or report, in whole or part, not be disclosed to specified persons. If inspection or disclosure is denied or limited, the court shall state its reasons for such denial or limitation to counsel.

(D) **Investigation: allocation of parental rights and responsibilities for the care of children; habeas corpus.** On the filing of a complaint for the allocation of parental rights and responsibilities for the care of children or for a writ of habeas corpus to determine the allocation of parental rights and responsibilities for the care of a child, or on the filing of a motion for change in the allocation of parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, health, family relations, past conduct, present living conditions, earning ability, and financial worth of the parties to the action. The report of the investigation shall be confidential, but shall be made available to the parties or their counsel upon written request not less than three days before hearing. The court may tax as costs all or any part of the expenses of each investigation.

History: Amended, eff 7-1-73; 7-1-76; 7-1-91; 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 32 SOCIAL HISTORY; PHYSICAL EXAMINATIONS; MENTAL EXAMINATION; INVESTIGATION INVOLVING THE ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES FOR THE CARE OF CHILDREN

Masculine references were replaced by gender neutral language and other nonsubstantive grammatical changes were made.

Cross-References to Related Statutes

Confinement of delinquent child for purposes of preparing social history, RC § 2152.04.

Cooperation with court, RC § 2151.40.

Temporary care; emergency medical treatment; reimbursement, RC § 2151.33.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute child care setting—

"Child's Education and Health Information," form 01443. OAC 5101:2-39-082.

Information to be provided to caregivers, school districts and juvenile courts; information to be included in individual child care agreement. OAC 5101:2-42-90.

NOTES TO DECISIONS

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Generally

The court did not err by considering the amended psychological report under JuvR 32. In re Lawson, 98 Ohio App. 3d 456, 648 N.E.2d 889, 1994 Ohio App. LEXIS 5065 (1994).

Admissibility

Where the county department of jobs and family services alleged the mother appeared to be mentally delayed, had lost custody of two other children, had a history of homelessness and/or poor home conditions, a history of lack of case plan compliance, and an inability to care for the two young children she had lost in a previous case, the doctor's psychological report clarified the department's allegations for the court and thus was admissible in the child dependency hearing. In re Barker, 2003 Ohio 6406, 2003 Ohio App. LEXIS 5758 (2003).

The court-ordered psychological examination of the parent was inadmissible hearsay. In re Mack, 148 Ohio App. 3d 626, 2002 Ohio 4161, 774 N.E.2d 1243, 2002 Ohio App. LEXIS 4327 (2002).

Competence to stand trial

Trial court erred by failing to appoint an expert to evaluate the juvenile's competency where defense counsel, the guardian ad litem, and the aunt who had helped raise the juvenile all were of the opinion that she was not competent. In re Harris, 169 Ohio App. 3d 331, 2006 Ohio 5534, 862 N.E.2d 881, 2006 Ohio App. LEXIS 5509 (2006).

Pursuant to JuvR 32(A)(4), RC § 2945.37, and due process, if the issue of competency is properly raised before trial, the trial court must hold a hearing on that issue and after considering the evidence presented by the parties at that hearing make a finding as to the juvenile's competency. In re B.M.S., 165 Ohio App. 3d 609, 2006 Ohio 981, 847 N.E.2d 506, 2006 Ohio App. LEXIS 906 (2006).

It was reversible error for a trial court not to appoint an expert, under Ohio R. Juv. P. 32(A), to evaluate the competency of appellant, a juvenile, because all witnesses who were in more intense contact with appellant than the trial court supported such an evaluation, and the trial court's cursory "competency" dialogue with appellant did not mitigate against those opinions. In re Harris, — Ohio App. 3d —, 2006 Ohio 5534, — N.E. 2d —, 2006 Ohio App. LEXIS 5509 (Oct. 24, 2006).

That a juvenile's psychological evaluation report showed he was mildly mentally retarded did not per se raise a "sufficient indicia of incompetence" as to require the trial court to sua sponte raise the competency issue and order a hearing, and defense counsel was not ineffective for failing to raise the juvenile's alleged incompetence. In re Adams, 2003 Ohio 4112, 2003 Ohio App. LEXIS 3664 (2003).

The standard enunciated in RC § 2945.37(G) governs competency evaluations of juveniles so long as it is applied in light of juvenile rather than adult norms. While a child may be incompetent to stand trial in adult court, he or she may be competent to enter an admission and stand for adjudication in juvenile court because of the differences in the complexities of adult criminal

proceedings versus juvenile proceedings: In re Bailey, 150 Ohio App. 3d 664, 2002 Ohio 6792, 782 N.E.2d 1177, 2002 Ohio App. LEXIS 6577 (2002).

The right not to be tried while incompetent applies to juvenile proceedings: In re Grimes, 147 Ohio App. 3d 192, 2002 Ohio 1547, 769 N.E.2d 420, 2002 Ohio App. LEXIS 4311 (2002).

Due process requires procedures sufficient to safeguard a child's right not to be adjudicated delinquent while incompetent to stand trial: In re D.G., 91 Ohio Misc. 2d 226, 698 N.E.2d 533, 1998 Ohio Misc. LEXIS 6 (CP 1998).

The standard enunciated in RC § 2945.37(A) governs competency evaluations of juveniles, so long as it is applied in light of juvenile rather than adult norms: In re Williams, 116 Ohio App. 3d 237, 687 N.E.2d 507, 1997 Ohio App. LEXIS 2189 (1997).

Disclosure of information

Where a minor and a parent executed waivers pursuant to RC § 1347.08, permitting access to the minor's juvenile records and the records concerning the minor's criminal history were relevant to prove the issues of notice and foreseeability in a civil action, good cause was demonstrated; consequently, the trial court did not abuse its discretion or breach the confidentiality considerations of RC §§ 2151.14 and 5153.17, and Ohio R. Juv. P. 32 in compelling production of the records under Ohio R. Civ. P. 26(B)(1). *Grantz v. Discovery for Youth*, 2005 Ohio 680, 2005 Ohio App. LEXIS 701 (2005).

An indigent parent in a custody hearing who has the right to a free court-ordered psychological evaluation may not limit disclosure of adverse results of such testing unless the court order granting the evaluation limits the purpose of the report solely for the parent's defense: In re Green, 18 Ohio App. 3d 43, 480 N.E.2d 492, 18 Ohio B. 155, 1984 Ohio App. LEXIS 9133 (1984).

Disclosure of juvenile court records, including social histories, to appropriate governmental and social agencies is not unconstitutional: *J. P. v. DeSanti*, 653 F.2d 1080, 1981 U.S. App. LEXIS 11411 (6th Cir. 1981).

Discretion of court

Where the court granted a motion that the father undergo a psychological evaluation, the court did not abuse its discretion in refusing to order the father's second wife to also undergo an evaluation: In re Reynolds, 2 Ohio App. 3d 309, 441 N.E.2d 1141, 2 Ohio B. 341, 1982 Ohio App. LEXIS 10888 (1982).

Expert assistance for indigent

Where the court orders an indigent parent to undergo a psychological evaluation by the examiner selected and paid by the non-parent party seeking to destroy parental rights, the parent is entitled to an expert of his or her own and funds to pay such expert: In re Stanley, 1993 Ohio App. LEXIS 5848 (10th Dist. 1993).

In relinquishment proceedings in the juvenile court pursuant to JuvR 30, a juvenile is not entitled to the appointment of a private psychiatric examiner of the court's choosing and at the state's expense, instead of the court's psychologist: *State ex rel. a Juvenile v. Hoose*, 43 Ohio App. 3d 109, 539 N.E.2d 704, 1988 Ohio App. LEXIS 1632 (1988).

Privileged communication

The physician-patient privilege did not apply to a psychiatrist who was retained by defense counsel to provide favorable testimony at a bindover proceeding: *State v. Hopper*, 112 Ohio App. 3d 521, 679 N.E.2d 321, 1996 Ohio App. LEXIS 3063 (1996).

Guardian ad litem

In a parental rights termination proceeding pursuant to Ohio Rev. Code Ann. § 2151.414, there was no error in the trial court's appointment of an agency volunteer as the children's guardian ad litem, as there was no statutory requirement that a guardian also be a licensed attorney pursuant to Ohio R. Juv. P. 32. In re D.R., — Ohio App. 3d —, 2006 Ohio 3513, — N.E. 2d —, 2006 Ohio App. LEXIS 3471 (July 7, 2006).

Opinions of Attorney General

Disclosure of information

Pursuant to JuvR 32(B), and RC § 2151.14, juvenile court

records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under RC § 149.43: OAG No. 90-101 (1990).

RULE 33. [Reserved].

RULE 34. Dispositional hearing

(A) **Scheduling the hearing.** Where a child has been adjudicated as an abused, neglected, or dependent child, the court shall not issue a dispositional order until after it holds a separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or dependent child shall be held at least one day but not more than thirty days after the adjudicatory hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing and all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child, the court may continue a dispositional hearing for a reasonable time not to exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed. If the dispositional hearing is not held within this ninety day period of time, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv. R. 29(F)(2)(a) through (d) and the ninety day requirement shall not apply. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.

(B) **Hearing procedure.** The hearing shall be conducted in the following manner:

(1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;

(2) Except as provided in division (1) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(C) **Judgment.** After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the judgment is conditional, the order shall state the conditions. If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from public funds.

(D) **Dispositional orders.** Where a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;

(4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;

(5) Place the child in a planned permanent living arrangement with a public or private agency if the agency requests the court for placement, if the court finds that a planned permanent living arrangement is in the best interest of the child, and if the court finds that one of the following exists:

(a) The child because of physical, mental, or psychological problems or needs is unable to function in a family-like setting;

(b) The parents of the child have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the best interest of the child and the child retains a significant and positive relationship with a parent or relative;

(c) The child is sixteen years of age or older, has been counseled, is unwilling to accept or unable to adapt to a permanent placement and is in an agency program preparing the child for independent living.

(E) **Protective supervision.** If the court issues an order for protective supervision, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or any other person including, but not limited to, any of the following:

(1) Ordering a party within forty-eight hours to vacate the child's home indefinitely or for a fixed period of time;

(2) Ordering a party, parent, or custodian to prevent any particular person from having contact with the child;

(3) Issuing a restraining order to control the conduct of any party.

(F) **Case plan.** As part of its dispositional order, the court shall journalize a case plan for the child. The agency required to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but not later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. The plan shall specify what additional information, if any, is necessary to complete the plan and how the information will be obtained. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child. If all parties agree to the content of the case plan and the court approves it, the court shall journalize the plan as part of its dispositional order. If no agreement is reached, the court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(G) **Modification of temporary order.** The department of human services or any other public or private agency or any party, other than a parent whose parental rights have been terminated, may at any time file a motion requesting that the court modify or terminate any order of disposition. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties and the guardian *ad litem* notice of the hearing pursuant to these rules. The court, on its own motion and upon proper notice to all parties and any interested agency, may modify or terminate any order of disposition.

(H) **Restraining orders.** In any proceeding where a child is made a ward of the court, the court may grant a restraining order controlling the conduct of any party if the court finds that the order is necessary to control any conduct or relationship that may be detrimental or harmful to the child and tend to defeat the execution of a dispositional order.

(I) **Bifurcation; Rules of Evidence.** Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.

(J) **Advisement of rights after hearing.** At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

History: Amended, eff 7-1-94; 7-1-96; 7-1-02.

STAFF NOTES

7-1-02 AMENDMENT

RULE 34(D) DISPOSITIONAL ORDERS

The July 1, 2002, amendment to Juv. R. 34(D)(5) substituted the language of "planned permanent living arrangement" for the former language of "long term foster care," to conform to the new legislative designation for these child-placing arrangements.

The amendment to Juv. R. 34(D)(5) conforms to section 2151.353(A)(5) of the Revised Code. Juvenile Rules 2, 10, and 15 also were amended effective July 1, 2002 to reflect this change in terminology.

7-1-96 AMENDMENT

RULE 34(B) HEARING PROCEDURE

The amendment changed the rule's reference from "referee" to "magistrate" in division (B)(1) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 34 DISPOSITIONAL HEARING

Changes in Juv. R. 34 now bring the rule into conformity with Revised Code 2151.35 as amended by S.B. 89.

Juv. R. 34(A) delineates the ninety day deadline for dispositional hearings in abuse, neglect, and dependency cases and clarifies that the ninety day rule does not apply in unruly and delinquency cases. Revised Code 2151.35(B)(1).

Juv. R. 34(B)(1) specifies that the judge or referee who presided at the adjudicatory hearing shall, if possible, preside at the dispositional hearing. Revised Code 2151.35(B)(2)(a).

Juv. R. 34(D) restates the dispositional alternatives for an adjudicated abused, neglected, or dependent child as set forth in Revised Code 2151.353(A)(1), (2), (3), (4), and (5).

Juv. R. 34(F) sets forth the utilization of the case plan as part of the dispositional order and restates the provisions of Revised Code 2151.353(D) and 2151.412.

Juv. R. 34(G) restates Revised Code 2151.353(E) regarding the procedure for modifying a temporary order.

Juv. R. 34(I) is new and attempts to eliminate the need to bifurcate a motion for permanent custody into adjudicatory and dispositional hearings. A good explanation of the state of current case law in appellate courts in Ohio on the subject of bifurcation is found in *In the Matter of Amy Lyons, Alleged Dependent Child*, No. 1411 (4th District Court of Appeals of Ohio, Ross County, decided August 1, 1987). A concurring opinion states:

"There is a conflict in Ohio law as to whether hearings for permanent custody under Revised Code 2151.414 must be bifurcated into separate adjudicatory and dispositional stages. Kurtz and Giannelli, *Ohio Juvenile Law* (1985), T 13.04(D)(5). The Third and Twelfth District Courts of Appeals have held the Juv. R. 29 and Juv. R. 34 control over R.C. 2151.414 to require a bifurcated hearing. *In re Vickers Children* (1983), 14 OApp3d 201; *In re Lucas* (1985), 29 OApp3d 165. However, the Eighth District Court of Appeals has held that only one hearing which is purely adjudicatory is required and that, contrary to Vickers, *supra*, there is no conflict between R.C. 2151.414 and the applicable Juvenile Rules.

"By contrast, however, in the case at bar, there is no dispositional option. Either the motion is granted, in which case the mother's parental rights are terminated, or else the motion is denied. The single hearing prescribed by R.C. 2151.414 is purely adjudicatory. The foregoing analysis is consistent with Juv. R. 2(1), which states:

"Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, neglected, or dependent or otherwise within the jurisdiction of the court or whether temporary legal custody should be converted to permanent custody. (Emphasis added.)

"Consequently, this court holds that the juvenile court did not err in failing to bifurcate the permanent custody hearing into separate adjudicatory and dispositional stages." *In re Jones* (1985), 29 OApp3d 176, 179.

"Although permanent custody is clearly a dispositional order, Juv. R. 2(1)'s definition of "adjudicatory hearing" appears sufficiently broad to require only one hearing or one "stage". See Kurtz and Giannelli, *Ohio Juvenile Law* (1985), T 13.04, p. 164 at fn. 155. When a permanent custody motion is filed pursuant to R.C. 2151.414, unlike an original disposition pursuant to R.C. 2151.353(A), there is no dispositional option in that the trial court, as the majority opinion notes, can only either terminate parental rights by granting the permanent custody motion or not terminate parental rights by overruling the permanent custody motion. *Jones, supra*; Juv. R. 2(1).

"Assuming, arguendo, that pursuant to Vickers and Lucas, *supra*, a bifurcated hearing was required herein, any error was waived by the failure of appellate to object to the lack of such bifurcation below. *Jones, supra* at p. 179; Vickers, *supra*. Accordingly, I concur in the judgment."

Footnote 1: A motion to certify the record in Lucas, *supra*, to the Supreme Court of Ohio was overruled on May 21, 1986.

Because the cases cited seemed to interpret the need for bifurcation based upon the current Juvenile Rules, Juv. R. 34(I) now seeks to clarify that the need to bifurcate a permanent custody hearing is unnecessary.

Cross-References to Related Statutes

Additional orders of disposition, RC § 2152.19.

Commitment for specification, RC § 2152.17.

Commitment to youth services department for secure confinement, RC § 2152.16.

Definitions, RC § 2151.01.1.

Disposition of —

Abused, neglected or dependent child, RC § 2151.35.3.

Delinquent child, RC § 2152.11.

Juvenile traffic offender, RC § 2152.21.

Unruly child, RC § 2151.35.4.

Hearing procedure; findings; record, RC § 2151.35.

Motion to invoke adult portion of dispositional sentence, RC § 2152.14.

Order at time of dispositional order classifying child as juvenile sex offender registrant, RC § 2152.82.

Other dispositional orders, RC § 2152.20.

Range of dispositions of child adjudicated to be delinquent, RC § 2152.11.

Serious youthful offender dispositional sentence, RC § 2152.13.

Ohio Administrative Code

Department of job and family services, division of social services—

Supportive services. OAC ch. 5101:2-39.

Case plan; case plan document; requirements for—

Form 01444: "Case Plan Document." OAC 5101:2-39-51.

Private child placing agency (PCPA). OAC 5101:2-39-10.

Public children services agency (PCSA). OAC 5101:2-39-08.1.

Protective supervision of children by PCSAs and PCPAs. OAC 5101:2-39-30.

NOTES TO DECISIONS

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Generally

Since appellant entered admissions and waived the right to contest the facts relative to the admissions, and since Ohio R. Juv. P. 34 contemplates an informal dispositional hearing, appellant's arguments that he was denied his right of confrontation and contended that inadmissible evidence was presented were without merit. *State v. McGrath*, — Ohio App. 3d —, 2006 Ohio 4696, — N.E. 2d —, 2006 Ohio App. LEXIS 4634 (Sept. 11, 2006).

Juvenile court's order granting legal custody in the absence of a motion violated the mandatory statutory and procedural requirements of Ohio Rev. Code Ann. § 2151.353 and Ohio R. Juv. P. 34, and also was in direct contravention of Ohio R. Juv. P. 19, mandating that requests for relief be made by motion, Ohio R. Juv. P. 22(E), requiring that prehearing motions be filed at least seven days prior to the proceeding, Ohio R. Juv. P. 20, establishing filing and service requirements for written motions and other papers, and Ohio R. Civ. P. 5(D), imposing a proof of service requirement. *In re L.R.T.*, 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Any person who seeks an award of legal custody of a child must, in accordance with the Ohio Rules of Juvenile Procedure, file a motion, prior to the dispositional hearing, requesting such custody. *In re L.R.T.*, 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Trial court erred as a matter of law when, in a review of a magistrate's decision granting a child's permanent custody to an agency, it overturned that decision and granted the child's legal custody to the child's great-aunt, because the great-aunt did not file a motion for the child's custody at least seven days preceding the dispositional hearing before the magistrate, pursuant to the

mandatory requirements of Ohio Rev. Code Ann. § 2151.353(A)(3) and Ohio R. Juv. P. 34. In *re* L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

It is inappropriate to follow the reasoning used in *In re Callier*, 2002 Ohio 2406, 2002 Ohio App. LEXIS 7304, with respect to compliance with the procedural requirements set forth in Ohio Rev. Code Ann. § 2151.353 and Ohio R. Juv. P. 34, regarding motions for custody, and compliance with those procedural requirements is mandatory. In *re* L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Because compliance with the statutory mandates in RC § 2151.01, et seq. and the rules of juvenile procedure is mandatory, and because any person wishing legal custody of a child must, prior to the dispositional hearing, file a written motion requesting such custody, the juvenile court erred as a matter of law in awarding legal custody of the mother's son to his maternal aunt when no such motion for custody had been filed prior to the dispositional hearing. In *re* C.T., 2005 Ohio 887, 2005 Ohio App. LEXIS 916 (2005).

Juvenile Rule 34(B) requires that the referee or judge who presided at the adjudicatory hearing, if possible, preside at the dispositional hearing: In *re* Johnson, 106 Ohio App. 3d 38, 665 N.E.2d 247, 1995 Ohio App. LEXIS 3418 (1995).

Appeal

Temporary custody orders entered pursuant to JuvR 34 are final and appealable when they are entered, and failure to timely appeal the orders precludes any further consideration of the hearings conducted prior to those orders: *Ackerman v. Lucas Cty. Children Services Bd.*, 49 Ohio App. 3d 14, 550 N.E.2d 549, 1989 Ohio App. LEXIS 3536 (1989).

A further dispositional order continuing an original temporary custody order, issued pursuant to JuvR 34, constitutes a final appealable order: In *re* Patterson, 16 Ohio App. 3d 214, 475 N.E.2d 160, 16 Ohio B. 229, 1984 Ohio App. LEXIS 12343 (1984).

Where no part of a proceeding conducted pursuant to JuvR 34(E) is contested, a Juvenile Court is not required to advise an accused of his right to appeal: In *re* Haas, 45 Ohio App. 2d 187, 74 Ohio Op. 2d 231, 341 N.E.2d 638, 1975 Ohio App. LEXIS 5806 (1975).

A temporary order of a juvenile court changing custody under JuvR 13 or 29, is not a dispositional order under JuvR 34, and hence is not a final appealable order: *Morrison v. Morrison*, 45 Ohio App. 2d 299, 74 Ohio Op. 2d 441, 344 N.E.2d 144, 1973 Ohio App. LEXIS 784 (1973).

Continuance

Error cannot be predicated on the juvenile court's holding a dispositional hearing immediately following an adjudicatory hearing and its failure to continue the dispositional hearing for a reasonable time to enable the party to obtain or consult counsel, as prescribed by JuvR 34(A), unless it affirmatively appears in the record that the affected non-indigent party has requested such continuance: In *re* Bolden, 37 Ohio App. 2d 7, 66 Ohio Op. 2d 26, 306 N.E.2d 166, 1973 Ohio App. LEXIS 796 (1973).

Custody

Father's dispositional hearing testimony supported a trial court's order, under Ohio Rev. Code Ann. § 2151.353(A)(2) and Ohio R. Juv. P. 34(D)(2), placing his children with their maternal grandmother, upon finding it was not in the children's best interests to place them with their mother, due to a lack of adequate housing, or to place them with their father, due to his mental instability. In *re* Washington, — Ohio App. 3d —, 2007 Ohio 522, — N.E. 2d —, 2007 Ohio App. LEXIS 466 (Feb. 7, 2007).

Evidence that a father had been physically violent with police when they responded to his home, that a loaded handgun was found under a recliner in the father's home five feet from where the father's child was sitting on a couch, that the father heard voices threatening him with harm, and that the father believed that he was an enemy of the state overwhelmingly supported a trial court's decision to grant temporary custody of the father's

children to their maternal grandmother pursuant to Ohio Rev. Code Ann. § 2151.353(A)(2) and Ohio R. Juv. P. 34(D)(2). In *re* Dependent, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 467 (Feb. 7, 2007).

Clear and convincing evidence was available at the time of disposition for the trial court's consideration of each of the Ohio Rev. Code Ann. § 2151.414(D) factors, and the evidence supported a finding that a grant of permanent custody was in the child's best interests. The mother had voluntarily admitted herself for psychiatric hospitalization when she became afraid of physically harming her son (she admitted to thoughts of suffocating him with a pillow and cutting the throats of two other young children in the home); the child had significant developmental delays but an adoptive home had been identified that was able to meet his special needs; and the guardian ad litem report was properly before the trial court for consideration, under Ohio R. Juv. P. 34(B)(2), as it was relevant and material. In *re* Erich L., — Ohio App. 3d —, 2005 Ohio 2945, — N.E. 2d —, 2005 Ohio App. LEXIS 2748 (June 10, 2005).

An indigent parent in a custody hearing who has the right to a free court-ordered psychological evaluation may not limit disclosure of adverse results of such testing unless the court order granting the evaluation limits the purpose of the report solely for the parent's defense: In *re* Green, 18 Ohio App. 3d 43, 480 N.E.2d 492, 18 Ohio B. 155, 1984 Ohio App. LEXIS 9133 (1984).

Dependency adjudication

When parents entered dependency admissions as to two children, and then, years later, after a third child was born and an agency sought permanent custody of all three children, the parents filed pleas of deny, this effectively withdrew the prior admissions, where the trial court did not adjudicate the children to be dependent when the prior admissions were entered, so, once the pleas of deny were entered, the trial court could not adjudicate the children to be dependent and/or abused based on the withdrawn pleas, and, as it did not otherwise adjudicate the children, its subsequent grant of their permanent custody to an agency without an adjudication was contrary to Ohio Rev. Code Ann. ch. 2151 and Ohio R. Juv. P. 29(F) and 34. In *re* J.H., — Ohio App. 3d —, 2006 Ohio 3237, — N.E. 2d —, 2006 Ohio App. LEXIS 3151 (June 26, 2006).

Trial court improperly awarded permanent custody (Ohio Rev. Code Ann. § 2151.414 and Ohio Rev. Code Ann. § 2151.353) to the agency without first adjudicating the child dependent. The evidence introduced at the temporary emergency custody hearing did not support a dependency determination and no subsequent hearing was held to determine dependency. In *re* Nibert, 2005 Ohio 2797, 2005 Ohio App. LEXIS 2641 (2005).

Evidence

Nothing prohibited the trial court from considering and relying upon evidence that occurred after the children's services agency filed the permanent custody request. The court could properly have considered the mother's conduct, as well as other relevant evidence, when it considered the children's best interests. In *re* Brown, — Ohio App. 3d —, 2006 Ohio 2863, — N.E. 2d —, 2006 Ohio App. LEXIS 2719 (May 26, 2006).

As a grandmother did not seek permanent custody of a child who was adjudicated as dependent, Ohio R. Juv. P. 34(I) did not apply and the juvenile court acted within its discretion in considering hearsay testimony in making its dispositional decision. In *re* Brown, — Ohio App. 3d —, 2006 Ohio 3189, — N.E. 2d —, 2006 Ohio App. LEXIS 3090 (June 23, 2006).

Trial court's consideration of hearsay evidence contained in a guardian's report for purposes of making a permanent custody determination in a parental rights termination proceeding was error pursuant to Ohio R. Juv. P. 34 and Ohio Rev. Code Ann. § 2151.414(C); however, such error was deemed harmless where the consideration given to that evidence was minimal and there was an abundance of admissible evidence that supported the trial court's determination that permanent custody should be granted to a county social service agency. In *re* Hilyard, — Ohio App. 3d —, 2006 Ohio 1977, — N.E. 2d —, 2006 Ohio App. LEXIS 1808 (Apr. 13, 2006).

Admittance of a referral report from a children's services agency was proper because the witness, in laying the business

records foundation under Ohio R. Evid. 803(6), testified as to the procedure of creating the report, that the report was kept in the normal course of the agency's business, and that it was the agency's regular practice to make such a report; moreover, as the report was primarily cumulative of other evidence, appellant mother was not prejudiced by its admission. In re Joiner, — Ohio App. 3d —, 2004 Ohio 1158, — N.E. 2d —, 2004 Ohio App. LEXIS 1017 (Feb. 13, 2004).

Juvenile Rule 34(B) provides that at a dispositional hearing, the court may admit hearsay, opinion and documentary evidence that is material and relevant. Since the focus of the dispositional phase of a neglect or dependency matter is the future care and best interests of the child, RC § 2151.35.3(A), then testimony relative to the child's home environment and parental care is material and relevant to the case. In re Smith, 77 Ohio App. 3d 1, 601 N.E.2d 45, 1991 Ohio App. LEXIS 4120 (1991).

The court-ordered psychological examination of the parent was inadmissible hearsay. In re Mack, 148 Ohio App. 3d 626, 2002 Ohio 4161, 774 N.E.2d 1243, 2002 Ohio App. LEXIS 4327 (2002).

Guardian ad litem's report

Trial court erred in considering a guardian ad litem's report with respect to its determination in a parental rights termination proceeding pursuant to Ohio Rev. Code Ann. § 2151.414(C), as such was not to be considered as substantive evidence in such a decision pursuant to Ohio R. Juv. P. 34. The error was harmless where the consideration by the trial court was minimal and only as to a factor under § 2151.414(D)(2), the father was not prejudiced by the trial court's consideration, and there was ample other evidence in the record to support the trial court's permanent custody award to a county agency. In re Hilyard, — Ohio App. 3d —, 2006 Ohio 1965, — N.E. 2d —, 2006 Ohio App. LEXIS 1807 (Apr. 13, 2006).

Hearings

When an agency filed a complaint which both alleged that a child was dependent and sought permanent custody of the child, Ohio R. Juv. P. 29 and 34 required the trial court to bifurcate proceedings as to dependency from dispositional proceedings as to permanent custody, so the trial court committed reversible error because it held one evidentiary hearing on both issues, with no clear demarcation between its considerations of each issue. In re J.H., — Ohio App. 3d —, 2006 Ohio 3237, — N.E. 2d —, 2006 Ohio App. LEXIS 3151 (June 26, 2006).

Review of Ohio Rev. Code Ann. § 2151.35(B)(1) showed that it was inconsistent with Ohio R. Juv. P. 34(A) as Ohio Rev. Code Ann. § 2151.35(B)(1) allowed a trial court to hold a dispositional hearing for an adjudicated dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing, while Ohio R. Juv. P. 34(A) was stricter because it also required that all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing, and it was well-established that in instances of procedural conflict the Ohio Rules of Juvenile Procedure, which were prepared and submitted by the Ohio Supreme Court to the legislature, controlled over inconsistent statutory provisions purporting to govern procedural matters. In re J.H., — Ohio App. 3d —, 2006 Ohio 3237, — N.E. 2d —, 2006 Ohio App. LEXIS 3151 (June 26, 2006).

Trial court did not fail to conduct the permanent custody dispositional hearing within 30 days of the adjudication hearing as required by Ohio R. Juv. P. 34 because the father implicitly waived his right to invoke the statute to have the case dismissed for exceeding the statutory time limits. The father participated in the scheduling of the dispositional hearing, failed to object when the hearing was continued, and filed his own motion to continue the dispositional hearing. In re Burton, 2004 Ohio 4021, 2004 Ohio App. LEXIS 3652 (2004).

In proceedings where parental rights are subject to termination, both the Juvenile Rules and the Revised Code prescribe that such proceedings be bifurcated into separate adjudicatory and dispositional hearings (RC § 2151.35 and JuvR 29 and 34, construed and applied.): In re Baby Girl Baxter, 17 Ohio St. 3d 229, 479 N.E.2d 257, 17 Ohio B. 469, 1985 Ohio LEXIS 345 (1985).

A juvenile court does not err in failing to bifurcate a hearing on a motion for permanent custody into adjudicatory and dispositional stages where no dispositional option is available, i.e., either the motion is granted, in which case the mother's parental rights are terminated, or else the motion is denied: In re Jones, 29 Ohio App. 3d 176, 504 N.E.2d 719, 29 Ohio B. 206, 1985 Ohio App. LEXIS 10399 (1985).

Hearings for permanent custody under RC § 2151.41.4 must conform to the Rules of Juvenile Procedure. Hence, pursuant to JuvR 29 and 34, the proceedings should be bifurcated into separate adjudicatory and dispositional stages: In re Vickers Children, 14 Ohio App. 3d 201, 470 N.E.2d 438, 14 Ohio B. 228, 1983 Ohio App. LEXIS 11449 (1983).

Jurisdiction

The juvenile court has exclusive original jurisdiction, pursuant to RC § 2151.23(A), concerning any child who is alleged in a proper complaint to be neglected, and the court does not lose jurisdiction by failing to adhere to the time limits set forth in JuvR 29(A) and JuvR 34(A): Linger v. Weiss, 57 Ohio St. 2d 97, 386 N.E.2d 1354, 11 Ohio Op. 3d 281, 1979 Ohio LEXIS 373 (1979).

Modification of custody order

A party seeking to modify a dispositional custody order must prove by clear and convincing evidence that the modification is in the best interests of the child: In re Patterson, 16 Ohio App. 3d 214, 475 N.E.2d 160, 16 Ohio B. 229, 1984 Ohio App. LEXIS 12343 (1984).

Motion for custody

Trial court erred as a matter of law in awarding custody to a relative when the relative failed to file a motion for legal custody before the dispositional hearing. Any person who seeks an award of legal custody of a child must, under the Rules of Juvenile Procedure, file a motion requesting custody prior to the dispositional hearing: In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (2006).

Oath of witness

Although a juvenile court may conduct a hearing in an informal manner, witnesses should be placed under oath before testifying: In re Ramsey Children, 102 Ohio App. 3d 168, 656 N.E.2d 1311, 1995 Ohio App. LEXIS 1510 (1995).

Presence of juvenile

When a magistrate took the disposition of a juvenile delinquency case under advisement, after conducting adjudicatory and dispositional hearings, and then issued a sentencing decision without holding a hearing, Ohio R. Juv. P. 34 provided the procedure for dispositional hearings in juvenile delinquency cases and did not require the juvenile to be present for sentencing, so the Ohio R. Crim. P. 43 requirement that the defendant be present for the imposition of sentence did not apply. In re Gibson, — Ohio App. 3d —, 2006 Ohio 5145, — N.E. 2d —, 2006 Ohio App. LEXIS 5109 (Oct. 2, 2006).

Right to counsel

Although the trial court substantially complied with Ohio R. Juv. P. 29(D) when it accepted defendant juvenile's waiver of counsel during the adjudication hearing, the trial court failed to reiterate defendant's right to counsel during disposition or allow him either to invoke or to waive his right to counsel at that stage as required by Ohio R. Juv. P. 34. In re S. J., — Ohio App. 3d —, 2006 Ohio 4467, — N.E. 2d —, 2006 Ohio App. LEXIS 4395 (Aug. 30, 2006).

Because the hearing on the motion to modify temporary custody to permanent custody was a dispositional hearing, rather than an adjudicatory hearing, Ohio R. Juv. P. 29 did not apply; rather, the hearing was governed by Ohio R. Juv. P. 34(I) where there was no obligation to inform the mother of her right to counsel. In re Williams, 2004 Ohio 678, 2004 Ohio App. LEXIS 592 (2004).

School district

In determining which school district shall bear the cost of educating a delinquent child who has been committed to the permanent custody of the Department of Youth Services, the

court, in complying with JuvR 34(C), is to follow the procedure set forth in RC § 2151.35.7 and 3313.64(C)(2): *Christman v. Washington Court House (School Dist.)*, 30 Ohio App. 3d 228, 507 N.E.2d 384, 30 Ohio B. 386, 1986 Ohio App. LEXIS 10075 (1986).

Standard of proof

Appellate court did not have to determine whether the proper standard for granting legal custody of a child to a maternal great grandmother was clear and convincing evidence under Ohio R. Juv. P. 29(E)(4) or a preponderance of the evidence under Ohio R. Juv. P. 29(E)(4), 34 where a substantial amount of evidence that was competent and credible under either standard supported the trial court's judgment. *In re Rowe*, — Ohio App. 3d —, 2003 Ohio 6062, — N.E. 2d —, 2003 Ohio App. LEXIS 5403 (Nov. 13, 2003).

Termination of parental rights

Juvenile Rule 34 does not require the court to engage in a colloquy with a parent in a RC § 2151.41.4 proceeding. A parent's admission in a dispositional hearing that a child's best interest would be served by permanent placement elsewhere than with the parent is not a matter that requires protections similar to JuvR 29(D): *In re Lakes*, 149 Ohio App. 3d 128, 2002 Ohio 3917, 776 N.E.2d 510, 2002 Ohio App. LEXIS 3991 (2002).

Time limitations

Where the trial court held the dispositional hearing 10 days after the adjudicatory hearing in which the trial court announced the judgment of dependency, that timeframe was within that required by Ohio R. Juv. P. 34. *In re Spangler*, — Ohio App. 3d —, 2005 Ohio 3450, — N.E. 2d —, 2005 Ohio App. LEXIS 3210 (July 5, 2005).

Where a county children service agency filed a dependency complaint, and a dispositional hearing was held by a magistrate within 90 days thereof, the time requirements of Ohio R. Juv. P. 34(A) and Ohio Rev. Code Ann. § 2151.35(B)(1) were met. The mother's claim on appeal that she did not present evidence at the hearing was waived where she stipulated to her daughters' dispositions, and she did not object to her son's disposition, nor did she attempt to present witnesses, and the magistrate had the right to conduct an informal hearing, pursuant to § 2151.35(A)(1) and Ohio R. Juv. P. 27(A). *In re Ohm*, 2005 Ohio 3500, 2005 Ohio App. LEXIS 3245 (2005).

A juvenile's right to be present at a dispositional hearing may be waived by a deliberate failure to appear: *In re Jason R.*, 77 Ohio Misc. 2d 37, 666 N.E.2d 666, 1995 Ohio Misc. LEXIS 93 (CP 1995).

The seven-day period for entry of judgment set forth in RC § 2151.35(B)(3) and JuvR 34(C) is mandatory. The proper remedy for the court's failure to comply is to file a writ of procedendo in the court of appeals: *In re Fleming*, 76 Ohio App. 3d 30, 600 N.E.2d 1112, 1991 Ohio App. LEXIS 4134 (1991).

The seven day period under RC § 2151.35(B)(3) and JuvR 34(C) for entry of final judgment is mandatory. However, non-compliance does not deprive the court of jurisdiction: *In re Galloway*, 77 Ohio App. 3d 61, 601 N.E.2d 83, 1991 Ohio App. LEXIS 4182 (1991).

Opinions of Attorney General

Juvenile Rule 34(C) and RC § 2151.35.7 require a court that commits a child to the custody of the Department of Youth Services to determine which school district shall bear the cost of educating the child: OAG No. 88-023 (1988).

Both the existing juvenile code and the Juvenile Rules require a hearing before a temporary commitment to the Ohio youth commission can be made permanent, which hearing requires the presence of the youth involved: OAG No. 72-071 (1972).

RULE 35. Proceedings after judgment

(A) Continuing jurisdiction; invoked by motion.

The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

(B) **Revocation of probation.** The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv. R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv. R. 34(C), been notified.

(C) **Detention.** During the pendency of proceedings under this rule, a child may be placed in detention in accordance with the provisions of Rule 7.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 35 PROCEEDINGS AFTER JUDGMENT

Masculine references were replaced by gender neutral language and other grammar changes were made; no substantive change was intended.

Cross-References to Related Statutes

Control of conduct of parent, guardian, or custodian, RC § 2151.35.9.

Court control of child following commitment to department; judicial release, RC § 2152.22.

Initiation receiving children required to make report, RC § 2151.37.

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Generally

After it decided to forbid contact between a mother and her son, the trial court should have scheduled a time soon afterwards for the mother to present her side of the story, if different from that of her son and her son's custodian, and anything else bearing on the matter of visitation, Ohio R. Juv. P. 35(A). *In re Boucher*, — Ohio App. 3d —, 2003 Ohio 5719, — N.E. 2d —, 2003 Ohio App. LEXIS 5119 (Oct. 24, 2003).

Even though RC § 2152.61 did not apply directly, since the trial court did not adjudicate a child to be delinquent, the statute provided guidance for the appeals court's decision regarding the proper notice to be given to a mother of the possibility of losing her right to have contact with her child. *In re Boucher*, — Ohio App. 3d —, 2003 Ohio 5719, — N.E. 2d —, 2003 Ohio App. LEXIS 5119 (Oct. 24, 2003).

Child support

Juvenile court erred in denying the father's motion to vacate judgment because the father did not receive notice of the hearing on the motion to set support as the docket sheet clearly showed that the father was served with the motion to set child support by ordinary mail only and thus, the service requirements of Ohio R. Juv. P. 35(A) were not satisfied; therefore, the continuing jurisdiction of the juvenile court was not invoked. *In re Brandon P.*, — Ohio App. 3d —, 2003 Ohio 1861, — N.E. 2d —, 2003 Ohio App. LEXIS 1782 (Apr. 11, 2003).

Credit for time served

An adjudged delinquent who is confined as an adult in an adult jail may be granted credit for time served while waiting his

dispositional hearing: *In re Smith*, 32 Ohio App. 3d 82, 513 N.E.2d 1387, 1986 Ohio App. LEXIS 10189 (1986).

Probation revocation

Appellant's purported waiver of counsel at a probation revocation hearing was not valid, under Ohio Rev. Code Ann. § 2151.352 and Ohio R. Juv. P. 4 and 35(B), because the trial court's advisement as to that right appeared to state that appellant had the right if he wanted an evidentiary hearing, but not if he wanted to admit the violation he was charged with, which was not the law. *In re Lohr*, — Ohio App. 3d —, 2007 Ohio 1130, — N.E. 2d —, 2007 Ohio App. LEXIS 1046 (Mar. 7, 2007).

Trial court complied with Juv. R. 35 when it revoked defendant's probation as it wrote in its judgment entry that defendant had failed to comply with the terms and conditions of the previous judgment as he had failed to comply with conditions 1 and 3 of that judgment. Nothing in the juvenile rules required the trial court to make any further findings. *In re Kiser*, — Ohio App. 3d —, 2006 Ohio 5970, — N.E. 2d —, 2006 Ohio App. LEXIS 5905 (Nov. 13, 2006).

When appellant received commitments to the Department of Youth Services upon her admissions to certain charges against her and, then, when she appeared before the juvenile court on new cases, which were continued, the court reimposed the previously suspended commitments, under Ohio Rev. Code Ann. § 2151.355(A)(22), without notice or any finding that she had violated a condition of probation, much less what condition, the court did not comply with the requirements of Ohio R. Juv. P. 35(B), and it committed reversible error. *In re Shine*, — Ohio App. 3d —, 2006 Ohio 7050, — N.E. 2d —, 2006 Ohio App. LEXIS 6977 (Dec. 20, 2006).

Violations of probation terms are governed by JuvR 35(B). A contempt proceeding was not a proper remedy: *In re Nowak*, 133 Ohio App. 3d 396, 728 N.E.2d 411, 1999 Ohio App. LEXIS 1857 (1999).

While a court may impose a previously suspended commitment under RC § 2151.35.5, it must comply with JuvR 35 concerning probation before doing so: *In re Royal*, 132 Ohio App. 3d 496, 725 N.E.2d 685, 1999 Ohio App. LEXIS 854 (1999).

The judgment entry revoking probation did not comply with JuvR 35(B): *In re Edwards*, 117 Ohio App. 3d 108, 690 N.E.2d 22, 1996 Ohio App. LEXIS 5614 (1996).

Juvenile Rule 35(B), not 29(D), governs probation revocation proceedings: *In re Motley*, 110 Ohio App. 3d 641, 674 N.E.2d 1268, 1996 Ohio App. LEXIS 1785 (1996).

Treatment programs

Where the juvenile refused to participate in the treatment program, the court did not violate JuvR 35(B) by rescinding its stay and committing the juvenile for a minimum period of six months: *In re William H.*, 105 Ohio App. 3d 761, 664 N.E.2d 1361, 1995 Ohio App. LEXIS 3357 (1995).

RULE 36. Dispositional review

(A) **Court review.** A court that issues a dispositional order in an abuse, neglect, or dependency case may review the child's placement or custody arrangement, the case plan, and the actions of the public or private agency implementing that plan at any time. A court that issues a dispositional order shall hold a review hearing one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. The court shall schedule the review hearing at the time that it holds the dispositional hearing. The court shall hold a similar review hearing no later than every twelve months after the initial review hearing until the child is adopted, returned to the child's parents, or the court otherwise terminates the child's placement or custody arrangement. A hearing pursuant to section 2151.415 of the Revised Code shall take the place of the first review hearing. The court shall schedule each subsequent

review hearing at the conclusion of the review hearing immediately preceding the review hearing to be scheduled. Review hearings may be conducted by a judge or magistrate.

(B) **Citizens' review board.** The court may appoint a citizens' review board to conduct review hearings, subject to the review and approval by the court.

(C) **Agency review.** Each agency required to prepare a case plan for a child shall complete a semiannual administrative review of the case plan no later than six months after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. After the first administrative review, the agency shall complete semiannual administrative reviews no later than every six months. The agency shall prepare and file a written summary of the semiannual administrative review that shall include an updated case plan. If the agency, parents, guardian, or custodian of the child and guardian ad litem stipulate to the revised case plan, the plan shall be signed by all parties and filed with the written summary of the administrative review no later than seven days after the completion of the administrative review. If the court does not object to the revised case plan, it shall journalize the case plan within fourteen days after it is filed with the court. If the court does not approve of the revised case plan or if the agency, parties, guardian ad litem, and the attorney of the child do not agree to the need for changes to the case plan and to all of the proposed changes, the agency shall file its written summary and request a hearing. The court shall schedule a review hearing to be held no later than thirty days after the filing of the case plan or written summary or both, if required. The court shall give notice of the date, time, and location of the hearing to all interested parties and the guardian ad litem of the child. The court shall take one of the following actions:

- (1) Approve or modify the case plan based upon the evidence presented;
- (2) Return the child home with or without protective supervision and terminate temporary custody or determine which agency shall have custody;
- (3) If the child is in permanent custody determine what actions would facilitate adoption;
- (4) Journalize the terms of the updated case plan.

History: Effective 7-1-94; amended, eff 7-1-96.

STAFF NOTES

7-1-96 AMENDMENT

RULE 36(A) COURT REVIEW

The amendment changed the rule's reference from "referee" to "magistrate" in division (A) in order to harmonize the rule with the language adopted in the 1995 amendments to Juv. R. 40. The amendment is technical only and no substantive change is intended.

7-1-94 AMENDMENT

RULE 36 DISPOSITIONAL REVIEW

Juv. R. 36 was previously reserved. The 1994 amendment was drafted to address requirements of dispositional review imposed by S.B. 89.

Revised Code 2151.353 and 2151.417(B) permit the court on its own motion or any public children's services agency or private child placing agency, the Department of Human Services, or any party at any time to move to modify or terminate any dispositional order on an abused, neglected, or dependent child.

Juv. R. 34 sets out the procedures for such a hearing to terminate or modify a dispositional order. Juv. R. 36(A) provides requirements for notice to all parties and the guardian ad litem.

Revised Code 2151.417(G) allows the appointment of a citizens' review board to review dispositional orders. Juv. R. 36(B) delineates that provision.

Juv. R. 36(C) delineates procedures for preparing case plans and conducting administrative reviews in accordance with Revised Code 2151.416(F).

Cross-References to Related Statutes

Court review of child's placement or custody arrangement; continuing jurisdiction; citizen's review board, RC § 2151.41.7.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care. OAC ch. 5101:2-42.

Requirements of semiannual administrative review by public children services agencies and private child placing agencies. OAC 5101:2-42-43.

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Applicability

Where a mother sought to vacate a prior court order that had awarded legal custody of her child to custodians, Ohio R. Juv. P. 36 and Ohio Rev. Code Ann. § 2151.417 were deemed inapplicable to the proceeding, as those dealt with modification or termination of a child custody arrangement upon a showing of a change in circumstances and a finding that such change was in the child's best interest; as no modification or termination was contemplated by the mother's motion, but rather, an examination of the circumstances at the time of the original custody award was mandated, there could have been no changed circumstances. In re H.B., — Ohio App. 3d —, 2006 Ohio 2124, — N.E. 2d —, 2006 Ohio App. LEXIS 1969 (Apr. 28, 2006).

Change of custody

Revised Code § 2151.41.7 and JuvR 36(A) allow a court to review a child's placement or custody arrangement at any time. However, a party with current custody of the child is entitled to prior notice that a change of custody will be considered at a hearing ostensibly concerning visitation rights: In re Bowman, 101 Ohio App. 3d 599, 656 N.E.2d 355, 1995 Ohio App. LEXIS 872 (1995).

Treatment programs

Upon a determination during reviewing hearings held pursuant to Ohio Rev. Code Ann. § 2151.417 and Ohio R. Juv. P. 36(A) that a juvenile was not benefitting from a residential treatment program that he was originally committed to upon being declared a delinquent pursuant to Ohio Rev. Code Ann. § 2151.35(A)(1) and that he was acting out, a juvenile court's placement of the juvenile with the Department of Youth Services was not error pursuant to Ohio Rev. Code Ann. § 2151.354(5) and (6); the juvenile was not amenable to treatment or rehabilitation due to his conduct at the residential treatment facility. In re D.B., — Ohio App. 3d —, 2006 Ohio 2891, — N.E. 2d —, 2006 Ohio App. LEXIS 2738 (June 8, 2006).

RULE 37. Recording of proceedings

(A) **Record of proceedings.** The juvenile court shall make a record of adjudicatory and dispositional proceedings in abuse, neglect, dependent, unruly, and delinquent

cases; permanent custody cases; and proceedings before magistrates. In all other proceedings governed by these rules, a record shall be made upon request of a party or upon motion of the court. The record shall be taken in shorthand, stenotype, or by any other adequate mechanical, electronic, or video recording device.

(B) **Restrictions on use of recording or transcript.** No public use shall be made by any person, including a party, of any juvenile court record, including the recording or a transcript of any juvenile court hearing, except in the course of an appeal or as authorized by order of the court or by statute.

History: Amended, eff 7-1-96; 7-1-01.

STAFF NOTES

7-1-01 AMENDMENT

RULE 37(B) RESTRICTIONS ON USE OF RECORDING OR TRANSCRIPT

Division (B) of this rule was amended to conform the rule with Revised Code section 2151.358 (E)(2), which provides for law enforcement personnel to have access to certain juvenile court records. The amendment was not intended to designate juvenile court records as public documents or to enlarge access to juvenile records beyond that specifically designated by a statute directed at juvenile court records.

7-1-96 AMENDMENT

RULE 37 RECORD OF PROCEEDINGS

Division (A) of this rule was modified to require the making of a record in adjudication and dispositional proceedings in abuse, neglect, dependent, unruly, and delinquent cases; in permanent custody cases; and in all proceedings before magistrates. It should be noted that the making of a record is mandatory in adjudicatory and dispositional proceedings. "Proceedings" includes the receiving of any admission or denial, as well as evidentiary hearings. The rule is consistent with section 2151.35(A) of the Revised Code requiring a record of permanent custody proceedings.

Division (B), which was not changed by the 1996 amendment, further provides that no public use shall be made of a transcript except upon appeal or upon authorization of the court.

The preparation of a transcript shall be at public expense if the party is indigent, in accordance with Juvenile Rule 29(B)(5).

Cross-References to Related Statutes

Hearing procedure; findings; record, RC § 2151.35.

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Constitutionality

A law making it a crime to publish truthful information, lawfully obtained, concerning the identity of a youth charged as a juvenile offender is violative of U.S. Const. amend. I: Smith v. Daily Mail Publishing Co., 443 U.S. 97, 99 S. Ct. 2667, 61 L. Ed. 2d 399, 1979 U.S. LEXIS 139 (1979).

A pretrial order enjoining the news media from disseminating the identity of a juvenile in any manner in connection with

juvenile proceedings violates the first amendment where members of the press were present at an initial hearing with full knowledge of and within objection by the court and defense and prosecution counsel: *Oklahoma Pub. Co. v. District Court of Oklahoma*, 430 U.S. 308, 97 S. Ct. 1045, 51 L. Ed. 2d 355, 1977 U.S. LEXIS 58 (1977).

Generally

When a magistrate took the disposition of a juvenile delinquency case under advisement, after conducting adjudicatory and dispositional hearings, and then issued a sentencing decision without holding a hearing, this was not a violation of Ohio R. Juv. P. 37(A), requiring that hearings be recorded, because the decision was based on adjudicatory and dispositional hearings which were recorded, and the sentencing decision itself was not a proceeding which Rule 37(A) required to be recorded. In re Gibson, — Ohio App. 3d —, 2006 Ohio 5145, — N.E. 2d —, 2006 Ohio App. LEXIS 5109 (Oct. 2, 2006).

Juvenile court's failure to follow the requirements of Ohio R. Juv. P. 37 mandated reversal, and defendant's obligation under Ohio R. App. P. 9(C) did not excuse an obligation to provide a complete record as required under Ohio R. Juv. P. 37; where the transcript of the second day of a two day juvenile delinquency trial was unavailable, the juvenile court's delinquency finding was reversed. In re A.F., — Ohio App. 3d —, 2004 Ohio 1119, — N.E. 2d —, 2004 Ohio App. LEXIS 1004 (Mar. 11, 2004).

Although failure to make any record of adjudicatory and dispositional proceedings clearly violates Ohio R. Juv. P. 37(A), failure to create a complete record does not always violate the rule; however, pursuant to Ohio R. App. P. 9(E), an appellant has a duty to exemplify any alleged errors by reference to matters in the record, and that duty is discharged by the filing of a verbatim transcript, a narrative statement of the evidence, or an agreed statement of the record; because a GAL failed to inform the appellate court with specificity what evidence or prejudicial errors were contained in inaudible taped testimony, and the GAL did not supplement the record, a juvenile court decision awarding custody was affirmed. In re Mitchell, 2003 Ohio 4102, 2003 Ohio App. LEXIS 3647 (2003).

Even though transcripts for two hearings were not provided by the trial court, as required by Ohio R. Juv. P. 37(A), this was not shown to be prejudicial where no evidence was accepted or offered and the only action taken by the trial court at the two hearings in question was the continuance of the trial to a later date; a transcript of the adjudication hearing and transcripts of the five dispositional hearings were provided and filed. In re D.F., — Ohio App. 3d —, 2003 Ohio 3221, — N.E. 2d —, 2003 Ohio App. LEXIS 2883 (June 19, 2003).

The court's failure to comply with JuvR 37(A) mandated reversal and remand: In re Collins, 127 Ohio App. 3d 278, 712 N.E.2d 798, 1998 Ohio App. LEXIS 1510 (1998).

Juvenile Rule 37 requires recording of all proceedings only upon request: In re Hannah, 106 Ohio App. 3d 766, 667 N.E.2d 76, 1995 Ohio App. LEXIS 4441 (1995).

Pursuant to RC § 2151.35(A), a transcript is not required unless requested: In re East, 105 Ohio App. 3d 221, 663 N.E.2d 983, 1995 Ohio App. LEXIS 2851 (1995).

In cases not involving permanent custody, the court is required to make a transcript of oral proceedings only on the request of a party: In re Wright, 88 Ohio App. 3d 539, 624 N.E.2d 347, 1993 Ohio App. LEXIS 3441 (1993).

Trial court recorded the dispositional hearing, as required by Ohio R. Juv. P. 37(A), even though the testimony of one witness was not recorded because the tape recorder inadvertently failed; however, since the trial court remedied that problem by allowing for the creation of a statement of the evidence provided by that witness, the trial court did not ignore the mandates of Ohio R. Juv. P. 37(A) to create a complete record of the hearing. In re Myers, 2003 Ohio 2776, 2003 Ohio App. LEXIS 2492 (2003).

Appeal

Although there were portions of a transcript from a juvenile's parole-violation hearing that were not transcribable due to the juvenile's "inaudible" responses, pursuant to Ohio R. Juv. P. 37(A) there was no violation of the right to a recorded proceeding, as the transcript that was recorded was sufficient to show that the

juvenile had waived his right to have counsel represent him in a knowing, voluntary, and intelligent manner. The juvenile failed in his burden to supplement the record with a statement pursuant to Ohio R. App. P. 9(C) where he failed to file such a statement. In re Andrew, — Ohio App. 3d —, 2007 Ohio 1021, — N.E. 2d —, 2007 Ohio App. LEXIS 927 (Mar. 9, 2007).

Where a juvenile court failed to comply with the recording requirement pursuant to Ohio R. Juv. P. 37(A) in a juvenile's delinquency proceeding, and the juvenile was unable to prepare an Ohio R. App. P. 9(C) statement for appellate purposes because he could not reach his prior counsel, the lack of clarity as to whether the juvenile was adjudicated as delinquent for a felony-level offense in order to determine if he was eligible for commitment to the Ohio Department of Youth Services required a remand for a new adjudication hearing. In re G.W., — Ohio App. 3d —, 2006 Ohio 5327, — N.E. 2d —, 2006 Ohio App. LEXIS 5320 (Oct. 12, 2006).

Since a trial court did not employ an adequate method of recording a change of plea hearing in a juvenile delinquency case, as required by Ohio R. Juv. P. 37, the appellate court was unable to ensure that the trial court properly complied with Ohio R. Juv. P. 29(D) and that appellant's plea was entered voluntarily, knowingly, and intelligently; thus, the trial court's judgment was reversed. In re Stoutamire, — Ohio App. 3d —, 2006 Ohio 5365, — N.E. 2d —, 2006 Ohio App. LEXIS 5374 (Oct. 13, 2006).

Because a magistrate failed to ask a juvenile defendant whether defendant understood that defendant was waiving constitutional rights in pleading guilty, and the transcript was so poor that the appellate court could not determine the sufficiency of the allocution, the trial court failed to comply with Ohio R. Juv. P. 29(D)(2), 37. In re Dawson, — Ohio App. 3d —, 2005 Ohio 2088, — N.E. 2d —, 2005 Ohio App. LEXIS 1984 (Apr. 29, 2005).

Where the juvenile court complied with RC § 2152.12 and JuvR 30 in transferring a juvenile for criminal prosecution, the trial court had subject matter jurisdiction to hear the case despite the juvenile court's failure to record the proceeding pursuant to JuvR 37(A): *State v. Mock*, 136 Ohio Misc. 2d 21, 2005 Ohio 7142, 846 N.E.2d 108, 2005 Ohio Misc. LEXIS 603 (2005).

When a juvenile court fails to comply with the recording requirements of JuvR 37(A) and an appellant attempts but is unable to submit an AppR 9(C) statement to correct or supplement the record, the matter must be remanded to the juvenile court for a rehearing: *Cuyahoga County Dep't of Children & Family Servs. v. Evans* (In re B.E.), 102 Ohio St. 3d 388, 2004 Ohio 3361, 811 N.E.2d 76, 2004 Ohio LEXIS 1583 (2004).

The court's failure to make a record of the hearings warranted reversal: In re Amos, 154 Ohio App. 3d 434, 2003 Ohio 5014, 797 N.E.2d 568, 2003 Ohio App. LEXIS 4514 (2003).

Even though the mother could have filed a statement pursuant to Ohio R. App. P. 9(C) detailing the hearing testimony missing from a tape recording that ended prematurely, termination of parental rights was reversible error because the trial court was unable to provide a complete record as required by Ohio R. Juv. P. 37(A). In re B.E., — Ohio App. 3d —, 2003 Ohio 3949, — N.E. 2d —, 2003 Ohio App. LEXIS 3525 (July 24, 2003).

Where a child custody proceeding involving two unmarried parents was conducted before a magistrate judge, the magistrate was obligated to record the proceedings under Ohio R. Juv. P. 37(A); however, since tape recording of the proceeding was inaudible, the magistrate's findings, derived from the hearing, set forth factual details sufficiently specific to permit appellate review and approval of the magistrate's decision to award custody of the child to the father. In re Knight, — Ohio App. 3d —, 2003 Ohio 7222, — N.E. 2d —, 2003 Ohio App. LEXIS 6514 (Dec. 19, 2003).

An indigent parent has a right to a transcript of proceedings for purposes of appealing from a state-instituted permanent custody action. *State ex rel. Howard v. Ferreri*, 70 Ohio St. 3d 587, 1994 Ohio 130, 639 N.E.2d 1189, 1994 Ohio LEXIS 2303 (1994).

Closing of proceedings

Prohibition may be granted to prevent a judge from closing juvenile court proceedings without conducting an evidentiary hearing and without making the required findings. When a party requests that a juvenile court proceeding be closed, but the court fails to hold an appropriate evidentiary hearing and make the

required findings before closing the proceeding, a person or entity successfully challenging that practice is not automatically entitled to release of the transcript of the improperly closed proceeding. Instead, the person or entity challenging the improper closure is entitled to a writ of mandamus to compel the judge to conduct the closure hearing that should have been held in order to determine if release of the transcript is warranted. Mandamus may be granted to compel a juvenile court to make publicly available notice of (1) motions to close proceedings, (2) when hearings on closure motions will be held, and (3) court rulings on closure motions: *State ex rel. Plain Dealer Publ. Co. v. Floyd*, 111 Ohio St. 3d 56, 2006 Ohio 4437, 855 N.E.2d 35, 2006 Ohio LEXIS 2573, 34 Media L. Rep. (BNA) 2325 (2006).

Confrontation clause

The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination concerning probationary status as juvenile offender: *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347, 1974 U.S. LEXIS 104 (1974).

Harmless error

Although a juvenile court erred under Ohio R. Juv. P. 37(A) in failing to record an amenability hearing, wherein it relinquished jurisdiction over a juvenile defendant with respect to a criminal charge against him in favor of the general trial court, such was harmless error where a statement of evidence under Ohio R. App. P. 9(C) was deemed adequate to determine the question of whether the relinquishment of jurisdiction by the juvenile court was proper. *State v. Lucas*, — Ohio App. 3d —, 2007 Ohio 188, — N.E. 2d —, 2007 Ohio App. LEXIS 178 (Jan. 19, 2007).

Release of transcript

Juvenile Rule 37(B) does not prevent release of a transcript of a juvenile court proceeding pursuant to RC § 149.43 when there is no evidence that release of the particular transcript will result in any harm to the child involved: *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, Juv. Div., 73 Ohio St. 3d 19, 652 N.E.2d 179, 1995 Ohio LEXIS 2681 (1995).

Transcript

Summary judgment was granted to a judge in an action by a prosecutor, seeking a writ of prohibition which was more appropriately considered as a writ of mandamus pursuant to Ohio Rev. Code Ann. § 2731.04, wherein a juvenile transcript from a bindover proceeding was sought, as the conditions under both Ohio R. Juv. P. 37(B) and Cuyahoga County, Ohio, Ct. C.P. Juv. R. 48(C)(4) were not met. The complaint was procedurally defective under Ohio Eighth Dist. Ct. App. R. 45(B)(1)(a), as it was in the form of a motion with a supportive brief rather than in the form of a complaint, and the supportive affidavit was lacking. *State ex rel. Mason v. Floyd*, — Ohio App. 3d —, 2007 Ohio 2368, — N.E. 2d —, 2007 Ohio App. LEXIS 2209 (May 15, 2007).

Waiver of counsel

Former JuvR 37 did not require a transcript to show a valid waiver of counsel: *Douglas v. Boykin*, 121 Ohio App. 3d 140, 699 N.E.2d 123, 1997 Ohio App. LEXIS 2978 (1997).

Pursuant to the 1996 amendment to JuvR 37, a notation in a journal entry that the juvenile waived counsel at a dispositional hearing is no longer sufficient: *In re Solis*, 124 Ohio App. 3d 547, 706 N.E.2d 839, 1997 Ohio App. LEXIS 5527 (1997).

Opinions of Attorney General

Pursuant to JuvR 32(B), and RC § 2151.14, juvenile court records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under RC § 149.43: OAG No. 90-101 (1990).

Revised Code § 1347.04 does not operate to exempt juvenile courts from the provisions of RC Chapter 1347, with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from RC Chapter 1347, under

RC § 1347.04(A)(1)(e): OAG No. 84-077 (1984).

Under RC § 1347.08, a juvenile court must permit a juvenile or a duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under RC § 1347.04(A)(1)(e) or RC § 1347.08(C) or (E)(2). Under JuvR 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court: OAG No. 84-077 (1984).

RULE 38. Voluntary surrender of custody

(A) Temporary custody.

(1) A person with custody of a child may enter into an agreement with any public or private children services agency giving the agency temporary custody for a period of up to thirty days without the approval of the juvenile court. The agency may request the court to grant a thirty day extension of the original agreement. The court may grant the original extension if it determines the extension to be in the best interest of the child. A case plan shall be filed at the same time the request for extension is filed. At the expiration of the original thirty day extension period, the agency may request the court to grant an additional thirty day extension. The court may grant the additional extension if it determines the extension is in the child's best interest. The agency shall file an updated case plan at the same time it files the request for additional extension. At the expiration of the additional thirty day extension period, or at the expiration of the original thirty day extension period if no additional thirty day extension was requested, the agency shall either return the child to the custodian or file a complaint requesting temporary or permanent custody and a case plan.

(2) Notwithstanding division (A)(1) of this rule, the agreement may be for a period of sixty days if executed solely for the purpose of obtaining the adoption of a child less than six months of age. The agency may request the court to extend the temporary custody agreement for thirty days. A case plan shall be filed at the same time the request for extension is filed. At the expiration of the thirty day extension, the agency shall either return the child to the child's custodian or file a complaint with the court requesting temporary or permanent custody and a case plan.

(B) Permanent custody.

(1) A person with custody of a child may make an agreement with court approval surrendering the child into the permanent custody of a public children service agency or private child placing agency. A public children service agency shall request and a private child placing agency may request the juvenile court of the county in which the child had residence or legal settlement to approve the permanent surrender agreement. The court may approve the agreement if it determines it to be in the best interest of the child. The agency requesting the approval shall file a case plan at the same time it files its request for approval of the permanent surrender agreement.

(2) An agreement for the surrender of permanent custody of a child to a private service agency is not required to be approved by the court if the agreement is executed solely for the purpose of obtaining an adoption of a child who is less than six months of age on the date of the execution of the agreement.

One year after the agreement is entered and every subsequent twelve months after that date, the court shall schedule a review hearing if a final decree of adoption has

not been entered for a child who is the subject of an agreement for the surrender of permanent custody.

History: Effective, 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 38 VOLUNTARY SURRENDER OF CUSTODY

Prior to July 1, 1994, this rule was reserved. The 1994 amendment implements the provisions of Revised Code 5103.15 as amended by S.B. 89, regarding the procedure for making voluntary agreements of temporary custody to a public or private agency where extensions are requested.

Pursuant to the above-referenced statute, Juv. R. 38(A) provides that requests for extension of voluntary surrenders of custody must be accompanied by an updated case plan and the court may grant the extension if it determines the extension to be in the best interest of the child. Two such extensions may be granted for up to sixty days. If the agency desires a further extension, a new complaint for temporary or permanent custody must be filed. An agreement for temporary custody may be for sixty days if executed solely for the purpose of obtaining the adoption of a child less than six months of age.

Juv. R. 38(B) sets out procedures for the voluntary surrender of permanent custody. Agreements for permanent custody must have the approval of the juvenile court of the county in which the child resides or has legal settlement. Then, on an annual basis until a final decree of adoption is entered, the court must conduct a review hearing of the agreement.

Ohio Administrative Code

Department of job and family services, division of social services—

Substitute care. OAC ch. 5101:2-42.

Acceptance of permanent custody by permanent surrender; "Permanent Surrender of Child," form 01666; procedures. OAC 5101:2-42-09.

Acceptance of temporary custody by agreement and court-approved extensions; "Agreement for Temporary Custody of Child," form 01645; procedures. OAC 5101:2-42-06 et seq.

Obtaining permanent custody: termination of parental rights. OAC 5101:2-42-95 et seq.

RULE 39. Out of county removal hearings

(A) **Notice of removal hearing.** Upon the filing of a removal action, the court in which the complaint is filed shall contact the court that issued the original dispositional order for information necessary for service of summons and issuance of notice of the removal hearing. The court that issued the original dispositional order shall respond within five days after receiving the request.

Summons shall issue pursuant to Juv. R. 15 and 16.

Notice of the removal hearing shall be sent by first class mail, as evidenced by a certificate of mailing filed with the clerk of court, to the following, not otherwise summoned, at least five days before the hearing:

- (1) The court issuing the dispositional order;
- (2) The guardian ad litem for the child;
- (3) Counsel for the child;
- (4) The placing entity;
- (5) The custodial entity;
- (6) The complainant;
- (7) The guardian ad litem and counsel presently representing the child in the court that issued the original dispositional order;
- (8) Any other persons the court determines to be appropriate.

(B) **Removal hearing.** The removal hearing shall be held not later than thirty days after service of summons is obtained. If, after the removal hearing, the court grants relief in favor of the complainant, the court shall send written notice of such relief to the juvenile court that issued the original dispositional order.

History: Effective, 7-1-98.

STAFF NOTES

7-1-98 AMENDMENT

RULE 39 OUT-OF-COUNTY REMOVAL HEARINGS

The 1998 addition of Juv. R. 39 was intended to establish procedures for removal actions, as defined in Juv. R. 2(E), which also was added by the 1998 amendments. Pursuant to Juv. R. 15(A), as in other cases within the purview of the Juvenile Rules, a summons must be issued to "the child, the parents, guardian, custodian, and any other persons who appear to the court to be proper or necessary parents." Juv. R. 39(A) includes a list of other entities and persons whose presence at the removal hearing may not be necessary, but who should be aware that the hearing will be conducted. This list includes, but is not limited to, the guardian ad litem and counsel for the child from the original proceeding in which the dispositional order was made, resulting in the child's out-of-county foster home placement.

Nothing contained in Juv. R. 39 is designed to obviate the authority of the court to regulate the proceedings.

Pursuant to Juv. R. 39(B), the time requirements for the scheduling of the hearing are predicated on service of summons.

Additional 1998 amendments governing removal actions were made to Juv. R. 2(E), 4(B), 10(A), 11(B), 15(B), and 29(A) and (E).

NOTES TO DECISIONS

Jurisdiction

Where a mother sought to preclude a juvenile court judge from exercising post-judgment jurisdiction over visitation and custody motions filed by the father of her child after the mother had filed her intent to relocate to North Carolina with the child, her claim that the judge no longer had jurisdiction over the matter lacked merit, as the juvenile court and the judge had general statutory authority over such issues pursuant to Ohio Rev. Code Ann. §§ 2151.23 and 2151.231. The mother also failed to show entitlement to the writ where she had an adequate remedy at law through either an appeal or a request to transfer the proceedings to North Carolina, pursuant to Ohio R. Juv. P. 11 and 39, such that dismissal of the complaint was warranted. *Rivers v. Ramsey*, — Ohio App. 3d —, 2006 Ohio 1744, — N.E. 2d —, 2006 Ohio App. LEXIS 1610 (Apr. 3, 2006).

RULE 40. Magistrates

(A) **Appointment.** The court may appoint one or more magistrates who shall be attorneys at law admitted to practice in Ohio. A magistrate appointed under this rule also may serve as a magistrate under Crim. R. 19. The court shall not appoint as a magistrate any person who has contemporaneous responsibility for working with, or supervising the behavior of, children who are subject to dispositional orders of the appointing court or any other juvenile court.

(B) **Compensation.** The compensation of magistrates shall be fixed by the court, and no part of the compensation shall be taxed as costs.

(C) **Authority.**

(1) *Scope.* To assist juvenile courts of record and pursuant to reference under Juv. R. 40(D)(1), magistrates are authorized, subject to the terms of the relevant

reference, to do any of the following:

(a) Determine any motion in any case, except a case involving the determination of a child's status as a serious youthful offender;

(b) Conduct the trial of any case that will not be tried to a jury, except the adjudication of a case against an alleged serious youthful offender;

(c) Upon unanimous written consent of the parties, preside over the trial of any case that will be tried to a jury; except the adjudication of a case against an alleged serious youthful offender;

(d) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) *Regulation of proceedings.* In performing the responsibilities described in Juv. R. 40(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

(d) Calling the parties to the action and examining them under oath;

(e) When necessary to obtain the presence of an alleged contemnor in cases involving direct or indirect contempt of court, issuing an attachment for the alleged contemnor and setting the type, amount, and any conditions of bail pursuant to Crim. R. 46;

(f) Imposing, subject to Juv. R. 40(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

(D) Proceedings in Matters Referred to Magistrates

(1) *Reference by court of record.*

(a) *Purpose and method.* A court may, for one or more of the purposes described in Juv. R. 40(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.

(b) *Limitation.* A court may limit a reference by specifying or limiting the magistrate's powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) *Magistrate's order; motion to set aside magistrate's order.*

(a) *Magistrate's order.*

(i) *Nature of order.* Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) *Form, filing, and service of magistrate's order.* A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their attorneys.

(iii) *Magistrate's order include.* A magistrate's order includes any of the following:

(A) Pretrial proceedings under Civ. R. 16;

(B) Discovery proceedings under Civ. R. 26 to 37, Juv.

R. 24, and Juv. R.25;

(C) Appointment of an attorney or guardian ad litem pursuant to Juv. R. 4 and Juv. R.29(B)(4);

(D) Taking a child into custody pursuant to Juv. R. 6;

(E) Detention hearings pursuant to Juv. R. 7;

(F) Temporary orders pursuant to Juv. R. 13;

(G) Extension of temporary orders pursuant to Juv. R. 14;

(H) Summons and warrants pursuant to Juv. R. 15;

(I) Preliminary conferences pursuant to Juv. R. 21;

(J) Continuances pursuant to Juv. R. 23;

(K) Deposition orders pursuant to Juv. R. 27(B)(3);

(L) Orders for social histories, physical and mental examinations pursuant to Juv. R. 32;

(M) Proceedings upon application for the issuance of a temporary protection order as authorized by law;

(N) Other orders as necessary to regulate the proceedings.

(b) *Motion to set aside magistrate's order.* Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

(3) *Magistrate's decision; objections to magistrate's decision.*

(a) *Magistrate's decision.*

(i) *When required.* Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under Juv. R. 40(D)(1).

(ii) *Findings of fact and conclusions of law.* Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) *Form, filing, and service of magistrate's decision.* A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv. R. 40(D)(3)(b).

(b) *Objections to magistrate's decision.*

(i) *Time for filing.* A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Juv. R. 40(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law,

the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) *Specificity of objection.* An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

(iii) *Objection to magistrate's factual finding; transcript or affidavit.* An objection to a factual finding, whether or not specifically designated as a finding of fact under Juv. R. 40(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(iv) *Waiver of right to assign adoption by court as error on appeal.* Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv. R. 40(D)(3)(b).

(4) *Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.*

(a) *Action of court required.* A magistrate's decision is not effective unless adopted by the court.

(b) *Action on magistrate's decision.* Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.

(c) *If no objections are filed.* If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

(d) *Action on objections.* If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) *Entry of judgment or interim order by court.* A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) *Judgment.* The court may enter a judgment either during the fourteen days permitted by Juv. R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Juv. R. 40(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the

judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) *Interim order.* The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown.

(5) *Extension of time.* For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

(6) *Disqualification of a magistrate.* Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.

(7) *Recording of proceedings before a magistrate.* Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

(8) *Contempt in the presence of a magistrate.*

(a) *Contempt order.* Contempt sanctions under Juv. R. 40(C)(2)(f) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

(b) *Filing and provision of copies of contempt order.* A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) *Review of contempt order by court; bail.* The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

History: Amended, eff 7-1-75; 7-1-85; 7-1-92; 7-1-95; 7-1-98; 7-1-01; 7-1-03, 7-1-06.

The provisions of § 3 of HB 393 (149 v —) read as follows:

SECTION 3. The General Assembly hereby encourages the Supreme Court to amend the Juvenile Rules to make clear that, while a magistrate may not try or sentence a case involving an alleged or adjudicated serious youthful offender, a magistrate may handle ministerial duties in that type of case, including arraignment and setting bail.

STAFF NOTES

7-1-06 AMENDMENT

Rule 40 has been reorganized in an effort to make it more helpful to bench and bar and reflective of developments since the rule was last substantially revised effective July 1, 1995. The relatively-few significant changes included in the reorganization are noted below.

Rule 40(A) Appointment

Juv. R. 40(A) is similar to former Juv. R. 40(A), except that it now requires all magistrates appointed pursuant to the rule to be attorneys admitted to practice in Ohio. The former rule allowed magistrates first appointed prior to July 1, 1995 to be nonattorneys.

Rule 40(B) Compensation

Juv. R. 40(B) is the same as former Juv. R. 40(B).

Rule 40(C) Authority

Juv. R. 40(C) is drawn largely from former Juv. R. 40(C)(1) and (2) and reflects the admonition of the Supreme Court that "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a *substitute* for the judicial functions but only an aid to them." *Hart v. Munobe* (1993), 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617 (emphases added). Juv. R. 40(C) specifies that juvenile court magistrates may determine motions and conduct trials but may not preside over the determination or trial of a serious youthful offender.

Rule 40(D) Proceedings in Matters Referred to Magistrates

Juv. R. 40(D)(1) through (4) treat each of the steps that potentially occur if a magistrate participates: (1) reference to a magistrate; (2) magistrate's orders and motions to set aside magistrate's orders; (3) magistrate's decisions and objections to magistrate's decisions; and (4) action of the court on magistrate's decisions and on any objections to magistrate's decisions and entry of judgment or interim order by the court. Juv. R. 40(D)(5) through (8) deal with good cause extensions of time, disqualification of a magistrate, recording of proceedings before a magistrate, and contempt in the presence of a magistrate.

Reference by court of record

Juv. R. 40(D)(1), unlike former Juv. R. 40(C)(1)(b), specifically authorizes reference of types of matters by rule as well as by a specific or general order of reference. In so doing, it recognizes existing practice in some courts. See, e.g., Loc. R. 99.02, Franklin Cty. Ct. of Common Pleas; Loc. R. 23(B), Hamilton Cty. Ct. of Common Pleas; State ex rel. Nalls v. Russo, 96 Ohio St.3d 410, 412-13, 2002-Ohio-4907 at ¶¶ 20-24, 775 N.E.2d 522; Davis v. Reed (Aug. 31, 2000), 8th Dist. App. No. 76712, 2000 WL 1231462 at *2 (citing White v. White (1977), 50 Ohio App.2d 263, 266-268, 362 N.E.2d 1013), and Partridge v. Partridge (Aug. 27, 1999), 2nd Dist. App. No. 98 CA 38, 1999 WL 945046 at *2, (treating a local rule of the Greene Cty. Ct. of Common Pleas, Dom. Rel. Div., as a standing order of reference).

Magistrate's order; motion to set aside magistrate's order

Juv. R. 40(D)(2)(a)(i) generally authorizes a magistrate to enter orders without judicial approval if necessary to regulate the proceedings and, adapting language from Crim. R. 19(B)(5)(a), if "not dispositive of a claim or defense of a party." The new language removes the arguably limiting title of former Juv. R. 40(C)(3)(a) ["Pretrial orders"] and is intended to more accurately reflect proper and existing practice. This language is not intended to narrow the power of a magistrate to enter orders without judicial approval. Juv. R. 40(D)(2)(a) lists certain actions that are included as magistrate orders. These are similar to those listed in former Juv. R. 40(C)(3), with the addition of division (D)(2)(a)(iii)(M) regarding the issuance of a temporary protection order. However, consistent with the admonition in Hart, supra, any temporary protection order issued as a result of such proceedings must be signed by a judge.

Juv. R. 40(D)(2)(b) replaces language in former Juv. R. 40(C)(3)(b), which purported to authorize "[a]ny person" to "appeal to the court" from any order of a magistrate "by filing a motion to set the order aside." The new language refers to the appropriate challenge to a magistrate's order as solely a "motion to set aside" the order. Juv. R. 40(D)(2)(b) likewise limits the authorization to file a motion to "any party," though an occasional nonparty may be entitled to file a motion to set aside a magistrate's order. Sentence two of Juv. R. 40(D)(2)(b) changes the trigger for the ten days permitted to file a motion to set aside a magistrate's order from entry of the order to filing of the order, as the latter date is definite and more easily available to counsel. Juv. R. 40(D)(2)(b) retains the provision of former Juv. R. 40(C)(3)(b) that the pendency of a motion to set aside a magistrate's order does not stay the effectiveness of the magistrate's order, although the magistrate or the court, by order, may stay the magistrate's order.

Magistrate's decision; objections to magistrate's decision

Juv. R. 40(D)(3) prescribes procedures for preparation of a magistrate's decision and for any objections to a magistrate's decision.

Juv. R. 40(D)(3)(a)(ii), unlike former Juv. R. 40(E)(2), adapts language from Civ. R. 52 rather than simply referring to Civ. R. 52. The change is intended to make clear that, e.g., a request for findings of fact and conclusions of law in a referred matter should be directed to the magistrate rather than to the court. Juv. R. 40(D)(3)(a)(ii) explicitly authorizes a magistrate's decision, subject to the terms of the relevant reference, to be general absent a timely request for findings of fact and conclusions of law or a provision of law that provides otherwise. Occasional decisions under former Juv. R. 40 said as much. See, e.g., *In re Chapman* (Apr. 21, 1997), 12th Dist. App. No. CA96-07-127, 1997 WL 194879 at *2; *Burke v. Brown*, 4th Dist. App. No. 01CA731, 2002-Ohio-6164 at ¶ 21; and *Rush v. Schlagetter* (Apr. 15, 1997), 4th Dist. App. No. 96CA2215, 1997 WL 193169 at *3. For a table of sections of the Ohio Revised Code that purport to make findings of fact by judicial officers mandatory in specified circumstances, see 2 Klein-Darling, Ohio Civil Practice § 52-4, 2002 Pocket Part at 136 (West Group 1997).

Juv. R. 40(D)(3)(a)(iii) now requires that the magistrate's decision be served on the parties or their attorneys no later than three days after the decision was filed. The former rule contained no specific time requirement. The provision further requires that a magistrate's decision include a conspicuous warning of the waiver rule prescribed by amended Juv. R. 40(D)(3)(b)(iv). The latter rule now provides that a party shall not assign as error on appeal a court's adoption of any factual finding or legal conclusion of a magistrate, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40(D)(3)(a)(ii), unless that party has objected to that finding or conclusion as required by Juv. R. 40(D)(3)(b). While the prior waiver rule, prescribed by former Juv. R. 40(E)(3)(b) (effective July 1, 1995) and former Juv. R. 40(E)(3)(d) (effective July 1, 2003), arguably applied only to findings of fact or conclusions of law specifically designated as such, the amended waiver rule applies to any factual finding or legal conclusion in a magistrate's decision and the required warning is broadened accordingly.

Juv. R. 40(D)(3)(b)(i) retains the fourteen-day time for filing written objections to a magistrate's decision. While the rule continues to authorize filing of objections by a "party," it has been held that a non-party attorney can properly object to a magistrate's decision imposing sanctions on the attorney. *All Climate Heating & Cooling, Inc. v. Zee Properties, Inc.* (May 17, 2001), 10th Dist. App. No. 00AP-1141, 2001 WL 521408 at *3.

Sentence one of Juv. R. 40(D)(3)(b)(iii) requires that an objection to a factual finding in a magistrate's decision, whether or not specifically designated as a finding of fact under Juv. R. 40(D)(3)(a)(ii), be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or by an affidavit of that evidence if a transcript is not available. The Supreme Court has prescribed the consequences on appeal of failure to supply the requisite transcript or affidavit as follows: (1) "appellate review of the court's findings is limited to whether the trial court abused its discretion in adopting the [magistrate's decision]" and (2) "the appellate court is precluded from considering the transcript of the hearing submitted with the appellate record." State ex rel. Duncan v. Chippewa Twp. Trustees (1995), 73 Ohio St.3d 728, 730, 654 N.E.2d 1254.

Sentence two of Juv. R. 40(D)(3)(b)(iii) adds a new requirement, adapted from Loc. R. 99.05, Franklin Cty. Ct. of Common Pleas, that the requisite transcript or affidavit be filed within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. The last sentence of Juv. R. 40(D)(3)(b)(iii) allows an objecting party to seek leave of court to supplement previously filed objections where the additional objections become apparent after a transcript has been prepared.

Juv. R. 40(D)(3)(b)(iv), as noted above, expands the "waiver rule" prescribed by former Juv. R. 40(E)(3)(b) (effective July 1, 1995) and former Juv. R. 40(E)(3)(d)

(effective July 1, 2003) to include any factual finding or legal conclusion in a magistrate's decision, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40(D)(3)(a)(ii). The Rules Advisory Committee was unable to discern a principled reason to apply different requirements to, e.g., a factual finding depending on whether or not that finding is specifically designated as a finding of fact under Juv. R. 40(D)(3)(a)(ii). An exception to the "waiver rule" exists for plain error, which cannot be waived based on a party's failure to object to a magistrate's decision.

Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by the court

Juv. R. 40(D)(4)(a), like sentence one of former Juv. R. 40(E)(4)(a), confirms that a magistrate's decision is not effective unless adopted by the court.

Juv. R. 40(D)(4)(b) provides that a court may properly choose among a wide range of options in response to a magistrate's decision, whether or not objections are timely filed. See, e.g., *Johnson v. Brown* 2nd Dist. App. No. 2002 CA 76, 2003-Ohio-1257 at ¶ 12 (apparently concluding that former Civ. R. 53(E)(4)(b) permitted the trial court to modify an aspect of the magistrate's decision to which no objection had been made).

Juv. R. 40(D)(4)(c) provides that if no timely objections are filed, the court may adopt a magistrate's decision, unless the court determines that there is an error of law or other defect evident on the face of the decision. A similar result was reached under sentence two of former Civ. R. 53(E)(4)(a). See, e.g., *Perrine v. Perrine*, 9th Dist. App. No. 20923, 2002-Ohio-4351 at ¶ 9; *City of Ravenna Police Dept. v. Sicuro* (Apr. 30, 2002), 11th Dist. App. No. 2001-P-0037; and *In re Weingart* (Jan. 17, 2002), 8th Dist. App. No. 79489, 2002 WL 68204 at *4. The language of Juv. R. 40(D)(4)(c) has been modified in an attempt to make clear that the obligation of the court does not extend to any "error of law" whatever but is limited to errors of law that are evident on the face of the decision. To the extent that decisions such as *In re Kelley*, 11th Dist. App. No. 2002-A-0088, 2003-Ohio-194 at ¶ 8 suggest otherwise, they are rejected. The "evident on the face" standard does not require that the court conduct an independent analysis of the magistrate's decision. The amended rule does not speak to the effect, if any, on the waiver rule prescribed by amended Juv. R. 40(D)(3)(b)(iv) of the "evident on the face" requirement. At least two courts have explicitly held that the "evident on the face" standard generates an exception to the waiver rule. *Dean-Kitts v. Dean*, 2nd Dist. App. No. 2002CA18, 2002-Ohio-5590 at ¶ 13 and *Hennessy v. Hennessy* (Mar. 24, 2000), 6th Dist. App. No. L-99-1170, 2000 WL 299450 at *1. Other decisions have indicated that the standard may generate an exception to the waiver rule. *Ohlin v. Ohlin* (Nov. 12, 1999), 11th Dist. App. No. 98-PA-87, 1999 WL 1580977 at *2; *Group One Realty, Inc. v. Dixie Intl. Co.* (1998), 125 Ohio App.3d 767, 769, 709 N.E.2d 589; *In re Williams* (Feb. 25, 1997), 10th Dist. App. No. 96APF06-778, 1997 WL 84659 at *1. However, the Supreme Court applied the waiver rule three times without so much as referring to the "evident on the face" standard as a possible exception. *State ex rel. Wilson v. Industrial Comm'n.* (2003), 100 Ohio St. 3d 23, 24, 2003-Ohio-4832 at ¶ 4, 795 N.E.2d 662; *State ex rel. Abate v. Industrial Comm'n.* (2002), 96 Ohio St.3d 343, 2002-Ohio-4796, 774 N.E.2d 1212; *State ex rel. Booher v. Honda of America Mfg. Co., Inc.* (2000), 88 Ohio St.3d 52, 2000-Ohio-269, 723 N.E.2d 571.

As noted above, even if no timely objection is made, a court may, pursuant to Juv. R. 40(D)(4)(b), properly choose a course of action other than adopting a magistrate's decision, even if there is no error of law or other defect evident on the face of the magistrate's decision.

Sentence one of Juv. R. 40(D)(4)(d), like sentence one of former Juv. R. 40(E)(4)(b), requires that the court rule on timely objections. Sentence two of Juv. R. 40(D)(4)(d) requires that, if timely objection is made to a magistrate's decision, the court give greater scrutiny than if no objections are made. The "independent review as to the objected matters" standard that applies if timely objection is made

should be distinguished from the lesser scrutiny permitted if no objections to a magistrate's decision are timely filed, the latter standard having been first adopted by former Juv. R. 40(E)(4)(a), effective July 1, 1995, and retained by new Juv. R. 40(D)(4)(c), discussed above.

The "independent review as to the objected matters" standard is intended to exclude the more limited appellate standards of review and codify the practice approved by most courts of appeals. The Second District Court of Appeals has most clearly and consistently endorsed and explained that standard. See, e.g., *Crosby v. McWilliam*, 2nd Dist. App. No. 19856, 2003-Ohio-6063; *Quick v. Kwiatkowski* (Aug. 3, 2001), 2nd Dist. App. No. 18620, 2001 WL 871406 (acknowledging that "Magistrates truly do the 'heavy lifting' on which we all depend"); *Knauer v. Keener* (2001), 143 Ohio App.3d 789, 758 N.E.2d 1234. Other district courts of appeal have followed suit. *Reese v. Reese*, 3rd Dist. App. No. 14-03-42, 2004-Ohio-1395; *Palenshus v. Smile Dental Group, Inc.*, 3rd Dist. App. No. 3-02-46, 2003-Ohio-3095; *Huffer v. Chafin*, 5th Dist. App. No. 01 CA 74, 2002-Ohio-356; *Rhoads v. Arthur* (June 30, 1999), 5th Dist. App. No. 98CAF10050, 1999 WL 547574; *Barker v. Barker* (May 4, 2001), 6th Dist. App. No. L-00-1346, 2001 WL 477267; *In re Day*, 7th Dist. App. No. 01 BA 28, 2003-Ohio-1215; *State ex rel. Ricart Auto. Personnel, Inc. v. Industrial Comm'n. of Ohio*, 10th Dist. App. No. 03AP-246, 2003-Ohio-7030; *Holland v. Holland* (Jan. 20, 1998), 10th Dist. App. No. 97APF08-974, 1998 WL 30179; *In re Gibbs* (Mar. 13, 1998), 11th Dist. App. No. 97-L-067, 1998 WL 257317.

Only one court of appeals appears consistently and knowingly to have taken a different approach. *Lowery v. Keystone Bd. of Ed.* (May 9, 2001), 9th Dist. App. No. 99CA007407, 2001 WL 490017; *Weber v. Weber* (June 30, 1999), 9th Dist. App. No. 2846-M, 1999 WL 459359; *Meadows v. Meadows* (Feb. 11, 1998), 9th Dist. App. No. 18382, 1998 WL 78686; *Rogers v. Rogers* (Dec. 17, 1997), 9th Dist. App. No. 18280, 1997 WL 795820.

The Rules Advisory Committee believes that the view adopted by the majority of courts of appeals is correct and that no change was made by the 1995 amendments to Juv. R. 40 in the review required of a trial judge upon the filing of timely objections to a magistrate's report.

The phrase "as to the objected matters" permits a court to choose to limit its independent review to those matters raised by proper objections. If a court need apply only the "defect evident on the face" standard if no objections are filed at all, then, if one or more objections are filed, a court logically need apply the more stringent independent review only to those aspects of the magistrate's decision that are challenged by that objection or those objections.

Sentence three of Juv. R. 40(D)(4)(d) provides that, before ruling on objections, a court may hear additional evidence and that it may refuse to hear additional evidence unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

Juv. R. 40(D)(4)(e) is similar to former Juv. R. 40(D)(4)(c) and requires that a court that adopts, rejects, or modifies a magistrate's decision also enter a judgment or interim order. Juv. R. 40(D)(4)(e)(i) permits the court to enter a judgment during the fourteen days permitted for the filing of objections to a magistrate's decision but provides that the timely filing of objections operates as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered. Juv. R. 40(D)(4)(e)(ii) permits the court, if immediate relief is justified, to enter an interim order during the fourteen days permitted for the filing of objections to a magistrate's decision. The timely filing of objections does not stay such an interim order, but the order may not properly extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. Juv. R. 40(D)(4)(e)(iii) allows multiple twenty-eight day extensions, whereas the former Juv. R. 40(D)(4)(c) allowed only one such extension.

Extension of time

Juv. R. 40(D)(5) is new and requires the court, for good cause shown, to provide an objecting party with a reasonable extension of time to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" would include the failure of a party to receive timely service of the magistrate's order or decision.

Disqualification of a magistrate

Juv. R. 40(D)(6) has no counterpart in former Juv. R. 40. The statutory procedures for affidavits of disqualification apply to judges rather than magistrates. Rev. Code §§ 2101.39, 2501.13, 2701.03, 2701.131; *In re Disqualification of Light* (1988), 36 Ohio St.3d 604, 522 N.E.2d 458. The new provision is based on the observation of the Chief Justice of the Supreme Court that "[t]he removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate and should be brought by a motion filed with the trial court." *In re Disqualification of Wilson* (1996), 77 Ohio St. 3d 1250, 1251, 674 N.E.2d 260; see also *Mascorro v. Mascorro* (June 9, 2000), 2nd Dist. App. No. 17945, 2000 WL 731751 at *3 (citing *In re Disqualification of Wilson*); *Reece v. Reece* (June 22, 1994), 2nd Dist. App. No. 93-CA-45, 1994 WL 286282 at *2 ("Appointment of a referee is no different from any other process in which the trial court exercises discretion it is granted by statute or rule. * * * If the defect concerns possible bias or prejudice on the part of the referee, that may be brought to the attention of the court by motion."); *Moton v. Ford Motor Credit Co.*, 5th Dist. App. No. 01CA74, 2002-Ohio-2857, appeal not allowed (2002), 95 Ohio St.3d 1422, 2002-Ohio-1734, 766 N.E.2d 163, reconsideration denied (2002), 95 Ohio St.3d 1476, 2002-Ohio-244, 768 N.E.2d 1183; *Walser v. Dominion Homes, Inc.* (June 11, 2001), 5th Dist. App. No. 00-CA-G-11-035, 2001 WL 704408 at *5; *Unger v. Unger* (Dec. 29, 2000), 12th Dist. App. No. CA2000-04-009, 2000 WL 1902196 at *2 (citing *In re Disqualification of Wilson*, supra); *Jordan v. Jordan* (Nov. 15, 1996), 4th Dist. App. No. 1427, 1990 WL 178162 at *5 ("Although referees are not judges and arguably, are not bound by Canon 3(C)(1) of the Code of Judicial Conduct, it would appear axiomatic that a party should be able to petition the court to have a referee removed from the case if the referee is unable to render a fair and impartial decision."); *In re Reiner* (1991), 74 Ohio App.3d 213, 220, 598 N.E.2d 768 ("where a referee affirmatively states that he is biased on the matter before him, it is an abuse of the court's discretion to fail to recuse the referee"). Particularly because "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a substitute for the judicial functions but only an aid to them," *Hart v. Munobe* (1993), 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617 (emphases added), Juv. R. 40(D)(6) contemplates that disqualification on a ground other than bias may sometimes be appropriate.

Recording of proceedings before a magistrate

Juv. R. 40(D)(7), generally requiring recording of proceedings before a magistrate, is taken verbatim from former Juv. R. 40(D)(2).

Contempt in the presence of a magistrate

Juv. R. 40(D)(8) is adapted from sentences two, three, and four of former Juv. R. 40(C)(3)(c). Juv. R. 40(D)(8)(b), unlike its predecessor, explicitly requires that the clerk provide a copy of a contempt order to the subject of the order.

7-1-01 AMENDMENT

RULE 40(C) REFERENCE AND POWERS

Divisions (C)(1)(a)(i), (ii), and (iii) were amended to reflect that certain proceedings involving serious youthful offenders shall not be referred to a magistrate, i.e., the hearing on a motion to determine if there is probable cause to prosecute the child as a serious youthful offender, and the adjudication itself, whether to a jury or not. These restrictions recognize the

seriousness of the charges and their determination, and are consistent with the restrictions upon the use of magistrates within the Criminal Rules.

Substitute Senate Bill 179, effective January 1, 2002, created the new category of serious youthful offender. Juv. R. 2(KK) was added effective July 1, 2001, defining serious youthful offender as "a child eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code."

7-1-98 AMENDMENT

RULE 40(E) DECISIONS IN REFERRED MATTERS

The 1998 amendment was to division (E)(4)(b) of this rule. The amendment was made because some trial judges apparently had avoided ruling upon objections to magistrates' reports since the previous rule appeared to require only "consideration" of the objections. The amendment should clarify that the judge is to rule upon, not just consider, any objections.

An identical amendment was made to division (E)(4)(b) of Civ. R. 53, also effective July 1, 1998.

7-1-95 AMENDMENT

RULE 40 MAGISTRATES

Juvenile Rule 40 has been extensively revised. To the extent possible, the revisions mirror similar changes in Civ. R. 53 also effective July 1, 1995. For further clarification reference is made to those staff notes.

RULE 40(A) APPOINTMENT

Changes the title from referee to magistrate in juvenile court; requires all magistrates of juvenile courts to be attorneys; permits those who are not attorneys and are presently serving as referees (prior to July 1, 1995) to continue to serve as magistrates.

It is intended that this grandfather clause is personal to the non-attorney magistrate and is not extended to the position itself. Subsequent appointment of a non-attorney magistrate who otherwise qualifies under this rule will not affect the status of that non-attorney magistrate.

If otherwise applicable, this rule is intended to apply to "referees" as that term continues to exist in rule and statute.

RULE 40(B) COMPENSATION

Clarifies that the compensation of magistrates shall be fixed by the court; eliminates language that allows compensation to be taxed as costs in certain situations.

RULE 40(C) REFERENCE AND POWERS

(C)(1) Order of Reference. Division (C)(1)(a)(i) and (ii) set forth the subject matter and types of cases that may be referred to a magistrate by the court pursuant to an order of reference.

Division (C)(1)(a)(iii) adds specific language, consistent with the court's ruling in *Hart v. Munobe* (1993), 67 Ohio St.3d 3, that permits magistrates to conduct jury trials and, in order to obviate the consent issue in *Munobe*, requires that consent of the parties must be in writing.

Language is also added, as extracted from Civ. R. 53, which makes it clear that, except in cases under division (C)(1)(a)(iii), the consent of the parties to the order of reference is not required. This is consistent with the existing practice in the court.

Divisions (C)(1)(b) and (c) otherwise leave to the discretion of the court the form and contents of the order of reference and restates existing language in the rule.

(C)(2) General Powers. Subpoena language is updated; unnecessary language describing the handling of account cases is deleted. Division (C)(2)(e) incorporates language adopted July 1, 1993 in Civ. R. 53 which permits magistrates to issue attachments.

(C)(3) Power to Enter Orders. Division (C)(3)(a) grants to magistrates the power to enter specified orders that are temporary or interlocutory in nature. Due process guarantees to the parties are preserved by allowing any party to file a timely motion to set the order aside and requiring the court

itself to address that motion. This expansion of magistrate's power is consistent with similar provisions found elsewhere in rule and statute and is designed to expedite the processing of cases and the time limitations imposed by S.B. 89.

(C)(3)(c) Contempt in the Magistrate's Presence. Provides the magistrate with specific power to impose appropriate contempt sanctions where necessary and addresses conflicting case authority regarding the power of the magistrate to control the courtroom. Safeguards have been provided to assure due process guarantees.

(C)(3)(d) Other Orders. Clarifies that the amended rule is not intended to supersede existing authority which grants to magistrates or referees the power to enter certain orders but is designed to supplement that existing authority. As other rules and statutes continue to carry the term "referee," reference is also made to referees.

RULE 40(D) PROCEEDINGS

Prior division (C) is deleted; amended division (D) requires that all proceedings before a magistrate be recorded. If, due to the nature of the facility, the magistrate is not provided with a courtroom separate from chambers, those informal proceedings, such as conferences that would normally take place in chambers, need not be recorded.

RULE 40(E) DECISIONS IN REFERRED MATTERS

Eliminates the report-writing requirement unless specifically required by the order of reference; substitutes the requirement that, except in situations in which the magistrate may issue an order, a magistrate issue a written decision, which does not become effective until approved by the court; requires a magistrate to issue findings of fact and conclusions of law in three specific situations: 1) where the order of reference requires them, 2) where otherwise required by law, 3) where findings and conclusions are requested by any party pursuant to Civ. R. 52, assures due process guarantees by retaining the right to file objections; adds to Juv. R. 40 a provision originally found in Civ. R. 53 that allows a party additional time to file counterobjections; and specifies the action to be taken by the court in acting upon a magistrate's decision.

Division (E)(4)(b) contains a new provision that limits the court's power to hear additional evidence or hear the matter itself in certain situations thereby eliminating the double jeopardy issues raised in *Swisher v. Brady* (1978), 438 U.S. 204.

Division (E)(4)(c) addresses the issue of permanent and interim orders. All of these provisions reflect what has been existing practice in many courts in response to increased pressure on the court system to process a burgeoning caseload efficiently and expeditiously. Due process considerations mandate that access to the court via the objection process be retained. Findings and conclusions are restricted to those situations where required by the court or by law or where, in fact, the parties themselves believe findings and conclusions to be necessary. The amendment is designed to facilitate the expeditious resolution of cases while preserving to the parties rights similar to those afforded previously by Juv. R. 40.

Staff Note (July 1, 2003 Amendment)

Juvenile Rule 40(E) Decisions in referred matters

The amendment to this rule is identical to an amendment to Civ. R. 53(E), also effective July 1, 2003.

It was suggested to the Rules Advisory Committee that the waiver rule prescribed by sentence four of former Civ. R. 53(E)(3)(b) [identical to sentence four of former Juv. R. 40(E)(3)(b)] sometimes surprised counsel and *pro se* litigants because they did not expect to be required to object to a finding of fact or conclusion of law in a magistrate's decision in order to assign its adoption by the trial court as error on appeal. A review of relevant appellate decisions seemed to confirm that suggestion.

It was further suggested that counsel or a *pro se* litigant was particularly likely to be surprised by the waiver rule of sentence four of former Civ. R. 53(E)(3)(b) if a trial court, as

authorized by sentence two of Civ. R. 53(E)(4)(a), adopted a magistrate's decision prior to expiration of the fourteen days permitted for the filing of objections. See, e.g., *Riolo v. Navin*, 2002 WL 502408, 2002-Ohio-1551, (8th Dist. Ct. App., 4-19-2002).

Since 1995, the potential for surprise posed by the waiver rule may have been, exacerbated by the fact that, under the original versions of Juv. R. 40 and Civ. R. 53, a party did not, by failing to file an objection, waive the right to assign as error on appeal the adoption by the trial court of a finding or fact or conclusion of law of a referee. See 30 Ohio St. 3d xlii-xliii (1972) (original version of Juv. R. 40); *Normandy Place Associates v. Beyer*, 2 Ohio St.3d 102, 103 (1982) (syl. 1)(noting absence of waiver rule in original version of Civ. R. 53). As of July 1, 1985, sentence one of Juv. R. 40(E)(6) and sentence one of Civ. R. 53(E)(6) were amended to read "[a] party may not assign as error the court's adoption of a referee's finding of fact unless an objection to that finding is contained in that party's written objections to the referee's report" (emphasis added). See 18 Ohio St.2d xxxv (1985)(Juv. R. 40(E)(6)); *State ex rel. Donah v. Windham Exempted Village Sch. Dist. Bd. of Ed.*, 69 Ohio St.3d 114, 118 (1994) (confirming that the waiver rule of sentence one of the 1985 version of Civ. R. 53 applied only to findings of fact by referee). The wording of the waiver rule of sentence one of Juv. R. 40(E)(6) was modified slightly effective July 1, 1992. See 64 Ohio St.3d cxlv (1992); *In re McClure*, 1995 WL 423391, No. 7-95-2 (3d Dist. Ct. App., 7-19-95) (applying 1992 version of the waiver rule of sentence one of Juv. R. 40(E)(6)). The present waiver rule, which applies to both findings of fact and conclusions of law, took effect July 1, 1995, and represents a complete reversal of the position of the original Juv. R. 40. See *State ex rel. Booher v. Honda of America Mfg., Inc.*, 88 Ohio St. 3d 52 (2000) (confirming that the waiver rule of sentence four of Civ. R. 53(E)(3)(b), which is identical to the waiver rule of sentence four of Juv. R. 40(E)(3)(b), now applies to conclusions of law as well as to findings of fact by a magistrate).

The amendment thus makes three changes in Juv. R. 40(E), none of which are intended to modify the substantive scope or effect of the waiver rule contained in sentence four of former Juv. R. 40(E)(3)(b) [now division (E)(3)(d)]. First, the amendment retains, but breaks into three appropriately-titled subdivisions, the four sentences which comprised former Juv. R. 40(E)(3)(b). Sentences two and three of former Juv. R. 40(E)(3)(b) are included in a new subdivision (c) entitled "Objections to magistrate's findings of fact." Sentence four of former Juv. R. 40(E)(3)(b), which prescribes the waiver rule, is a new subdivision (d) entitled "Waiver of right to assign adoption by court as error on appeal."

Second, new language is inserted at the beginning of Juv. R. 40(E)(3)(a) to make it more evident that a party may properly file timely objections to a magistrate's decision even if the trial court has previously adopted that decision as permitted by Juv. R. 40(E)(4)(c).

Third, the amendment adds a new sentence to Juv. R. 40(E)(2), which sentence requires that a magistrate who files a decision which includes findings of fact and conclusions of law also provide a conspicuous warning that timely and specific objection as required by Juv. R. 40(E)(3) is necessary to assign as error on appeal adoption by the trial court of any finding of fact or conclusion of law. It is ordinarily assumed that rule language which prescribes a procedural requirement (see, e.g., sentence six of Civ. R. 51(A), which is analogous to the waiver rule of sentence four of Juv. R. 40(E)(3)) constitutes sufficient notice to counsel and to *pro se* litigants of that requirement. The Committee nonetheless concluded that the additional provision requiring that a magistrate's decision that includes findings of fact and conclusions of law call attention of counsel and *pro se* litigants to the waiver rule is justified because, as noted above, the original version of Juv. R. 40 imposed no waiver at all and even the 1985 and 1992 versions imposed waiver only as to findings of fact by referees.

Cross-References to Related Statutes

Referees; powers and duties, RC § 2151.16.

NOTES TO DECISIONS**INDEX**

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Generally

Appellant, who failed to file objections to a magistrate's decision as required by Ohio R. Juv. P. 40(D)(3)(b)(iv), failed to demonstrate that the magistrate committed plain error in accepting appellant's admission in a juvenile delinquency proceeding without first informing appellant that he had the right to subpoena witnesses; instead, the magistrate substantially complied with the requirements of Ohio R. Juv. P. 29(D) by informing appellant of the consequences of his plea and advising him that he was giving up the opportunity to question witnesses, to remain silent, and to call his own witnesses. Ohio R. Juv. P. 29(D) does not require a magistrate to inform an appellant of his right to subpoena witnesses. In re T.K.W., — Ohio App. 3d —, 2007 Ohio 1205, — N.E. 2d —, 2007 Ohio App. LEXIS 1026 (Mar. 13, 2007).

Although a juvenile failed to object to a magistrate's determination in his delinquency matter, as required by Ohio R. Juv. P. 40(D)(3)(b)(i), the exception to waiver under Rule 40(D)(4) applied, as the magistrate committed prejudicial, plain error under Ohio R. Crim. P. 52 when she failed to personally address the juvenile to ascertain that he voluntarily, knowingly, and intelligently waived his rights as required by Ohio R. Juv. P. 29(D). The magistrate's reliance on counsel's statement that he had explained the waiver of rights to the juvenile was improper, as was reliance on the juvenile's written waiver form, such that there was no substantial compliance with Rule 29(D). In re Tabler, — Ohio App. 3d —, 2007 Ohio 411, — N.E. 2d —, 2007 Ohio App. LEXIS 366 (Jan. 29, 2007).

Even if a mother had not waived her right to challenge a decision granting legal custody of her children to their grandparents by failing to file the objections required by former Ohio R. Juv. P. 40(E)(4)(c); the record supported the grant of legal custody to the grandparents as the evidence showed that the children were doing well in the grandparents' home, that the children were attending school on a regular basis, and that the mother's progress on her case plan was slow. In re Christopher M., — Ohio App. 3d —, 2007 Ohio 1040, — N.E.2d —, 2007 Ohio App. LEXIS 975 (Mar. 9, 2007).

In a child custody matter, a mother did not affirmatively demonstrate, under either Ohio R. Juv. P. 40 or Ohio R. Civ. P. 53, that a trial court did not independently review a magistrate's

recommendations, because the absence of language in the trial court's judgment that it had conducted such an independent review was insufficient to make this showing. In re Taylor G., — Ohio App. 3d —, 2006 Ohio 1992, — N.E. 2d —, 2006 Ohio App. LEXIS 1824 (Apr. 21, 2006).

Due to a mother's failure to file objections to a magistrate's decision, the trial court only was required to review the magistrate's decision to determine whether an error of law or other defect existed on the face of the magistrate's decision and the trial court found no such defect; the appellate court also found no error of law or other defect on the face of the magistrate's decision. In re K.X., Ohio App. 3d, 2005 Ohio 3791, N.E.2d, 2005 Ohio App. LEXIS 3489 (July 26, 2005).

Trial court did not err in overruling the father's objections to the magistrate's decision that permanent custody of the father's children was in the children's best interest, because the father's objections did not satisfy the requirements of Ohio R. Juv. P. 40 as the father failed to include a transcript of the magistrate hearing; also the father raised the identical issues that were overruled by the trial court in the direct appeal. In re Davis, — Ohio App. 3d —, 2005 Ohio 411, — N.E. 2d —, 2005 Ohio App. LEXIS 357 (Feb. 4, 2005).

Because the father failed to submit the transcript or affidavit of the hearing before the magistrate, as required by Ohio R. Juv. P. 40(E)(3)(c), the trial court was required to accept as true the magistrate's findings of fact regarding the father's unsuitability to parent his child. In re : M. O., — Ohio App. 3d —, — N.E.2d —, 2005 Ohio App. LEXIS 238 (Jan. 26, 2005).

Trial court did not abuse its discretion in designating a father as the residential parent of his two minor child where a magistrate found that the children were suffering from mental ailments as a result of the one-sided war prosecuted by the mother against the father, and the mother had engaged in what the magistrate referred to as the worst sort of parental alienation in that the mother had created an alternate sphere of reality, and had convinced the children they were victims of abuse, and where the mother's objections were vague, and did not meet the requirements for specificity, pursuant to Ohio R. Juv. P. 40. Allen v. Murphy, — Ohio App. 3d —, 2004 Ohio 2578, — N.E. 2d —, 2004 Ohio App. LEXIS 2285 (May 17, 2004).

Ohio R. Juv. P. 40(E)(4)(b) provides that a trial court shall rule on objections to a magistrate's decision and that a trial court may adopt, reject, or modify a magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter itself. A trial court is not required to hear additional evidence prior to ruling on objections. In re R.N., 2004 Ohio 4420, 2004 Ohio App. LEXIS 4010 (2004).

Because the materials before the trial court, when it ruled on the mother's objections to the magistrate's decision finding that the Children Services Board was not required to make reasonable efforts to eliminate the continued removal of the four children from the mother's home, did not specify the law under which the mother lost her parental rights with respect to the children's siblings, the validity of the trial court's proceedings was presumed. In re T.W., — Ohio App. 3d —, 2004 Ohio 4332, — N.E. 2d —, 2004 Ohio App. LEXIS 3928 (Aug. 18, 2004).

Denial of a father's motion for shared parenting for there being no change in child's or mother's circumstances as required by Ohio Rev. Code Ann. § 3109.04(E)(1)(a) was not abuse of discretion; the father failed to preserve the argument by properly objecting to a magistrate's decision under Ohio R. Juv. P. 40(E)(3)(c), (d), but the denial of his motion was supported by the evidence. Muirhead v. Boyd, — Ohio App. 3d —, 2003 Ohio 6901, — N.E. 2d —, 2003 Ohio App. LEXIS 6238 (Dec. 19, 2003).

The magistrate's noncompliance with JuvR 29(D) constituted plain error, rendering inapplicable the waiver of JuvR 40(E)(3)(b): In re Etter, 134 Ohio App. 3d 484, 731 N.E.2d 694, 1998 Ohio App. LEXIS 2571 (1998).

The court did not comply with JuvR 4 and 29 when it adopted the referee's report and proposed entry without sufficient findings to enable the court to make an independent determination that the juvenile properly waived counsel and entered an admission: In re Montgomery, 117 Ohio App. 3d 696, 691 N.E.2d 349, 1997 Ohio App. LEXIS 35 (1997).

An entry merely incorporating the recommendations of a referee's report does not suffice as a judgment. The report and the entry are to be separate and distinct instruments. In re Zakov, 107 Ohio App. 3d 716, 669 N.E.2d 344, 1995 Ohio App. LEXIS 6111 (1995).

The mother of the victim of the delinquent act was never specifically designated by the court as a "party," making her objections to the referee's report a nullity. There is an appearance of unfairness where a hearing on objections is conducted without defense counsel present. In re Ross, 107 Ohio App. 3d 35, 667 N.E.2d 1012, 1995 Ohio App. LEXIS 4791 (1995).

Although reports of referees may frequently be adopted by the trial court, JuvR 40 does not contemplate that the trial court rubber-stamp all reports by referees. In re Bradford, 30 Ohio App. 3d 87, 506 N.E.2d 925, 30 Ohio B. 185, 1986 Ohio App. LEXIS 10034 (1986).

Appeal

Trial court properly adopted a magistrate's custody determination regarding parties' two children where neither party filed objections, and as the trial court thereafter denied the mother's out-of-time objections, the waiver rule of Ohio R. Juv. P. 40(E)(3)(d) applied for purposes of her appeal, such that the custody issue was not reviewable. In re L.G., — Ohio App. 3d —, 2007 Ohio 591, — N.E. 2d —, 2007 Ohio App. LEXIS 545 (Feb. 12, 2007).

Because the father failed to file objections to the magistrate's decision which recommended granting permanent custody of his children to the agency, he waived his right to assign as error on appeal the trial court's adoption of the magistrate's decision. Although the father was required to file objections within 14 days of the magistrate's decision, the father did not file objections despite having been advised in a written document of that right. In re Williams, — Ohio App. 3d —, 2007 Ohio 2082, — N.E. 2d —, 2007 Ohio App. LEXIS 1934 (Apr. 30, 2007).

Since a mother did not appeal from a trial court's award of permanent custody, *res judicata* barred the mother from challenging in her appeal from the trial court's later decision dismissing her motion for alternative disposition the trial court's award of permanent custody. Even if the mother had asserted assignments of error addressing the trial court's adoption of the magistrate's decision, the mother failed to file objections to the decision, and thus, pursuant to Ohio R. Juv. P. 40(E)(3)(d), she was precluded from assigning as error the trial court's adoption of the findings of fact and conclusions of law from that decision. In re K.B., — Ohio App. 3d —, 2006 Ohio 3104, — N.E. 2d —, 2006 Ohio App. LEXIS 2967 (June 20, 2006).

Since a mother's failure to file objections to the magistrate's decision (and attendant failure to file a transcript with the lower court) prevented the trial court from independently reviewing the error that the mother assigned on appeal, the appellate court's analysis was limited to a review of the trial court's actions in light of the facts reflected in the magistrate's decision. Hence, even though the record on appeal contained a transcript of the proceedings before the magistrate, the appellate court was precluded from considering the transcript on appeal. In re Whaley, — Ohio App. 3d —, 2006 Ohio 4535, — N.E. 2d —, 2006 Ohio App. LEXIS 4512 (Sept. 1, 2006).

Father did not preserve the issue for appeal, under Ohio R. Juv. P. 40(E)(3)(d), because he failed to specifically object to the preponderance of the evidence standard which the magistrate issued to terminate his visitation rights. Instead, he objected to the result reached when applying the preponderance of evidence standard, not to the use of the standard itself. Antoine v. Lannom, — Ohio App. 3d —, 2006 Ohio 2354, — N.E. 2d —, 2006 Ohio App. LEXIS 2218 (May 10, 2006).

Since a mother failed to raise any objections to the magistrate's custody decision, as required by Ohio R. Juv. P. 40(E)(3)(d), she waived for purposes of appeal the issue of the propriety of the custody decision. In re T.C., — Ohio App. 3d —, 2006 Ohio 5504, — N.E. 2d —, 2006 Ohio App. LEXIS 5489 (Oct. 23, 2006).

Pursuant to Ohio R. Juv. P. 40(D)(3)(a) and Ohio R. Civ. P. 53(D)(3)(b), where a juvenile was adjudicated as delinquent and was thereafter found guilty of committing probation violations, which decisions were adopted by the trial court from a magistrate's determinations, and the juvenile failed to file objections to

the magistrate's decision with respect to the failure of the magistrate to appoint a guardian ad litem for him and to determine whether the juvenile's waiver of the right to counsel was voluntary, intelligent, or knowing, he waived any challenge on those issues on appeal except as to possible plain error. In re J-M, — Ohio App. 3d —, — N.E. 2d —, 2006 Ohio App. LEXIS 6131 (Nov. 22, 2006).

Where father's objections to a magistrate's decision, requiring him to have supervised visitation with the parties' daughter, were not specific with respect to issues regarding a psychologist's evaluation, as required by Ohio R. Juv. P. 40(E)(3)(b) and (d), they were waived for purposes of review. DePaul v. Phillips, 2005 Ohio 6784, 2005 Ohio App. LEXIS 6116 (2005).

Since a minor failed to file objections, as required by Ohio R. Juv. P. 40(E)(3)(d), to a magistrate's decision finding the minor delinquent and recommending that he be committed to the legal custody of the youth services department for six months, he waived his right to assign the trial court's adoption of the decision as error on appeal. In re J.H., — Ohio App. 3d —, 2005 Ohio 2398, — N.E. 2d —, 2005 Ohio App. LEXIS 2297 (May 18, 2005).

Where appellant, a juvenile, filed objections to a magistrate's decision and recommendation, which found that the juvenile should be adjudicated as a delinquent child, and the trial court overruled the juvenile's objections and adopted the magistrate's decision, pursuant to Ohio R. Juv. P. 40(E)(4)(b), the decision by the trial court was a judgment entry which ruled on the juvenile's objections, and inclusion of the "adoption" language was merely a reiteration of a prior judgment by the trial court; accordingly, the prior judgment clearly satisfied the requirements for determination of the action pursuant to Ohio Rev. Code Ann. § 2505.02(B)(1) as a final, appealable order, as it was detailed in indicating why the decision of the magistrate was adopted. In re Cox, 2005 Ohio 3899, 2005 Ohio App. LEXIS 3565 (2005).

Appellate court could not determine whether a magistrate's decision was contrary to the evidence as a mother failed to object to the magistrate's decision as required by Ohio R. Juv. P. 40(E)(3) and Ohio R. Civ. P. 53(E)(3) and failed to file a transcript of the hearing before the magistrate with the trial court. The appellate court could not consider the supplemental transcript filed by the mother as the trial court did not have the opportunity to review it before determining whether to adopt the magistrate's decision. In re K.X., Ohio App. 3d, 2005 Ohio 3791, N.E.2d, 2005 Ohio App. LEXIS 3489 (July 26, 2005).

Since a mother failed to object to a trial court's adoption of a magistrate's decision holding her in contempt for taking a child dependency exemption in violation of an agreed judgment, she waived all but plain error on appellate review; the case required application of plain error to prevent a manifest miscarriage of justice, and the mother's appellate argument was precluded. In re Moore, — Ohio App. 3d —, 2005 Ohio 747, — N.E. 2d —, 2005 Ohio App. LEXIS 725 (Feb. 24, 2005).

Although a dispositional hearing was required by Ohio Rev. Code Ann. § 2151.353(E)(2), based upon the fact that a county agency had petitioned for permanent custody of two minor children, because a grandmother failed to file an objection to a magistrate's determination, pursuant to Ohio R. Juv. P. 40(E)(3)(b), the error was not properly preserved for appellate review. In re McCann, — Ohio App. 3d —, 2004 Ohio 283, — N.E. 2d —, 2004 Ohio App. LEXIS 260 (Jan. 26, 2004).

Mother's assertions that the trial court erred in terminating her parental rights were not preserved for review where she failed to object to the alleged errors. In re K.M., — Ohio App. 3d —, 2003 Ohio 5781, — N.E. 2d —, 2003 Ohio App. LEXIS 5146 (Oct. 29, 2003).

When, in a child support enforcement proceeding, an obligor father complained, on appeal, that the enforcement agency did not provide him with an accounting, as the trial court had ordered it to do, the father waived this objection, under Ohio R. Juv. P. 40(E)(3)(b), by not raising it in the trial court within 14 days after a magistrate issued her decision in the father's case. Jones v. Bowens, 2003 Ohio 5224, 2003 Ohio App. LEXIS 4671 (2003).

Juvenile defendant waived all but plain error where she failed to object to a magistrate's decision accepting her admission to charges of delinquency; the judgment was affirmed where defen-

dant failed to show plain error in the magistrate's decision. In re Harper, 2003 Ohio 6666, 2003 Ohio App. LEXIS 5962 (2003).

Where a magistrate awarded a father the income tax dependency exemption for the parties' child and the mother objected, a resolution of the issue necessarily involved a factual analysis of evidence presented before the magistrate and the mother was required to support her objection with a transcript of the proceedings, however, as she failed to do so, she did not preserve the issue for appellate review and was precluded from raising this issue on appeal and, thus, the appellate court did not reach the merits of her argument. Adkins v. Doss, — Ohio App. 3d —, 2003 Ohio 7174, — N.E. 2d —, 2003 Ohio App. LEXIS 6622 (Dec. 31, 2003).

Appellate court could not review an objection to the magistrate's finding that the father was underemployed voluntarily and hid income and assets, as the father failed to provide the transcript of the magistrate's proceeding to the trial court; the trial court's requirement of child support was not an abuse of discretion and was affirmed. Howard v. Howard, — Ohio App. 3d —, 2003 Ohio 5683, — N.E. 2d —, 2003 Ohio App. LEXIS 5068 (Oct. 24, 2003).

Where a father failed to object to findings of fact and the conclusions made by a magistrate in a permanent custody and parental rights termination proceeding, he could not assign them as error on appeal pursuant to Ohio R. Juv. P. 40(E)(3)(b) and accordingly, his claim that some of the findings and conclusions were not supported by the evidence was not reviewable; an appellate court's review of the decision of a magistrate is limited to those issues for which a party filed objections, and such objections are to be filed within 14 days of the magistrate's decision being filed. In re Kincer, — Ohio App. 3d —, 2003 Ohio 6356, — N.E. 2d —, 2003 Ohio App. LEXIS 5689 (Nov. 24, 2003).

Parents were deemed to have waived two issues pursuant to Ohio R. Juv. P. 40(E)(3)(b) by failing to raise them in their objection to a magistrate's decision to terminate parental rights; the parents failed to claim that appointing a guardian ad litem as the children's attorney represented a conflict of interest and that the children's services board failed to comply with Ohio Admin. Code § 5101:2-42-96(D). In re Sessoms, — Ohio App. 3d —, 2003 Ohio 5281, — N.E. 2d —, 2003 Ohio App. LEXIS 4775 (Oct. 6, 2003).

Under JuvR 40, appellant's failure to object to the magistrate's findings of fact precludes appellant from raising matters on appeal that are directly related to those findings of fact and which form the basis of those findings although appellant is not challenging those findings directly. In re Williams, 1995 Ohio App. LEXIS 2672 (3rd Dist. 1995).

Appeal by state

There is no double jeopardy problem where the state appeals adverse findings of referees so long as there is no trial de novo before a juvenile judge and no new evidence may be introduced by the prosecution without consent of the juvenile. Swisher v. Brady, 438 U.S. 204, 57 L. Ed. 2d 705, 98 S. Ct. 2699, 1978 U.S. LEXIS 4 (1978).

Authority of juvenile judge

Juvenile Rule 40 permits a juvenile judge to appoint one or more referees and by order of reference to direct the referee to hear a specific case or a class of cases. But CFSupR 4 requires that the judge, to whom the case is assigned, be "primarily responsible for the determination of every issue and proceeding in the case until its termination". In re Leonhardt, 62 Ohio Misc. 2d 783, 610 N.E.2d 1238, 1993 Ohio Misc. LEXIS 7 (CP 1993).

A juvenile judge has no authority to commit the trial of a criminal charge against an adult to a referee and any proceedings so committed are null and void. State v. Eddington, 52 Ohio App. 2d 312, 369 N.E.2d 1054, 6 Ohio Op. 3d 317, 1976 Ohio App. LEXIS 5915 (1976).

Compatibility of offices

A person may serve as a part-time administrative hearing officer for a county child support enforcement agency and part-time magistrate of a court of common pleas in an adjacent county, provided that as a magistrate she does not preside over cases

involving the child support enforcement agency that employs her as an administrative hearing officer. (1989 Op. Att'y Gen. No. 89-072, distinguished.) Opinion No. 2005-022 (2005).

Confidential records

A referee's release of allegedly confidential records without review by the court is improper. Sharpe v. Sharpe, 85 Ohio App. 3d 638, 620 N.E.2d 916, 1993 Ohio App. LEXIS 1897 (1993).

Continuance

When a magistrate presiding over a juvenile delinquency proceeding granted appellant juvenile's motion for acquittal after denying the State's motion for a continuance to allow a key witness to appear, and a trial court sustained the State's objection to that ruling, it was not a violation of double jeopardy to remand the matter to the magistrate for a continuation of appellant's trial because, under Ohio R. Juv. P. 40(D)(4)(a), the magistrate's decision was not effective until it was adopted by the trial court, and the trial court's decision was not an attempt to punish appellant a second time for the same crime. Brown v. State, — Ohio App. 3d —, 2006 Ohio 4791, — N.E. 2d —, 2006 Ohio App. LEXIS 4698 (Sept. 11, 2006).

Custody

Even if a mother never agreed to a magistrate's interim custody order, she was incorrect that custody would default to her pursuant to RC § 3109.042, instead, custody defaulted to the father, pursuant to the magistrate's Ohio R. Juv. P. 40(E)(4)(c) temporary order naming the father the custodial parent. Goeller v. Moore, 2005 Ohio 292, 2005 Ohio App. LEXIS 249 (2005).

Because the mother failed to challenge the grounds for the emergency removal below, she could not argue that the agency failed to make reasonable efforts to prevent the child's removal. In re Lewis, — Ohio App. 3d —, 2003 Ohio 5262, — N.E. 2d —, 2003 Ohio App. LEXIS 4763 (Sept. 25, 2003).

The court's failure to prepare and serve the referee's report after the change-of-custody hearing vitiated that hearing. A litigant is entitled to an opportunity to object to the referee's findings of fact. In re Wright, 88 Ohio App. 3d 539, 624 N.E.2d 347, 1993 Ohio App. LEXIS 3441 (1993).

Defamation

As any magistrate's decision rendered in a minor's juvenile delinquency proceedings had absolutely no effect whatsoever, even if it contained recommendations regarding the minor's ultimate level of culpability for the counts with which he was originally charged, the trial court abused its discretion when it found a mother was entitled to judgment as a matter of law on the minor's father's defamation claim based on the substantial truth of the mother's statements that the minor was "a convicted sexual offender." Roe v. Heap, — Ohio App. 3d —, 2004 Ohio 2504, — N.E. 2d —, 2004 Ohio App. LEXIS 2093 (May 11, 2004).

Discretion of court

When objections based on the sufficiency or weight of the evidence are filed to a referee's report and recommendations and a transcript is ordered, a trial court does not have the discretion to overrule the objections and to adopt the referee's report without reviewing and considering the transcript. In re Moorehead, 75 Ohio App. 3d 711, 600 N.E.2d 778, 1991 Ohio App. LEXIS 4121 (1991).

Where a party objects to the report based on the manifest weight of the evidence, it is an abuse of discretion for the court to deny a request for a transcript without stating a substantial reason. In re Swain, 68 Ohio App. 3d 737, 589 N.E.2d 483, 1991 Ohio App. LEXIS 73 (1991).

Due process

Where a juvenile court granted extensions to allow a father to file supplemental objections to a magistrate's decision, but the father failed to do so, the juvenile court did not violate Ohio R. Juv. P. 40 or the father's due process rights in entering a custody order well after the time for filing had expired. In re Ballard, — Ohio App. 3d —, 2003 Ohio 3233, — N.E. 2d —, 2003 Ohio App. LEXIS 2900 (June 20, 2003).

Evidence

There was no apparent error on the face of the magistrate's decision terminating the father's visitations rights, based on allegations that the father's live-in boyfriend had sexually abused the younger son, that the trial court ignored. The evidence which the trial court elected to credit comfortably satisfied the standard of showing extraordinary circumstances. *Antoine v. Lannom*, — Ohio App. 3d —, 2006 Ohio 2354, — N.E. 2d —, 2006 Ohio App. LEXIS 2218 (May 10, 2006).

Hearing

Juvenile Rule 40(D) does not mandate a hearing whenever objections and an affidavit about evidence have been filed: In re Zindle, 107 Ohio App. 3d 342, 668 N.E.2d 969, 1995 Ohio App. LEXIS 4977 (1995).

By adopting the referee's report and recommendation "as is," without conducting an evidentiary hearing pursuant to JuvR 40(D)(2), the court perfunctorily approved a deficient report without making an independent analysis. Thus the judgment is void: In the Matter of Carlson, 1990 Ohio App. LEXIS 4894 (11th Dist. 1990).

Interim orders

Because the trial court never adopted the magistrate's decision, as required by former Ohio R. Juv. P. 40(E), which required the trial court to "adopt, reject, or modify" the magistrate's decision, the child support order never became a final judgment of the trial court and ceased to have any effect after the expiration of the interim order. Therefore, no material facts remained in dispute and the mother was entitled to judgment as a matter of law regarding any child support which had accrued as a result of any of the judgment entries issued after the interim order expired on February 25, 2002. *State ex rel. Rangel v. Woodbury*, — Ohio App. 3d —, 2007 Ohio 2151, — N.E. 2d —, 2007 Ohio App. LEXIS 1998 (May 3, 2007).

Interim order from a magistrate is only valid for 28 days, for the purpose of an interim order is to govern the actions of the parties until the court enters a final judgment; at the end of the 28 days, the judge must do one of the following: (1) extend the interim order for one more 28 day period, (2) if no objections to the magistrate's decision have been filed, adopt, reject, or modify the magistrate's decision and enter judgment accordingly, or (3) if objections to the magistrate's decision have been filed, rule on the objections and adopt, reject, or modify the magistrate's decision and enter judgment accordingly. Regardless, once the court enters an order ruling on a party's objections and adopting, rejecting, or modifying the magistrate's decision, the interim order expires by operation of law. *Steven D.C. v. Carrie Anne P.*, 2005 Ohio 3858, 2005 Ohio App. LEXIS 3548 (2005).

Judicial code of conduct

A juvenile court referee is an officer of the judicial system who performs judicial functions as outlined in CivR 53 and JuvR 40. The Judicial Code of Conduct, therefore, applies to juvenile court referees. Where a juvenile court referee is unable to be impartial, he should disqualify himself from the case. As a matter of law, where a referee affirmatively states that he is biased on the matter before him, it is an abuse of the court's discretion to fail to recuse the referee: In re Reiner, 74 Ohio App. 3d 213, 598 N.E.2d 768, 1991 Ohio App. LEXIS 2122 (1991).

Magistrate's findings

Absent a review of all of the evidence presented to the magistrate, the trial court lacked a sufficient basis to disregard the magistrate's findings and to render its own: In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (2006).

Order of reference

Juvenile Rule 40 does not require a specific journalized order of reference. An order authorizing a magistrate to "hear and recommend dispositions on official cases assigned to him as the court shall direct" was sufficient: *State ex rel. Nalls v. Russo*, 96 Ohio St. 3d 410, 2002 Ohio 4907, 775 N.E.2d 522, 2002 Ohio LEXIS 2398 (2002).

Pro se litigants

Pro se father, who was a convicted child sex offender, failed to state his objections to a magistrate's decision with specificity or particularity Ohio R. Juv. P. 40(E)(3) requires, and pro se civil litigants are not to be accorded greater rights than if represented by counsel. In re Tracy, — Ohio App. 3d —, 2003 Ohio 3781, — N.E. 2d —, 2003 Ohio App. LEXIS 3425 (July 3, 2003).

Sentencing decision

When a magistrate took the disposition of a juvenile delinquency case under advisement, after conducting adjudicatory and dispositional hearings, and then issued a sentencing decision without holding a hearing, the subject juvenile did not waive his assignments of error related to the manner in which he was sentenced by not filing objections to the magistrate's decision, under Ohio R. Juv. P. 40(E)(3), because he did not contest any findings of fact or conclusions of law entered by the magistrate, but, rather, only contested the manner of his sentencing. In re Gibson, — Ohio App. 3d —, 2006 Ohio 5145, — N.E. 2d —, 2006 Ohio App. LEXIS 5109 (Oct. 2, 2006).

Supplemental report

Where a juvenile, adjudged to be delinquent by a referee, files objections to the referee's report, and where the court then reserves judgment on the objections and requests the referee to supply a statement as to the evidence in the hearing, and where a supplemental report of the referee is then filed with court, but no copy of the supplemental report is served on the juvenile or his counsel, it is error for the court to then approve the referee's report, as supplemented, for the juvenile was not given an opportunity to object to the supplemental report in compliance with JuvR 40(D): In re Weimer, 19 Ohio App. 3d 130, 483 N.E.2d 173, 19 Ohio B. 219, 1984 Ohio App. LEXIS 12506 (1984).

Termination of parental rights

There was no error in failing to commence the permanent custody hearing (Ohio Rev. Code Ann. § 2151.414) anew after counsel was appointed for the children, pursuant to Ohio R. Juv. P. 4 and Ohio Rev. Code Ann. § 2151.352, because the conflict between the guardian ad litem's recommendation and the children's wishes only became apparent after the hearing had commenced; the error was waived since the mother failed to object, pursuant to Ohio R. Juv. P. 40(3)(a)(i); the attorney declined the opportunity to call other witnesses who had testified at the earlier hearing, with full knowledge of what those witnesses had said, because the attorney was provided a transcript of that earlier hearing; and after the attorney was appointed to represent the children, the mother could no longer claim standing to object that the children's rights in the subsequent proceedings were violated. In re R.E., — Ohio App. 3d —, 2006 Ohio 1256, — N.E. 2d —, 2006 Ohio App. LEXIS 1145 (Mar. 17, 2006).

Time limitations

As a father's objections to a magistrate's decision involving the date that child support was to commence were clearly untimely under Ohio R. Juv. P. 40(E)(3)(a) and Ohio R. Civ. P. 53(E)(3), warranting dismissal thereof by the juvenile court, and the father he did not seek to enlarge the time within which to file objections pursuant to Ohio R. Juv. P. 18(B) and Ohio R. Civ. P. 6(B), his time to appeal was not extended by the objections. His failure to appeal within 30 days of the juvenile court's adoption of the magistrate's decision did not preserve his merit issue for appellate review under Ohio R. App. P. 4(A). In re D.K.K., — Ohio App. 3d —, 2006 Ohio 5576, — N.E. 2d —, 2006 Ohio App. LEXIS 5590 (Oct. 20, 2006).

Transcript

Although the grandparents' arguments challenged the magistrate's proceedings, neither of their two motions to set aside the entries of the magistrate was accompanied by a transcript of the evidence relevant to their claims, nor did they explain why a transcript was not available so that an affidavit of that evidence could be presented. Their reliance on two personal affidavits which were attached to their motion and response was misplaced because the affidavits failed to satisfy the requirements of the Ohio Rules of Civil Procedure and the Juvenile Rules for the

support of challenges to the factual findings of a magistrate. In re I. S., — Ohio App. 3d —, 2007 Ohio 47, — N.E. 2d —, 2007 Ohio App. LEXIS 42 (Jan. 10, 2007).

In reviewing the decision of a magistrate granting permanent custody of a child to an agency, it was reversible error, under Ohio R. Juv. P. 40(E)(3)(b), for a trial court to overrule that decision without reviewing the entire transcript of the dispositional hearing at which that order was entered. In re L.R.T., 165 Ohio App. 3d 77, 2006 Ohio 207, 844 N.E. 2d 914, 2006 Ohio App. LEXIS 173 (Jan. 23, 2006).

Trial court properly denied objections of a father in a permanent custody proceeding to the findings and decision of a magistrate who recommended the grant of custody to the county agency, as the father failed to file a transcript with the trial court pursuant to Ohio R. Juv. P. 40(E)(3)(c); accordingly, the matter had not been properly perfected for appeal. In re Edwards, — Ohio App. 3d —, 2006 Ohio 3990, — N.E. 2d —, 2006 Ohio App. LEXIS 3919 (Aug. 3, 2006).

Where the state did not demonstrate that a transcript of a competency hearing was unavailable and the state's affidavit was fatally flawed, the transcript did not comply with the requirements of Ohio R. Juv. P. 40(E)(3)(c); consequently, the trial court erred in rejecting a magistrate's decision that found a juvenile incompetent to stand trial. In re E.B., — Ohio App. 3d —, 2005 Ohio 401, — N.E. 2d —, 2005 Ohio App. LEXIS 442 (Feb. 3, 2005).

Vacation of judgment

As a trial court had not ruled on a minor child's mother's objections to a magistrate's decision, which had granted legal custody of the child to the maternal aunt and uncle, the decision was not a final order and a motion to vacate under Ohio R. Civ. P. 60(B) was not proper; however, the trial court had jurisdiction to vacate, modify, or adopt the magistrate's decision pursuant to the mother's pending objections under Ohio R. Juv. P. 40. In re Murphy, — Ohio App. 3d —, 2006 Ohio 5527, — N.E. 2d —, 2006 Ohio App. LEXIS 5518 (Oct. 17, 2006).

Visiting judge

There was plain error in the journal entry transferring the permanent custody case to the docket of the visiting judge signed by a magistrate because, pursuant to Ohio R. Juv. P. 40 and Ohio R. Juv. P. 9, the magistrate was not empowered to refer cases to a visiting judge. Additionally, there was no notice of judicial approval by the sitting judge assigned the case. In re S.J., — Ohio App. 3d —, 2005 Ohio 1854, — N.E. 2d —, 2005 Ohio App. LEXIS 1763 (Apr. 21, 2005).

RULE 41. [Reserved]

RULE 42. Consent to marry

(A) **Application where parental consent not required.** When a minor desires to contract matrimony and has no parent, guardian, or custodian whose consent to the marriage is required by law, the minor shall file an application under oath in the county where the female resides requesting that the judge of the juvenile court give consent and approbation in the probate court for such marriage.

(B) **Contents of application.** The application required by division (A) of this rule shall contain all of the following:

- (1) The name and address of the person for whom consent is sought;
- (2) The age of the person for whom consent is sought;
- (3) The reason why consent of a parent is not required;
- (4) The name and address, if known, of the parent, where the minor alleges that parental consent is unnecessary because the parent has neglected or abandoned the child for at least one year immediately preceding the application.

(C) **Application where female pregnant or delivered of child born out of wedlock.** Where a female is pregnant or delivered of a child born out of wedlock and the parents of such child seek to marry even though one or both of them is under the minimum age prescribed by law for persons who may contract marriage, such persons shall file an application under oath in the county where the female resides requesting that the judge of the juvenile court give consent in the probate court to such marriage.

(D) **Contents of application.** The application required by subdivision (C) shall contain:

- (1) The name and address of the person or persons for whom consent is sought;
- (2) The age of such person;
- (3) An indication of whether the female is pregnant or has already been delivered;
- (4) An indication of whether or not any applicant under eighteen years of age is already a ward of the court; and
- (5) Any other facts which may assist the court in determining whether to consent to such marriage.

If pregnancy is asserted, a certificate from a physician verifying pregnancy shall be attached to the application. If an illegitimate child has been delivered, the birth certificate of such child shall be attached.

The consent to the granting of the application by each parent whose consent to the marriage is required by law shall be indorsed on the application.

(E) **Investigation.** Upon receipt of an application under subdivision (C), the court shall set a date and time for hearing thereon at its earliest convenience and shall direct that an inquiry be made as to the circumstances surrounding the applicants.

(F) **Notice.** If neglect or abandonment is alleged in an application under subdivision (A) and the address of the parent is known, the court shall cause notice of the date and time of hearing to be served upon such parent.

(G) **Judgment.** If the court finds that the allegations stated in the application are true, and that the granting of the application is in the best interest of the applicants, the court shall grant the consent and shall make the applicant referred to in subdivision (C) a ward of the court.

(H) **Certified copy.** A certified copy of the judgment entry shall be transmitted to the probate court.

History: Amended, eff 7-1-80; 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 42 CONSENT TO MARRY

Masculine references in Juv. R. 42 were replaced by gender neutral language and nonsubstantive grammatical revisions were made.

Cross-References to Related Statutes

Consent of juvenile court, RC § 3101.04.
Jurisdiction of juvenile court, RC § 2151.23.

Opinions of Attorney General

Minors

A minor youth who has been committed to the department of youth services pursuant to RC § § 2151.35.5 and 5139.05 and who wishes to get married must first obtain consent, as required by the applicable provisions of RC § 3101.01 and JuvR 42, from one or both parents, from one of the alternative authorities named in RC § 3101.01, or from the juvenile court as provided in JuvR 42(A). Pursuant to RC § 3101.01 and JuvR 42(A), the department of youth services has no authority to either consent or withhold

consent to the marriage of a minor committed to the legal custody of the department: OAG No. 89-046 (1989).

RULE 43. Reference to Ohio Revised Code

A reference in these rules to a section of the Revised Code shall mean the section as amended from time to time including the enactment of additional sections, the numbers of which are subsequent to the section referred to in the rules.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 43 REFERENCE TO OHIO REVISED CODE

Juv. R. 43 clarifies that any Revised Code section referred to in these rules shall mean the section as amended from time to time. This provision replicates Civ. R. 81.

RULE 44. Jurisdiction unaffected

These rules shall not be construed to extend or limit the jurisdiction of the juvenile court.

Cross-References to Related Statutes

Jurisdiction of juvenile court, RC § 2151.23.

NOTES TO DECISIONS

Jurisdiction

The juvenile court has exclusive original jurisdiction, pursuant to RC § 2151.23(A), concerning any child who is alleged in a proper complaint to be neglected, and the court does not lose jurisdiction by failing to adhere to the time limits set forth in JuvR 29(A) and 34(A): *Linger v. Weiss*, 57 Ohio St. 2d 97, 386 N.E.2d 1354, 11 Ohio Op. 3d 281, 1979 Ohio LEXIS 373 (1979).

RULE 45. Rules by juvenile courts; procedure not otherwise specified

(A) **Local rules.** The juvenile court may adopt rules concerning local practice that are not inconsistent with these rules. Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment but promptly shall afford notice and opportunity for comment. Local rules shall be filed with the Supreme Court.

(B) **Procedure not otherwise specified.** If no procedure is specifically prescribed by these rules or local rule, the court shall proceed in any lawful manner not inconsistent with these rules or local rule.

History: Amended, eff 7-1-94.

STAFF NOTES

7-1-94 AMENDMENT

RULE 45 RULES BY JUVENILE COURTS; PROCEDURE NOT OTHERWISE SPECIFIED

Division (A) has been added to permit juvenile courts to develop local rules not inconsistent with the Ohio Rules of Juvenile Procedure. This provision is consistent with similar changes in Civ. R. 83 and App. R. 31.

NOTES TO DECISIONS

Generally

Inasmuch as JuvR 22(A) provides that a party may move "for other appropriate relief," a juvenile presumably may move to limit the court's use of social histories before and during the adjudication. If it does not authorize such relief, then JuvR 45 provides the procedure when no procedure is specifically prescribed: *J. P. v. DeSanti*, 653 F.2d 1080, 1981 U.S. App. LEXIS 11411 (6th Cir. 1981).

RULE 46. Forms

The forms contained in the Appendix of Forms which the supreme court from time to time may approve are illustrative and not mandatory.

RULE 47. Effective Date

(A) **Effective date of rules.** These rules shall take effect on first day of July, 1972. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(B) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 12, 1973, shall take effect on the first day of July, 1973. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application is a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(C) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 10, 1975, and on April 29, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(D) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 9, 1976 shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(E) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 14, 1980, shall take effect on July 1, 1980. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(F) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on December 24, 1984 and January 8, 1985 shall take effect on July 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(G) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 10, 1991 shall take effect on July 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(H) **Effective date of amendments.** The amendments filed by the Supreme Court with the General Assembly on January 14, 1992 and further filed on April 30, 1992, shall take effect on July 1, 1992. They govern all proceedings in actions brought after they take effect and also all future proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(I) **Effective date of amendments.** The amendments filed by the Supreme Court with the General Assembly on January 14, 1994 and further revised and filed on April 29, 1994 shall take effect on July 1, 1994. They govern all proceedings in actions brought after they take effect and also all future proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(J) **Effective date of amendments.** The amendments to Rules 1, 4, and 40 filed by the Supreme Court with the General Assembly on January 11, 1995 and further revised and filed on April 25, 1995 shall take effect on July 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(K) **Effective date of amendments.** The amendments to Rules 6, 8, 13, 27, 34, 36, and 37 filed by the Supreme Court with the General Assembly on January 5, 1996 and refiled on April 26, 1996 shall take effect on July 1, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(L) **Effective date of amendments.** The amendments to Rule 30 filed by the Supreme Court with the General Assembly on January 10, 1997 and refiled on April 24, 1997 shall take effect on July 1, 1997. They govern all proceedings in actions brought after they take

effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(M) **Effective date of amendments.** The amendments to Rules 2, 4, 10, 11, 15, 16, 29, 39, and 40 filed by the Supreme Court with the General Assembly on January 15, 1998 and further revised and refiled on April 30, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(N) **Effective date of amendments.** The amendments to Juvenile Rules 2, 7, 8, 10, 15, 22, 27, 29, 37, and 40 filed by the Supreme Court with the General Assembly on January 12, 2001, and revised and refiled on April 26, 2001, shall take effect on July 1, 2001. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(O) **Effective date of amendments.** The amendments to Juvenile Rules 2, 10, 15, and 34 filed by the Supreme Court with the General Assembly on January 11, 2002, and refiled on April 18, 2002 shall take effect on July 1, 2002. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(P) **Effective date of amendments.** The amendments to Juvenile Rule 40 filed by the Supreme Court with the General Assembly on January 9, 2003 and refiled on April 28, 2003, shall take effect on July 1, 2003. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Q) **Effective date of amendments.** The amendments to Juvenile Rule 29 filed by the Supreme Court with the General Assembly on January 7, 2004 and refiled on April 28, 2004 shall take effect on July 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(R) **Effective date of amendments.** The amendments to Juvenile Rule 40 filed by the Supreme Court with the General Assembly on January 12, 2006 shall take effect on July 1, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when

the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

History: Amended, eff 7-1-73; 7-1-75; 7-1-76; 7-1-80; 7-1-85; 7-1-91; 7-1-92; 7-1-94; 7-1-95; 7-1-96; 7-1-97; 7-1-98; 7-1-01; 7-1-02; 7-1-03; 7-1-04; 7-1-06.

RULE 48. Title

These rules shall be known as Ohio Rules of Juvenile Procedure and may be cited as "Juvenile Rules" or "Juv. R. ____"

RELATED MISCELLANEOUS STATUTES

TITLE 1: STATE GOVERNMENT

CHAPTER 103: LEGISLATIVE SERVICES

§ 103.75 Youth services facility defined.

As used in sections 103.76 to 103.79 of the Revised Code, "youth services facility" means a facility operated, or contracted for, by the department of youth services that is used for the care, protection, treatment, or secure confinement of any child committed to the department's custody.

HISTORY: 150 v H 375, § 1, eff. 4-29-05.

§ 103.76 Authority of inspection committee.

Subject to division (C) of section 103.73 of the Revised Code, the correctional institution inspection committee may make an inspection of any youth services facility at such times as it determines.

HISTORY: 150 v H 375, § 1, eff. 4-29-05.

§ 103.77 Access to facilities.

Subject to division (C) of section 103.73 of the Revised Code, the correctional institution inspection committee, and each member of the committee, for the purpose of making inspections of youth services facilities shall have access to any youth services facility, or to any part of that facility and shall not be required to give advance notice of, or to make prior arrangements before conducting, an inspection.

HISTORY: 150 v H 375, § 1, eff. 4-29-05.

§ 103.78 Programs concerning inspections and improvements.

The correctional institution inspection committee may do the following:

(A) Subject to division (C) of section 103.73 of the Revised Code, establish and maintain a continuing program of inspection of youth services facilities;

(B) Evaluate and assist in the development of programs to improve the condition or operation of youth services facilities;

HISTORY: 150 v H 375, § 1, eff. 4-29-05.

§ 103.79 Report to general assembly.

If the correctional institution inspection committee conducts inspections of youth services facilities during a biennium, the committee shall prepare a report for submission to the succeeding general assembly of the findings the committee makes in its inspections and of any programs that have been proposed or developed to improve the condition or operation of youth services facilities. The committee shall submit the report to the

succeeding general assembly within fifteen days after commencement of that general assembly's first regular session.

HISTORY: 150 v H 375, § 1, eff. 4-29-05.

CHAPTER 121: STATE DEPARTMENTS

[SPANISH-SPEAKING AFFAIRS]

§ 121.37 Family and children first cabinet council; county or regional councils; county service coordination mechanism and comprehensive joint service plan.

(A)(1) There is hereby created the Ohio family and children first cabinet council. The council shall be composed of the superintendent of public instruction and the directors of youth services, job and family services, mental health, health, alcohol and drug addiction services, mental retardation and developmental disabilities, and budget and management. The chairperson of the council shall be the governor or the governor's designee and shall establish procedures for the council's internal control and management.

The purpose of the cabinet council is to help families seeking government services. This section shall not be interpreted or applied to usurp the role of parents, but solely to streamline and coordinate existing government services for families seeking assistance for their children.

(2) In seeking to fulfill its purpose, the council may do any of the following:

(a) Advise and make recommendations to the governor and general assembly regarding the provision of services to children;

(b) Advise and assess local governments on the coordination of service delivery to children;

(c) Hold meetings at such times and places as may be prescribed by the council's procedures and maintain records of the meetings, except that records identifying individual children are confidential and shall be disclosed only as provided by law;

(d) Develop programs and projects, including pilot projects, to encourage coordinated efforts at the state and local level to improve the state's social service delivery system;

(e) Enter into contracts with and administer grants to county family and children first councils, as well as other county or multicounty organizations to plan and coordinate service delivery between state agencies and local service providers for families and children;

(f) Enter into contracts with and apply for grants from federal agencies or private organizations;

(g) Enter into interagency agreements to encourage coordinated efforts at the state and local level to improve the state's social service delivery system. The agreements

may include provisions regarding the receipt, transfer, and expenditure of funds;

(h) Identify public and private funding sources for services provided to alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children, including regulations governing access to and use of the services;

(i) Collect information provided by local communities regarding successful programs for prevention, intervention, and treatment of unruly behavior, including evaluations of the programs;

(j) Identify and disseminate publications regarding alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children and regarding programs serving those types of children;

(k) Maintain an inventory of strategic planning facilitators for use by government or nonprofit entities that serve alleged or adjudicated unruly children or children who are at risk of being alleged or adjudicated unruly children.

(3) The cabinet council shall provide for the following:

(a) Reviews of service and treatment plans for children for which such reviews are requested;

(b) Assistance as the council determines to be necessary to meet the needs of children referred by county family and children first councils;

(c) Monitoring and supervision of a statewide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004," 20 U.S.C.A. 1400, as amended.

(4) The cabinet council shall develop and implement the following:

(a) An interagency process to select the indicators that will be used to measure progress toward increasing child well-being in the state and to update the indicators on an annual basis. The indicators shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood.

(b) An interagency system to offer guidance and monitor progress toward increasing child well-being in the state and in each county;

(c) An annual plan that identifies state-level agency efforts taken to ensure progress towards increasing child well-being in the state.

On an annual basis, the cabinet council shall submit to the governor and the general assembly a report on the status of efforts to increase child well-being in the state. This report shall be made available to any other person on request.

(B)(1) Each board of county commissioners shall establish a county family and children first council. The board may invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council. Each county council must include the following individuals:

(a) At least three individuals who are not employed by an agency represented on the council and whose families are or have received services from an agency represented

on the council or another county's council. Where possible, the number of members representing families shall be equal to twenty per cent of the council's membership.

(b) The director of the board of alcohol, drug addiction, and mental health services that serves the county; or, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards. If a board of alcohol, drug addiction, and mental health services covers more than one county, the director may designate a person to participate on the county's council.

(c) The health commissioner, or the commissioner's designee, of the board of health of each city and general health district in the county. If the county has two or more health districts, the health commissioner membership may be limited to the commissioners of the two districts with the largest populations.

(d) The director of the county department of job and family services;

(e) The executive director of the public children services agency;

(f) The superintendent of the county board of mental retardation and developmental disabilities;

(g) The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, which shall notify each board of county commissioners of its determination at least biennially;

(h) A school superintendent representing all other school districts with territory in the county, as designated at a biennial meeting of the superintendents of those districts;

(i) A representative of the municipal corporation with the largest population in the county;

(j) The president of the board of county commissioners, or an individual designated by the board;

(k) A representative of the regional office of the department of youth services;

(l) A representative of the county's head start agencies, as defined in section 3301.32 of the Revised Code;

(m) A representative of the county's early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004";

(n) A representative of a local nonprofit entity that funds, advocates, or provides services to children and families.

Notwithstanding any other provision of law, the public members of a county council are not prohibited from serving on the council and making decisions regarding the duties of the council, including those involving the funding of joint projects and those outlined in the county's service coordination mechanism implemented pursuant to division (C) of this section.

The cabinet council shall establish a state appeals process to resolve disputes among the members of a county council concerning whether reasonable responsibilities as members are being shared. The appeals process may be accessed only by a majority vote of the council members who are required to serve on the council. Upon appeal, the cabinet council may order that state funds for services to children and families be redirected to a county's board of county commissioners.

The county's juvenile court judge senior in service or another judge of the juvenile court designated by the administrative judge or, where there is no administrative judge, by the judge senior in service shall serve as the

judicial advisor to the county family and children first council. The judge may advise the county council on the court's utilization of resources, services, or programs provided by the entities represented by the members of the county council and how those resources, services, or programs assist the court in its administration of justice. Service of a judge as a judicial advisor pursuant to this section is a judicial function.

(2) The purpose of the county council is to streamline and coordinate existing government services for families seeking services for their children. In seeking to fulfill its purpose, a county council shall provide for the following:

(a) Referrals to the cabinet council of those children for whom the county council cannot provide adequate services;

(b) Development and implementation of a process that annually evaluates and prioritizes services, fills service gaps where possible, and invents new approaches to achieve better results for families and children;

(c) Participation in the development of a countywide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004";

(d) Maintenance of an accountability system to monitor the county council's progress in achieving results for families and children;

(e) Establishment of a mechanism to ensure ongoing input from a broad representation of families who are receiving services within the county system.

(3) A county council shall develop and implement the following:

(a) An interagency process to establish local indicators and monitor the county's progress toward increasing child well-being in the county;

(b) An interagency process to identify local priorities to increase child well-being. The local priorities shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood and take into account the indicators established by the cabinet council under division (A)(4)(a) of this section.

(c) An annual plan that identifies the county's interagency efforts to increase child well-being in the county.

On an annual basis, the county council shall submit a report on the status of efforts by the county to increase child well-being in the county to the county's board of county commissioners and the cabinet council. This report shall be made available to any other person on request.

(4)(a) Except as provided in division (B)(4)(b) of this section, a county council shall comply with the policies, procedures, and activities prescribed by the rules or interagency agreements of a state department participating on the cabinet council whenever the county council performs a function subject to those rules or agreements.

(b) On application of a county council, the cabinet council may grant an exemption from any rules or interagency agreements of a state department participating on the council if an exemption is necessary for the council to implement an alternative program or approach for service delivery to families and children. The appli-

cation shall describe the proposed program or approach and specify the rules or interagency agreements from which an exemption is necessary. The cabinet council shall approve or disapprove the application in accordance with standards and procedures it shall adopt. If an application is approved, the exemption is effective only while the program or approach is being implemented, including a reasonable period during which the program or approach is being evaluated for effectiveness.

(5)(a) Each county council shall designate an administrative agent for the council from among the following public entities: the board of alcohol, drug addiction, and mental health services, including a board of alcohol and drug addiction or a community mental health board if the county is served by separate boards; the board of county commissioners; any board of health of the county's city and general health districts; the county department of job and family services; the county agency responsible for the administration of children services pursuant to section 5153.15 of the Revised Code; the county board of mental retardation and developmental disabilities; any of the county's boards of education or governing boards of educational service centers; or the county's juvenile court. Any of the foregoing public entities, other than the board of county commissioners, may decline to serve as the council's administrative agent.

A county council's administrative agent shall serve as the council's appointing authority for any employees of the council. The council shall file an annual budget with its administrative agent, with copies filed with the county auditor and with the board of county commissioners, unless the board is serving as the council's administrative agent. The council's administrative agent shall ensure that all expenditures are handled in accordance with policies, procedures, and activities prescribed by state departments in rules or interagency agreements that are applicable to the council's functions.

The administrative agent of a county council shall send notice of a member's absence if a member listed in division (B)(1) of this section has been absent from either three consecutive meetings of the county council or a county council subcommittee, or from one-quarter of such meetings in a calendar year, whichever is less. The notice shall be sent to the board of county commissioners that establishes the county council and, for the members listed in divisions (B)(1)(b), (c), (e), and (l) of this section, to the governing board overseeing the respective entity; for the member listed in division (B)(1)(f) of this section, to the county board of mental retardation and developmental disabilities that employs the superintendent; for a member listed in division (B)(1)(g) or (h) of this section, to the school board that employs the superintendent; for the member listed in division (B)(1)(i) of this section, to the mayor of the municipal corporation; for the member listed in division (B)(1)(k) of this section, to the director of youth services; and for the member listed in division (B)(1)(n), to that member's board of trustees.

The administrative agent for a county council may do any of the following on behalf of the council:

(i) Enter into agreements or administer contracts with public or private entities to fulfill specific council business. Such agreements and contracts are exempt from the competitive bidding requirements of section 307.86 of the Revised Code if they have been approved by the county council and they are for the purchase of family and child welfare or child protection services or other social or job and family services for families and children.

The approval of the county council is not required to exempt agreements or contracts entered into under section 5139.34, 5139.41, or 5139.43 of the Revised Code from the competitive bidding requirements of section 307.86 of the Revised Code.

(ii) As determined by the council, provide financial stipends, reimbursements, or both, to family representatives for expenses related to council activity;

(iii) Receive by gift, grant, devise, or bequest any moneys, lands, or other property for the purposes for which the council is established. The agent shall hold, apply, and dispose of the moneys, lands, or other property according to the terms of the gift, grant, devise, or bequest. Any interest or earnings shall be treated in the same manner and are subject to the same terms as the gift, grant, devise, or bequest from which it accrues.

(b)(i) If the county council designates the board of county commissioners as its administrative agent, the board may, by resolution, delegate any of its powers and duties as administrative agent to an executive committee the board establishes from the membership of the county council. The board shall name to the executive committee at least the individuals described in divisions (B)(1)(b) to (h) of this section and may appoint the president of the board or another individual as the chair of the executive committee. The executive committee must include at least one family county council representative who does not have a family member employed by an agency represented on the council.

(ii) The executive committee may, with the approval of the board, hire an executive director to assist the county council in administering its powers and duties. The executive director shall serve in the unclassified civil service at the pleasure of the executive committee. The executive director may, with the approval of the executive committee, hire other employees as necessary to properly conduct the county council's business.

(iii) The board may require the executive committee to submit an annual budget to the board for approval and may amend or repeal the resolution that delegated to the executive committee its authority as the county council's administrative agent.

(6) Two or more county councils may enter into an agreement to administer their county councils jointly by creating a regional family and children first council. A regional council possesses the same duties and authority possessed by a county council, except that the duties and authority apply regionally rather than to individual counties. Prior to entering into an agreement to create a regional council, the members of each county council to be part of the regional council shall meet to determine whether all or part of the members of each county council will serve as members of the regional council.

(7) A board of county commissioners may approve a resolution by a majority vote of the board's members that requires the county council to submit a statement to the board each time the council proposes to enter into an agreement, adopt a plan, or make a decision, other than a decision pursuant to section 121.38 of the Revised Code, that requires the expenditure of funds for two or more families. The statement shall describe the proposed agreement, plan, or decision.

Not later than fifteen days after the board receives the statement, it shall, by resolution approved by a majority of its members, approve or disapprove the agreement, plan, or decision. Failure of the board to pass a resolution

during that time period shall be considered approval of the agreement, plan, or decision.

An agreement, plan, or decision for which a statement is required to be submitted to the board shall be implemented only if it is approved by the board.

(C) Each county shall develop a county service coordination mechanism. The county service coordination mechanism shall serve as the guiding document for coordination of services in the county. For children who also receive services under the help me grow program, the service coordination mechanism shall be consistent with rules adopted by the department of health under section 3701.61 of the Revised Code. All family service coordination plans shall be developed in accordance with the county service coordination mechanism. The mechanism shall be developed and approved with the participation of the county entities representing child welfare; mental retardation and developmental disabilities; alcohol, drug addiction, and mental health services; health; juvenile judges; education; the county family and children first council; and the county early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004." The county shall establish an implementation schedule for the mechanism. The cabinet council may monitor the implementation and administration of each county's service coordination mechanism.

Each mechanism shall include all of the following:

(1) A procedure for an agency, including a juvenile court, or a family voluntarily seeking service coordination, to refer the child and family to the county council for service coordination in accordance with the mechanism;

(2) A procedure ensuring that a family and all appropriate staff from involved agencies, including a representative from the appropriate school district, are notified of and invited to participate in all family service coordination plan meetings;

(3) A procedure that permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite a family advocate, mentor, or support person of the family's choice to participate in any such meeting;

(4) A procedure for ensuring that a family service coordination plan meeting is conducted for each child who receives service coordination under the mechanism and for whom an emergency out-of-home placement has been made or for whom a nonemergency out-of-home placement is being considered. The meeting shall be conducted within ten days of an emergency out-of-home placement. The meeting shall be conducted before a nonemergency out-of-home placement. The family service coordination plan shall outline how the county council members will jointly pay for services, where applicable, and provide services in the least restrictive environment.

(5) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested in the county including monitoring and tracking children in out-of-home placements to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement with appropriate arrangements for housing, treatment, and education.

(6) A procedure for protecting the confidentiality of all personal family information disclosed during service co-

ordination meetings or contained in the comprehensive family service coordination plan.

(7) A procedure for assessing the needs and strengths of any child or family that has been referred to the council for service coordination, including a child whose parent or custodian is voluntarily seeking services, and for ensuring that parents and custodians are afforded the opportunity to participate;

(8) A procedure for development of a family service coordination plan described in division (D) of this section;

(9) A local dispute resolution process to serve as the process that must be used first to resolve disputes among the agencies represented on the county council concerning the provision of services to children, including children who are abused, neglected, dependent, unruly, alleged unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services. The local dispute resolution process shall comply with sections 121.38, 121.381 [121.38.1], and 121.382 [121.38.2] of the Revised Code. The local dispute resolution process shall be used to resolve disputes between a child's parents or custodians and the county council regarding service coordination. The county council shall inform the parents or custodians of their right to use the dispute resolution process. Parents or custodians shall use existing local agency grievance procedures to address disputes not involving service coordination. The dispute resolution process is in addition to and does not replace other rights or procedures that parents or custodians may have under other sections of the Revised Code.

The cabinet council shall adopt rules in accordance with Chapter 119. of the Revised Code establishing an administrative review process to address problems that arise concerning the operation of a local dispute resolution process.

Nothing in division (C)(4) of this section shall be interpreted as overriding or affecting decisions of a juvenile court regarding an out-of-home placement, long-term placement, or emergency out-of-home placement.

(D) Each county shall develop a family service coordination plan that does all of the following:

(1) Designates service responsibilities among the various state and local agencies that provide services to children and their families, including children who are abused, neglected, dependent, unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services;

(2) Designates an individual, approved by the family, to track the progress of the family service coordination plan, schedule reviews as necessary, and facilitate the family service coordination plan meeting process;

(3) Ensures that assistance and services to be provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions. Identified assistance and services shall be provided in the least restrictive environment possible.

(4) Includes a process for dealing with a child who is alleged to be an unruly child. The process shall include methods to divert the child from the juvenile court system;

(5) Includes timelines for completion of goals specified in the plan with regular reviews scheduled to monitor progress toward those goals;

(6) Includes a plan for dealing with short-term crisis situations and safety concerns.

(E)(1) The process provided for under division (D)(4) of this section may include, but is not limited to, the following:

(a) Designation of the person or agency to conduct the assessment of the child and the child's family as described in division (C)(7) of this section and designation of the instrument or instruments to be used to conduct the assessment;

(b) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(c) Involvement of local law enforcement agencies and officials.

(2) The method to divert a child from the juvenile court system that must be included in the service coordination process may include, but is not limited to, the following:

(a) The preparation of a complaint under section 2151.27 of the Revised Code alleging that the child is an unruly child and notifying the child and the parents, guardian, or custodian that the complaint has been prepared to encourage the child and the parents, guardian, or custodian to comply with other methods to divert the child from the juvenile court system;

(b) Conducting a meeting with the child, the parents, guardian, or custodian, and other interested parties to determine the appropriate methods to divert the child from the juvenile court system;

(c) A method to provide to the child and the child's family a short-term respite from a short-term crisis situation involving a confrontation between the child and the parents, guardian, or custodian;

(d) A program to provide a mentor to the child or the parents, guardian, or custodian;

(e) A program to provide parenting education to the parents, guardian, or custodian;

(f) An alternative school program for children who are truant from school, repeatedly disruptive in school, or suspended or expelled from school;

(g) Other appropriate measures, including, but not limited to, any alternative methods to divert a child from the juvenile court system that are identified by the Ohio family and children first cabinet council.

(F) Each county may review and revise the service coordination process described in division (D)(2) of this section based on the availability of funds under Title IV-A of the "Social Security Act," 110 Stat. 2113 (1996), 42 U.S.C.A. 601, as amended, or to the extent resources are available from any other federal, state, or local funds.

HISTORY: 142 v H 304 (Eff 10-20-87); 143 v H 317 (Eff 10-10-89); 144 v H 82 (Eff 9-10-91); 144 v H 298 (Eff 7-26-91); 145 v H 152 (Eff 7-1-93); 146 v H 117 (Eff 9-29-95); 146 v H 274 (Eff 8-8-96); 147 v H 215 (Eff 9-29-97); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 149 v H 57, Eff 2-19-2002; 151 v H 66, § 101.01, eff. 6-30-05; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 289, § 1, eff. 8-17-06.

† The effective date of sections 1 and 2 of Sub. H.B. 57 (149 v —) differs from the effective date set for the sections by section 3 of the Act. See provisions of OConst art II, §§ 1c and d.

The effective date is set by § 812.03 of 151 v H 530.

The effective date is set by § 612.12 of 151 v H 66.

The provisions of § 4 of H.B. 516 (150 v —) read in part as follows:

SECTION 4. The following agencies shall be retained pursuant to division (D) of section 101.83 of the Revised Code and shall expire on December 31, 2010:

AGENCY NAME	REVISED CODE OR UNCODIFIED SECTION
○○○	○○○
Ohio Family and Children First Cabinet Council	121.37
○○○	○○○

The provisions of § 3 of HB 57 (149 v —) read as follows:

SECTION 3. Sections 1 and 2 of this act shall take effect January 1, 2002.

The provisions of §§ 4, 5 of HB 57 (149 v —) read as follows:

SECTION 4. Not later than thirty days after the effective date of this section, the Ohio Family and Children First Cabinet Council shall develop and distribute advisory guidance to each county family and children first council and to any other key relevant constituency that the Cabinet Council identifies. The Cabinet Council shall design the advisory guidance to assist a county council in developing under divisions (C), (D), (E), and (F) of section 121.37 of the Revised Code its local service coordination process for diversion of unruly children and children who have committed acts that would be misdemeanors if committed by an adult from the juvenile court system. The Cabinet Council shall include in the advisory guidance suggestions on how to effectively utilize TANF Youth Diversion Program funds, authorized in Section 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 299 of the 124th General Assembly, and suggestions on how to effectively utilize other available federal, state, local, or private funds.

This section does not authorize the Cabinet Council to adopt rules setting forth the above-described advisory guidance.

Comment, Legislative Service Commission

Section 121.37 of the Revised Code is amended by Am. Sub. H.B. 530 and Sub. H.B. 289 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 121.38 Resolution of agency disputes concerning services or funding.

(A) An agency represented on a county family and children first council that disagrees with the council's decision concerning the services or funding for services a child is to receive from agencies represented on the council may initiate the local dispute resolution process established in the county service coordination mechanism applicable to the council. On completion of the process, the decision maker designated in the mechanism shall issue a written determination that directs one or more agencies represented on the council to provide services or funding for services to the child. The determination shall include a plan of care governing the manner in which the services or funding are to be provided. The decision maker shall base the plan of care on the family service coordination plan developed as part of the county's service coordination mechanism and on evidence presented during the local dispute resolution process. The decision maker may require an agency to provide services or funding only if the child's condition or needs qualify the child for services under the laws governing the agency.

(B) An agency subject to a determination issued pursuant to a local dispute resolution process shall immediately comply with the determination, unless the agency objects to the determination by doing one of the following not later than seven days after the date the written determination is issued:

(1) If the child has been alleged or adjudicated to be an abused, neglected, dependent, unruly, or delinquent child or a juvenile traffic offender, filing in the juvenile court of the county having jurisdiction over the child's case a motion requesting that the court hold a hearing to determine which agencies are to provide services or funding for services to the child. .

(2) If the child is not a child described in division (B)(1) of this section; filing in the juvenile court of the county served by the county council a complaint objecting to the determination.

The court shall hold a hearing as soon as possible, but not later than ninety days after the motion or complaint is filed. At least five days before the date on which the court hearing is to be held, the court shall send each agency subject to the determination written notice by first class mail of the date, time, place, and purpose of the court hearing. In the case of a motion filed under division (B)(1) of this section, the court may conduct the hearing as part of the adjudicatory or dispositional hearing concerning the child, if appropriate, and shall provide notice as required for those hearings.

Except in cases in which the hearing is conducted as part of the adjudicatory or dispositional hearing, a hearing held pursuant to this division shall be limited to a determination of which agencies are to provide services or funding for services to the child. At the conclusion of the hearing, the court shall issue an order directing one or more agencies represented on the county council to provide services or funding for services to the child. The order shall include a plan of care governing the manner in which the services or funding are to be provided. The court shall base the plan of care on the family service coordination plan developed as part of the county's service coordination plan and on evidence presented during the hearing. An agency required by the order to provide services or funding shall be a party to any juvenile court proceeding concerning the child. The court may require an agency to provide services or funding for a child only if the child's condition or needs qualify the child for services under the laws governing the agency.

(C) While the local dispute resolution process or court proceedings pursuant to this section are pending, each agency shall provide services and funding as required by the decision made by the county council before dispute resolution was initiated. If an agency that provides services or funds during the local dispute resolution process or court proceedings is determined through the process or proceedings not to be responsible for providing them, it shall be reimbursed for the costs of providing the services or funding by the agencies determined to be responsible for providing them.

HISTORY: 146 v H 274 (Eff 8-8-96); 147 v H 215. Eff 9-29-97; 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

Not analogous to former RC § 121.38 (143 v H 749), repealed 146 v H 117, § 2, eff 9-29-95.

The effective date is set by section 222 of HB 215.

[§ 121.38.1] § 121.381 Continuation of services and funding during dispute resolution process.

A parent or custodian who disagrees with a decision rendered by a county family and children first council regarding services for a child may initiate the dispute

resolution process established in the county service coordination mechanism pursuant to division (C)(10) of section 121.37 of the Revised Code.

Not later than sixty days after the parent or custodian initiates the dispute resolution process, the council shall make findings regarding the dispute and issue a written determination of its findings.

HISTORY: 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

[§ 121.38.2] § 121.382 Continuation of services and funding.

Each agency represented on a county family and children first council that is providing services or funding for services that are the subject of the dispute resolution process initiated by a parent or custodian under section 121.381 [121.38.1] of the Revised Code shall continue to provide those services and the funding for those services during the dispute resolution process.

HISTORY: 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

CHAPTER 131: REVENUES AND FUNDS

§ 131.11 Security required for county funds deposited by certain public officials; service charge.

No money held or controlled by any probate court, juvenile court, clerk of the court of common pleas, clerk of a county court, sheriff, county recorder, director of a county department of job and family services, clerk or bailiff of a municipal court, prosecuting attorney, resident or division deputy director of highways, or treasurer of a university receiving state aid, in excess of that covered by federal deposit insurance as hereinafter described or in excess of that covered by federal savings and loan insurance, shall be deposited in any bank, trust company, or building and loan association as defined in section 1151.01 of the Revised Code until there is a hypothecation of securities as provided for in section 135.18 of the Revised Code, or until there is executed by the bank, trust company, or building and loan association selected, a good and sufficient undertaking, payable to the depositor, in such sum as the depositor directs, but not less than the excess of the sum that is deposited in the depository, at any one time over and above the portion or amount of the sum as is at any time insured by the federal deposit insurance corporation created pursuant to "The Banking Act of 1933," or by the federal savings and loan insurance corporation created pursuant to the "Home Owners' Loan Act of 1933," 40 Stat. 128, 12 U.S.C.A. 1461, or by any other agency or instrumentality of the federal government, pursuant to such acts or any acts of congress amendatory thereof.

Any funds or securities in the possession or custody of any county official in an official capacity or any funds or securities the possession or custody of which is charged to any county official, including funds or securities in transit to or from any bank or trust company, may be insured by the board of county commissioners in such amount as is

found necessary in the public interest. All costs of such insurance shall be paid by the county as provided in section 307.55 of the Revised Code.

With respect to any insured or secured deposit mentioned in this section which is active as defined by section 135.01 of the Revised Code, any depositor named in this section may pay a service charge which is the same as that customarily made by the institution or institutions receiving money on deposit subject to check in the city or village where the bank or trust company accepting such active deposit is located.

HISTORY: GC § 2288-1c; 116 v 409; 119 v 344; 120 v 180; Bureau of Code Revision, 10-1-53; 126 v 893 (Eff 8-30-55); 132 v S 321 (Eff 6-11-68); 136 v H 49 (Eff 9-1-75); 141 v H 428 (Eff 12-23-86); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 131.18 Release of treasurers and clerks from liability.

When a loss of public funds, entrusted to a county or municipal corporation treasurer or to a clerk of the court of common pleas, clerk of the court of appeals, clerk of the municipal court, clerk of the county court, judge of the probate court as clerk of such court, judge of the juvenile court as clerk of such court, or to a township or school district treasurer, or a clerk of the board of trustees of a public library by virtue of his office, results from fire, robbery, burglary, flood, or inability of a bank to refund public money lawfully in its possession belonging to such public funds, the board of county commissioners, board of township trustees, the legislative authority of the municipal corporation, the board of education, or the board of library trustees, respectively, may release and discharge such treasurer, clerk, or judge from all personal liability to or demands of such county, township, municipal corporation, school district, or public library, for the loss so created unless the loss resulted from his negligence or other wrongful act.

HISTORY: RS § 22b-4; 98 v 120; 99 v 388; GC § 2303; Bureau of Code Revision, 10-1-53; 130 v 71 (Eff 9-24-63); 131 v 70 (Eff 11-5-65); 138 v H 1. Eff 5-16-79.

CHAPTER 141: SALARIES OF STATE OFFICERS

§ 141.07 Compensation and expenses of judges holding court outside county of residence.

In addition to the annual salary and expenses provided for in sections 141.04 and 141.05 of the Revised Code, each judge of the probate court, and of the juvenile court, while holding court in a county in which the judge does not reside, by assignment of the chief justice of the supreme court under section 2101.37, 2101.39, or 2151.07 of the Revised Code, and each judge of the common pleas court while holding court in a county in which the judge does not reside, by assignment of the chief justice of the supreme court under section 2701.03 of the Revised Code, or without any assignment, shall receive the actual and necessary expenses that the judge incurred while so holding court in that county, to be paid from the treasury of that county upon the warrant of the county auditor. Each judge of the court of common pleas,

of the probate court, and of the juvenile court, who is assigned by the chief justice by virtue of section 2503.04 of the Revised Code, each judge of the probate court who is assigned by the chief justice by virtue of sections 2101.37 and 2101.39 of the Revised Code, and each judge of the juvenile court who is assigned by the chief justice by virtue of section 2151.07 of the Revised Code, to aid in disposing of business of some county other than that in which the judge resides shall receive fifty dollars for each day of the assignment and the actual and necessary expenses that the judge incurred in holding court under the assignment, together with the judge's actual transportation expenses, to be paid from the treasury of the county to which the judge is so assigned upon the warrant of the auditor of that county.

HISTORY: RS § 1284a; 95 v 654; 97 v 558; GC § 2253; 103 v 405(419); 104 v 250; 108 v PH, 374; 108 v PH, 1301; 112 v 344; 115 v 249; 122 v 141; Bureau of Code Revision, 10-1-53; 128 v 778 (Eff 11-2-59); 135 v H 578 (Eff 11-16-73); 137 v H 280 (Eff 4-24-78); 146 v H 438. Eff 7-1-97.

The effective date is set by section 3 of HB 438.

CHAPTER 181: CRIMINAL SENTENCING COMMISSION; CRIMINAL JUSTICE SERVICES

§ 181.21 State criminal sentencing commission; juvenile committee.

(A) There is hereby created within the supreme court the state criminal sentencing commission, consisting of thirty-one members. One member shall be the chief justice of the supreme court, who shall be the chairperson of the commission. The following ten members of the commission, no more than six of whom shall be members of the same political party, shall be appointed by the chief justice: one judge of a court of appeals, three judges of courts of common pleas who are not juvenile court judges, three judges of juvenile courts, and three judges of municipal courts or county courts. Four members shall be the superintendent of the state highway patrol, the state public defender, the director of youth services, and the director of rehabilitation and correction, or their individual designees. The following twelve members, no more than seven of whom shall be members of the same political party, shall be appointed by the governor after consulting with the appropriate state associations, if any, that are represented by these members: one sheriff; two county prosecuting attorneys, at least one of whom shall be experienced in the prosecution of cases in juvenile court involving alleged delinquent children, unruly children, and juvenile traffic offenders; two peace officers of a municipal corporation or township, at least one of whom shall be experienced in the investigation of cases involving juveniles; one former victim of a violation of Title XXIX [29] of the Revised Code; one attorney whose practice of law primarily involves the representation of criminal defendants; one member of the Ohio state bar association; one attorney whose practice of law primarily involves the representation in juvenile court of alleged delinquent children, unruly children, and juvenile traffic offenders; one full-time city prosecuting attorney; one county commissioner; and one mayor, city manager, or member of a legislative authority of a municipal corpo-

ration. Two members shall be members of the senate, one appointed by the president of the senate and one appointed by the minority leader of the senate. Two members shall be members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives.

The chief justice shall become a member of the commission on August 22, 1990, and the chief justice's successors in office shall become members of the commission on the day that they assume the office of chief justice. The term of office of the chief justice as a member of the commission shall continue for as long as that person holds the office of chief justice. The term of office of the member who is an attorney whose practice of law primarily involves the representation of criminal defendants, the term of office of the member who is an attorney whose practice of law primarily involves the representation in juvenile court of alleged delinquent children, unruly children, and juvenile traffic offenders, and the term of office of the former victim of a violation of Title XXIX [29] of the Revised Code shall be four years. The term of office of the superintendent of the state highway patrol, the state public defender, the director of youth services, and the director of rehabilitation and correction, or their individual designees, as members of the commission shall continue for as long as they hold the office of superintendent of the state highway patrol, state public defender, director of youth services, or director of rehabilitation and correction. The term of office of a municipal corporation or township peace officer as a member of the commission shall be the lesser of four years or until that person ceases to be a peace officer of a municipal corporation or township. Unless the full-time city prosecuting attorney is an elected official, the term of office of the full-time city prosecuting attorney shall be the lesser of four years or until the full-time city prosecuting attorney ceases to be a full-time city prosecuting attorney. All of the members of the commission who are elected officials shall serve the lesser of four years or until the expiration of their term of office. Any vacancy on the commission shall be filled in the same manner as the original appointment.

When the chief justice and governor make their appointments to the commission, they shall consider adequate representation by race and gender.

(B) The commission shall select a vice-chairperson and any other necessary officers and adopt rules to govern its proceedings. The commission shall meet as necessary at the call of the chairperson or on the written request of eight or more of its members. Sixteen members of the commission constitute a quorum, and the votes of a majority of the quorum present shall be required to validate any action of the commission. All business of the commission shall be conducted in public meetings.

The members of the commission shall serve without compensation, but each member shall be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties on the commission. In the absence of the chairperson, the vice-chairperson shall perform the duties of the chairperson.

(C) The commission shall establish an office and shall appoint and fix the compensation of a project director and any other employees necessary to assist the commission in the execution of its authority under sections

181.21 to 181.26 of the Revised Code. The project director shall have a thorough understanding of the criminal laws of this state and experience in committee-oriented research. The other employees may include a research coordinator with experience and training in policy-oriented research; professional staff employees with backgrounds in criminal law, criminal justice, political science, or related fields of expertise; administrative assistants; and secretaries. The commission also may appoint and fix the compensation of part-time data collectors, clerical employees, and other temporary employees as needed to enable the commission to execute its authority under sections 181.21 to 181.26 of the Revised Code.

(D) The sentencing commission shall establish a standing juvenile committee. The committee shall consist of the following commission members: the chief justice of the supreme court or the chief justice's designee, the director of youth services, the three juvenile court judges, one court of common pleas judge who is not a juvenile court judge, one county prosecuting attorney who is experienced in the prosecution of cases in juvenile court involving alleged delinquent children, unruly children, and juvenile traffic offenders, the attorney whose practice of law primarily involves the representation in juvenile court of alleged delinquent children, unruly children, and juvenile traffic offenders, the former victim of a violation of Title XXIX [29] of the Revised Code, the county commissioner, one legislator from each political party, the sheriff, and one municipal corporation or township peace officer who is experienced in the investigation of cases involving juveniles. The members of the commission may serve on the committee by designation of the chief justice. The chief justice shall designate a member to serve as chairperson of the committee. The committee shall meet as necessary at the call of the chairperson or on the written request of four or more of the committee's members. A majority of the members of the committee shall constitute a quorum, and the votes of a majority of the quorum present shall be required to validate any action of the committee, including recommendations to the commission. The committee and the commission shall comply with section 181.26 of the Revised Code.

HISTORY: 143 v § 258 (Eff 8-22-90); 145 v H 152 (Eff 7-1-93); 145 v H 21 (Eff 2-4-94); 146 v H 670 (Eff 12-2-96); 146 v H 591 (Eff 3-13-97); 148 v S 107. Eff 3-23-2000.

The provisions of § 4 of H.B. 516 (150 v —) read in part as follows:

SECTION 4. The following agencies shall be retained pursuant to division (D) of section 101.83 of the Revised Code and shall expire on December 31, 2010:

AGENCY NAME	REVISED CODE OR UNCODIFIED
	SECTION
○○○	○○○
State Criminal Sentencing Commission	181.21
○○○	○○○

The provisions of § 4 of SB 107 (148 v —) read in part as follows:

SECTION 4. Sections 181.21 and 181.22 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 591 and Sub. H.B. 670 of the 121st General

Assembly, with the new language of neither of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 181.26 Additional duties of commission concerning juveniles.

(A) In addition to its duties set forth in sections 181.23 to 181.25 of the Revised Code, the state criminal sentencing commission shall do all of the following:

- (1) Review all statutes governing delinquent child, unruly child, and juvenile traffic offender dispositions in this state;
- (2) Review state and local resources, including facilities and programs, used for delinquent child, unruly child, and juvenile traffic offender dispositions and profile the populations of youthful offenders in the facilities and programs;
- (3) Report to the general assembly no later than October 1, 1999, a comprehensive plan containing recommendations based on the reviews required under divisions (A)(1) and (2) of this section. The recommendations shall do all of the following:
 - (a) Assist in the managing of the number of persons in, and costs of, the facilities, the programs, and other resources used in delinquent child, unruly child, and juvenile traffic offender dispositions;
 - (b) Foster rehabilitation, public safety, sanctions, accountability, and other reasonable goals;
 - (c) Provide greater certainty, proportionality, uniformity, fairness, and simplicity in delinquent child, unruly child, and juvenile traffic offender dispositions while retaining reasonable judicial discretion;
 - (d) Provide for the restoration of victims of juvenile offenses.

(B) The commission shall project the impact of the comprehensive plan recommended by the commission under this section on state and local resources used in delinquent child, unruly child, and juvenile traffic offender dispositions. The commission shall determine whether any additional facilities, programs, or other resources are needed to implement the comprehensive plan.

(C) If the general assembly enacts all or a substantial part of the comprehensive plan recommended by the commission under this section, the commission shall do all of the following:

- (1) Assist in the implementation of the enacted plan;
- (2) Monitor the operation of the plan, periodically report to the general assembly on the plan's operation and the plan's impact on resources used in delinquent child, unruly child, and juvenile traffic offender dispositions, and periodically recommend changes in the plan to the general assembly based on this monitoring;
- (3) Review all bills that are introduced in the general assembly that relate to delinquent child, unruly child, and juvenile traffic offender dispositions and assist the general assembly in making legislation consistent with the plan.

HISTORY: 146 v H 591 (Eff 3-13-97); 147 v H 1 (Eff 11-25-97); 147 v H 484. Eff 3-18-99.

TITLE 3: COUNTIES

CHAPTER 307: BOARD OF COUNTY COMMISSIONERS — POWERS

§ 307.01 County buildings; appropriations for court of common pleas.

(A) A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners when, in its judgment, any of them are needed. The buildings and offices shall be of such style, dimensions, and expense as the board determines. All new jails and renovations to existing jails shall be designed, and all existing jails shall be operated in such a manner as to comply substantially with the minimum standards for jails in Ohio adopted by the department of rehabilitation and correction. The board shall also provide equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices, except that, for the purpose of obtaining federal or state reimbursement, the board may impose on the public children services agency reasonable charges, not exceeding the amount for which reimbursement will be made and consistent with cost-allocation standards adopted by the department of job and family services, for the provision of office space, supplies, stationery, utilities, telephone use, postage, and general support services.

The board of county commissioners shall provide all rooms, fireproof and burglarproof vaults, safes, and other means of security in the office of the county treasurer that are necessary for the protection of public moneys and property in the office.

(B) The court of common pleas shall annually submit a written request for an appropriation to the board of county commissioners that shall set forth estimated administrative expenses of the court that the court considers reasonably necessary for its operation. The board shall conduct a public hearing with respect to the written request submitted by the court and shall appropriate the amount of money each year that it determines, after conducting the public hearing and considering the written request of the court, is reasonably necessary to meet all administrative expenses of the court.

If the court considers the appropriation made by the board pursuant to this division insufficient to meet all the administrative expenses of the court, it shall commence an action under Chapter 2731. of the Revised Code in the court of appeals for the judicial district for a determination of the duty of the board of county commissioners to appropriate the amount of money in dispute. The court of appeals shall give priority to the action filed by the court of common pleas over all cases pending on its docket. The burden shall be on the court of common pleas to prove that the appropriation requested is reasonably necessary to meet all its administrative expenses. If, prior to the filing of an action under Chapter 2731. of the Revised Code or during the pendency of the action, any judge of the court exercises the contempt power of the court of common pleas in order to obtain the amount of money in dispute, the judge shall not order the imprisonment of any member of the board of county commissioners

notwithstanding sections 2705.02 to 2705.06 of the Revised Code.

(C) Division (B) of this section does not apply to appropriations for the probate court or the juvenile court that are subject to section 2101.11 or 2151.10 of the Revised Code.

HISTORY: RS § 859; S&C 1228, 1604, 1606; 29 v 315, §§ 1, 2, 3, 7, 8; 55 v 44, § 2; 56 v 160, § 27; GC § 2419; 106 v 423; 108 v Ptl, 387; Bureau of Code Revision, 10-1-53; 138 v S 63 (Eff 7-26-79); 139 v S 23 (Eff 7-6-82); 142 v S 89 (Eff 1-1-89); 147 v H 408 (Eff 10-1-97); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 307.02 Providing county facilities; costs and specifications; bids.

The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention facility, public market houses, retail store rooms and offices, if located in a building acquired to house county offices, for which store rooms or offices the board of county commissioners may establish and collect rents or enter into leases as provided in section 307.09 of the Revised Code, county children's home, community mental health facility, community mental retardation or developmental disability facility, facilities for senior citizens, alcohol treatment and control center, other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, public library buildings, golf courses, and off-street parking facilities determined by the board of county commissioners to be so situated as to be useful for any of such purposes or any combination of such purposes, for the use of which parking facilities the board of county commissioners may establish and collect rates, charges, or rents, and sites therefore, such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress, and egress; such copies of any public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county.

The board of county commissioners of any county may lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, those buildings, structures, and other improvements enumerated in the first paragraph of this section, and in conjunction therewith, may grant leases, easements, or licenses for lands under the control of the county for a period not to exceed forty years. Such lease-purchase plan shall provide that at the end of the lease period such buildings, structures, and related improvements, together with the land on which they are situated, shall become the property of the county without cost.

Whenever any building, structure or other improvement is to be so leased by a county, the board of county commissioners shall file in the office of the board, if the

board has a full-time clerk, or in the office of the county auditor such basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders all needed information, or alternatively, shall file the following plans, details, bills of materials, and specifications:

(A) Full and accurate plans, suitable for the use of mechanics and other builders in such construction, improvement, addition, alteration, or installation;

(B) Details to scale and full sized, so drawn and represented as to be easily understood;

(C) Accurate bills showing the exact quantity of different kinds of material necessary to the construction;

(D) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needed information;

(E) A full and accurate estimate of each item of expense and of the aggregate cost thereof.

The board of county commissioners shall invite bids in the manner prescribed in sections 307.86 to 307.92 of the Revised Code. Such bids shall contain the terms upon which the builder would propose to lease the building, structure, or other improvement to the county. The form of the bid approved by the board of county commissioners shall be used and a bid shall be invalid and not considered unless such form is used without change, alteration, or addition.

Before submitting bids pursuant to this section, any builder shall have complied with sections 153.50 to 153.52 of the Revised Code.

On the day and at the place named for receiving bids for entering into lease agreements with the county, the board of county commissioners shall open the bids, and shall publicly proceed immediately to tabulate the bids. No such lease agreement shall be entered into until the bureau of workers' compensation has certified that the corporation, partnership, or person to be awarded the lease agreement has complied with Chapter 4123. of the Revised Code, and until, if the builder submitting the lowest and best bid is a foreign corporation, the secretary of state has certified that such corporation is authorized to do business in this state, and until, if the builder submitting the lowest and best bid is a person or partnership nonresident of this state, such person or partnership has filed with the secretary of state a power of attorney designating the secretary of state as its agent for the purpose of accepting service of summons in any action brought under Chapter 4123. of the Revised Code, and until the agreement is submitted to the county prosecutor and the county prosecutor's approval certified thereon. Within thirty days after the day on which the bids are received, the board of county commissioners shall investigate the bids received and shall determine that the bureau and the secretary of state have made the certifications required by this section of the builder who has submitted the lowest and best bid. Within ten days of the completion of the investigation of the bids the board of county commissioners may award the lease agreement to the builder who has submitted the lowest and best bid and who has been certified by the bureau and secretary of state as required by this section. If bidding for the lease agreement has been conducted upon the basis of basic plans, specifications, bills of materials, and estimates of costs, upon the award to the builder, the board of county commissioners, or the builder with the approval of the board of county commissioners, shall appoint an architect

or engineer licensed in Ohio to prepare such further detailed plans, specifications, and bills of materials as are required to construct the buildings, structures, and other improvements enumerated in the first paragraph of this section. The board of county commissioners may reject any bid. Where there is reason to believe there is collusion or combination among the bidders, the bids of those concerned therein shall be rejected.

HISTORY: RS § 870; 66 v 52; GC § 2433; 102 v 54; 106 v 423; 108 v PH, 627; 112 v 364(381), § 6; 113 v 252; 116 v 477; 118 v 159; Bureau of Code Revision, 10-1-53; 127 v 392; 128 v 633 (Eff 7-29-59); 129 v 1586 (Eff 9-18-61); 131 v 200 (Eff 10-13-65); 132 v H 648 (Eff 10-26-67); 132 v H 824 (Eff 12-14-67); 133 v H 1 (Eff 3-18-69); 133 v H 450 (Eff 11-25-69); 134 v H 240 (Eff 4-28-72); 136 v S 343 (Eff 4-20-76); 138 v H 847 (Eff 8-22-80); 139 v S 114 (Eff 10-27-81); 139 v S 550 (Eff 11-26-82); 140 v H 660 (Eff 7-26-84); 143 v H 222 (Eff 11-3-89); 143 v H 569 (Eff 7-1-91); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 307.02.1] § 307.021 State purpose to provide capital facilities for jails, workhouses or community-based corrections; lease to subdivision.

(A) It is hereby declared to be a public purpose and function of the state, and a matter of urgent necessity, that the state acquire, construct, or renovate capital facilities for use as county, multicounty, municipal-county, and multicounty-municipal jail facilities or workhouses, as single county or district community-based correctional facilities authorized under section 2301.51 of the Revised Code, as minimum security misdemeanor jails under sections 341.34 and 753.21 of the Revised Code, and as single-county or joint-county juvenile facilities authorized under section 2151.65 of the Revised Code in order to comply with constitutional standards and laws for the incarceration of alleged and convicted offenders against state and local laws, and for use as county family court centers. For these purposes, counties and municipal corporations are designated as state agencies to perform duties of the state in relation to such facilities, workhouses, jails, and centers, and such facilities, workhouses, jails, and centers are designated as state capital facilities. The Ohio building authority is authorized to issue revenue obligations under sections 152.09 to 152.33 of the Revised Code to pay all or part of the cost of such state capital facilities as are designated by law.

The office of the sheriff, due to its responsibilities concerning alleged and convicted offenders against state laws, is designated as the state agency having jurisdiction over such jail, workhouse, community-based correctional, or county minimum security misdemeanor jail capital facilities in any one county or over any district community-based correctional facilities. The corrections commission, due to its responsibilities in relation to such offenders, is designated as the state agency having jurisdiction over any such multicounty, municipal-county, or multicounty-municipal jail, workhouse, or correctional capital facilities. The office of the chief of police or marshal of a municipal corporation, due to its responsibilities concerning certain alleged and convicted criminal offenders, is designated as the state agency having jurisdiction over any such municipal corporation minimum security misdemeanor jail capital facilities in the municipal corporation. The juvenile court, as defined in section 2151.011 [2151.01.1] of the Revised Code, is designated as the branch of state government having jurisdiction over any such family court center or single-county or joint-

county juvenile capital facilities. It is hereby determined and declared that such capital facilities are for the purpose of housing such state agencies, their functions, equipment, and personnel.

(B) The capital facilities provided for in this section may be included in capital facilities in which one or more governmental entities are participating or in which other facilities of the county or counties, or any municipal corporations, are included pursuant to section 152.31 or 152.33 of the Revised Code or in an agreement between any county or counties and any municipal corporation or municipal corporations for participating in the joint construction, acquisition, or improvement of public works, public buildings, or improvements benefiting the parties in the same manner as set forth in section 153.61 of the Revised Code.

(C) A county or counties or a municipal corporation or municipal corporations may contribute to the cost of capital facilities authorized under this section.

(D) A county or counties, and any municipal corporations, shall lease capital facilities described in this section that are constructed, reconstructed, otherwise improved, or financed by the Ohio building authority pursuant to sections 152.09 to 152.33 of the Revised Code for the use of the county or counties and any municipal corporations, and may enter into other agreements ancillary to the construction, reconstruction, improvement, financing, leasing, or operation of such capital facilities, including, but not limited to, any agreements required by the applicable bond proceedings authorized by sections 152.09 to 152.33 of the Revised Code.

Such lease may obligate the county or counties and any municipal corporation, as using state agencies under Chapter 152. of the Revised Code, to occupy and operate such capital facilities for such period of time as may be specified by law and to pay such rent as the authority determines to be appropriate. Notwithstanding any other section of the Revised Code, any county or counties or municipal corporation may enter into such a lease, and any such lease is legally sufficient to obligate the political subdivision for the term stated in the lease. Any such lease constitutes an agreement described in division (E) of section 152.24 of the Revised Code.

(E) If rental payments required from the county or counties or municipal corporation by a lease established pursuant to this section are not paid in accordance with such lease, the funds which otherwise would be apportioned to the lessees from the county undivided local government fund, pursuant to sections 5747.51 to 5747.53 of the Revised Code, shall be reduced by the amount of rent payable to the authority. The county treasurer immediately shall pay the amount of such reductions to the authority.

(F) Any lease of capital facilities authorized by this section, the rentals of which are payable in whole or in part from appropriations made by the general assembly, is governed by division (D) of section 152.24 of the Revised Code. Such rentals constitute available receipts as defined in section 152.09 of the Revised Code and may be pledged for the payment of bond service charges as provided in section 152.10 of the Revised Code.

(G) Any provision of section 152.21, 152.22, or 152.26 of the Revised Code that applies to buildings and facilities described in section 152.19 of the Revised Code also applies to the buildings and facilities described in this section, unless it is inconsistent with this section.

HISTORY: 139 v H 530 (Eff 5-28-82); 142 v H 455 (Eff 7-20-87); 142 v H 812 (Eff 6-29-88); 143 v S 258 (Eff 8-22-90); 144 v S 351. Eff 7-1-92.

§ 307.71 Curfew.

(A) Whenever the adoption of, a curfew for persons under eighteen years of age is deemed necessary by the board of county commissioners for the immediate preservation of the public peace, health, or safety in any of the unincorporated areas of such county, the board of county commissioners may adopt a resolution setting forth the provisions of such curfew and the necessity for such curfew together with a statement of the reasons for such necessity, and providing for its enforcement within such unincorporated areas of the county. Upon adoption of the resolution by a majority of the commissioners, the resolution shall become effective immediately.

(B) Any person under the age of eighteen years who violates the provisions of a curfew adopted in accordance with division (A) of this section shall be apprehended and charged as being an unruly child and taken before the juvenile court in the county in which the violation occurred as provided in Chapter 2151. of the Revised Code.

HISTORY: 133 v H 1018. Eff 6-23-70.

Not analogous to former RC § 307.71 (RS § 895; S&C 248; 48 v 65; GC § 2459; 110 v 4; Bureau of Code Revision, 10-1-53), repealed 132 v H 166, eff 11-24-67.

§ 307.86 When competitive bidding required.

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of twenty-five thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 125.60 to 125.6012 [125.60.12], 307.022 [307.02.2], 307.041 [307.04.1], 307.861 [307.86.1], 339.05, 340.03, 340.033 [340.03.3], 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when any of the following applies:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

(1) The estimated cost is less than fifty thousand dollars.

(2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of this division, "unanimous vote" means all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than fifty thousand dollars, but the estimated cost is twenty-five thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The county or contracting authority shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

(B)(1) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier.

(2) The purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source.

(C) The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation.

(D) The purchase is made by a county department of job and family services under section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of mental retardation and developmental disabilities under section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

(E) The purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751. of the Revised Code, or any combination of such policies, contracts, or plans that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Employs a competent consultant to assist the contracting authority in procuring appropriate coverages at the best and lowest prices;

(3) Requests issuers of the policies, contracts, or plans to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, or plans as the contracting authority desires to purchase;

(4) Negotiates with the issuers for the purpose of purchasing the policies, contracts, or plans at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation

project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

(H) Child care services are purchased for provision to county employees.

(I)(1) Property, including land, buildings, and other real property, is leased for offices, storage, parking, or other purposes, and all of the following apply:

(a) The contracting authority is authorized by the Revised Code to lease the property.

(b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property.

(c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Revised Code.

(d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

(2) The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under this division.

(J) The purchase is made pursuant to section 5139.34 or sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

(K) The purchase is made by a public children services agency pursuant to section 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

(L) The purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to section 307.05 of the Revised Code with a joint emergency medical services district.

Any issuer of policies, contracts, or plans listed in division (F) of this section and any prospective lessor under division (I) of this section may have the issuer's or prospective lessor's name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority that name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

Any contracting authority that negotiates a contract under division (F) of this section shall request proposals and renegotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract.

Any consultant employed pursuant to division (F) of this section and any real estate appraiser employed pursuant to division (I) of this section shall disclose any fees or compensation received from any source in connection with that employment.

HISTORY: 132 v H 428 (Eff 12-9-67); 132 v H 1008 (Eff 6-11-68); 134 v S 104 (Eff 12-23-71); 136 v H 1 (Eff 6-13-75); 136 v S 430 (Eff 8-13-76); 136 v S 396 (Eff 8-18-76); 137 v H 1 (Eff 8-26-77); 137 v S 295 (Eff 11-15-77); 138 v H 271 (Eff 5-13-80); 138 v H 752 (Eff 10-24-80); 139 v S 114 (Eff 10-27-81); 139 v H 598 (Eff 5-13-82); 140 v H 373 (Eff 7-1-83); 140 v H 224 (Eff 10-4-84); 140 v S 96 (Eff 4-4-85); 141 v H 47 (Eff 9-23-85); 141 v H 100 (Eff 3-6-86); 141 v H 428 (Eff 12-23-86); 142 v H 13 (Eff 9-10-87); 142 v S 156 (Eff 7-1-88); 142 v S 155 (Eff 6-24-88); 143 v H 317 (Eff 10-10-89); 143 v S 254 (Eff 4-13-90); 143 v S 374 (Eff 4-10-91); 144 v H 155 (Eff 7-22-91); 145 v S 21 (Eff 10-29-93); 145 v H 300 (Eff 7-1-94); 147 v S 67 (Eff 6-4-97); 147 v H 215 (Eff 6-30-97); 148 v S 31 (Eff 9-29-99); 148 v H 283 (Eff 9-29-99); 148 v H 470 (Eff 7-1-2000); 149 v H 94 (Eff 9-5-2001); 150 v H 95, § 1, eff. 9-26-03; 150 v H 230, § 1, eff. 9-16-04; 150 v H 11, § 1, eff. 5-18-05; 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v —).

Comment, Legislative Service Commission

Section 307.86 of the Revised Code is amended by Am. Sub. H.B. 11 and Sub. H.B. 230 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

CHAPTER 340: ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICES

§ 340.15 Referral of parent or other caregiver of at risk child.

(A) A public children services agency that identifies a child by a risk assessment conducted pursuant to section 5153.16 of the Revised Code as being at imminent risk of being abused or neglected because of an addiction of a parent, guardian, or custodian of the child to a drug of abuse or alcohol shall refer the child's addicted parent, guardian, or custodian and, if the agency determines that

the child needs alcohol or other drug addiction services, the child to an alcohol and drug addiction program certified by the department of alcohol and drug addiction services under section 3793.06 of the Revised Code. A public children services agency that is sent a court order issued pursuant to division (B) of section 2151.3514 [2151.35.14] of the Revised Code shall refer the addicted parent or other caregiver of the child identified in the court order to an alcohol and drug addiction program certified by the department of alcohol and drug addiction services under section 3793.06 of the Revised Code. On receipt of a referral under this division and to the extent funding identified under division (A) of section 340.033 [340.03.3] of the Revised Code is available, the program shall provide the following services to the addicted parent, guardian, custodian, or caregiver and child in need of alcohol or other drug services:

(1) If it is determined pursuant to an initial screening to be needed, assessment and appropriate treatment;

(2) Documentation of progress in accordance with a treatment plan developed for the addicted parent, guardian, custodian, caregiver, or child;

(3) If the referral is based on a court order issued pursuant to division (B) of section 2151.3514 [2151.35.14] of the Revised Code and the order requires the specified parent or other caregiver of the child to submit to alcohol or other drug testing during, after, or both during and after, treatment, testing in accordance with the court order.

(B) The services described in division (A) of this section shall have a priority as provided in the alcohol and drug addiction services plan established pursuant to section 340.033 [340.03.3] of the Revised Code. Once a referral has been received pursuant to this section, the public children services agency and the alcohol or drug addiction program shall, in accordance with 42 C.F.R. Part 2, share with each other any information concerning the persons and services described in that division that the agency and program determine are necessary to share. If the referral is based on a court order issued pursuant to division (B) of section 2151.3514 [2151.35.14] of the Revised Code, the results and recommendations of the alcohol and drug addiction program also shall be provided and used as described in division (D) of that section. Information obtained or maintained by the agency or program pursuant to this section that could enable the identification of any person described in division (A) of this section is not a public record subject to inspection or copying under section 149.43 of the Revised Code.

HISTORY: 147 v H 484. Eff 3-18-99.

TITLE 5: TOWNSHIPS

CHAPTER 505: TRUSTEES

§ 505.89 Curfew for minors.

(A) Whenever a board of township trustees considers it necessary to adopt a curfew for persons under eighteen years of age in any of the unincorporated areas of the township, the board may adopt a resolution setting forth the provisions of the curfew and declaring the necessity

for it, together with a statement of the reasons for the necessity, and providing for its enforcement within the unincorporated area of the township.

(B) Any person under eighteen years of age who violates a curfew adopted under division (A) of this section shall be charged as being an unruly child and taken before juvenile court as provided in Chapter 2151. of the Revised Code.

HISTORY: 145 v H 580. Eff 3-9-95.

The effective date is set by section 3 of HB 580.

TITLE 15: CONSERVATION OF NATURAL RESOURCES

CHAPTER 1533: HUNTING; FISHING

[§ 1533.17.1] § 1533.171 Injury of persons or property by hunters.

(A) No person, in the act of hunting, pursuing, taking, or killing a wild animal, shall act in a negligent, careless, or reckless manner so as to injure persons or property.

(B) The court before whom any person is convicted of or pleads guilty to a violation of division (A) of this section shall report that fact, together with the violator's name and address, to the chief of the division of wildlife not later than ten days after the date of conviction or plea.

(C) Not later than seven days after receiving a notification under division (B) of this section, the chief shall revoke, for not less than one year nor more than five years, each hunting license, fur taker permit, deer permit, wild turkey permit, and wetlands habitat stamp issued to that person under this chapter. No fee paid for such a license, permit, or stamp shall be returned to the person.

Upon revoking a license, permit, or stamp, or a combination thereof, under this division, the chief immediately shall send a notice of that action by certified mail to the last known address of the person. The notice shall state the action taken, order the person to surrender the revoked license, permit, or stamp, or combination thereof, and state that the department of natural resources will not afford a hearing as required under section 119.06 of the Revised Code.

(D) If, after receiving a notice under division (C) of this section, the person decides to petition for a review of the revocation, the person shall file a petition for such a review not later than thirty days after receiving the notice in the municipal court or the county court, or, if the person is under eighteen years of age, the juvenile court, in whose jurisdiction the violation occurred. The review shall be limited to the question of the appropriateness of the period of revocation. The court shall send a copy of the petition to the chief by certified mail together with timely notice of the date, time, and place of a hearing on the petition. The filing of a petition for a review shall not stay the revocation during the pendency of the appeal.

(E) No person whose license, permit, or stamp, or a combination thereof, has been revoked under this section shall attempt to purchase, purchase, apply for, or receive any hunting license, fur taker permit, deer permit, wild turkey permit, or wetlands habitat stamp issued under this chapter or engage in hunting during the time any such license, permit, or stamp, or a combination thereof, is revoked.

HISTORY: 126 v 417, § 1 (Eff 10-5-55); 145 v S 182 (Eff 10-20-94); 147 v S 187, Eff 3-18-99; 151 v H 443, § 1, eff. 4-6-07.

CHAPTER 1547: WATERCRAFT AND WATERWAYS

§ 1547.11 Operation, physical control, or manipulation under influence of alcohol or drug.

(A) No person shall operate or be in physical control of any vessel underway or shall manipulate any water skis,

aquaplane, or similar device on the waters in this state if, at the time of the operation, control, or manipulation, any of the following applies:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person has a concentration of eight-hundredths of one per cent or more by weight of alcohol per unit volume in the person's whole blood.

(3) The person has a concentration of ninety-six-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(4) The person has a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(5) The person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

(6) Except as provided in division (H) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

(a) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(b) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(c) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(d) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(e) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(f) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or has a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

(g) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

(h) Either of the following applies:

(i) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(ii) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(i) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(j) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

(B) No person under twenty-one years of age shall operate or be in physical control of any vessel underway or shall manipulate any water skis, aquaplane, or similar device on the waters in this state if, at the time of the operation, control, or manipulation, any of the following applies:

(1) The person has a concentration of at least two-hundredths of one per cent, but less than eight-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least twenty-eight one-thousandths of one gram, but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(4) The person has a concentration of at least two-hundredths of one gram, but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1) and a violation of division (B)(1), (2), (3), or (4) of this section, but the person shall not be convicted of more than one violation of those divisions.

(D)(1) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent violation, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's or child's whole blood, blood serum or plasma, urine, or breath at the time of the alleged violation as shown by chemical analysis of the substance withdrawn, or specimen taken within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (C) of section 1547.111 [1547.11.1] of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section.

When a person submits to a blood test, only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division if, in that person's opinion, the physical welfare of the defendant or child would be endangered by withdrawing blood.

The whole blood, blood serum or plasma, urine, or breath shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director pursuant to section 3701.143 [3701.14.3] of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section or for a violation of a prohibition that is substantially equivalent to division (A) of this section, if there was at the time the bodily substance was taken a concentration of less than the applicable concentration of alcohol specified for a violation of division (A)(2), (3), (4), or (5) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(6) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant or in making an adjudication for the child. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or for a violation of a prohibition that is substantially equivalent to that division.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney immediately upon completion of the test analysis.

The person tested may have a physician, a registered

nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer, and shall be so advised. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(E)(1) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent violation, if a law enforcement officer has administered a field sobriety test to the operator or person found to be in physical control of the vessel underway involved in the violation or the person manipulating the water skis, aquaplane, or similar device involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for reliable, credible, and generally accepted field sobriety tests for vehicles that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that have been set by the national highway traffic safety administration, that by their nature are not clearly inapplicable regarding the operation or physical control of vessels underway or the manipulation of water skis, aquaplanes, or similar devices, all of the following apply:

(a) The officer may testify concerning the results of the field sobriety test so administered.

(b) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(c) If testimony is presented or evidence is introduced under division (E)(1)(a) or (b) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(2) Division (E)(1) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (E)(1) of this section.

(F)(1) Subject to division (F)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of this section or for an equivalent violation, the court shall admit as prima-facie evidence a laboratory report from any laboratory personnel issued a permit by the department of health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division. The laboratory report shall contain all of the following:

(a) The signature, under oath, of any person who performed the analysis;

(b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

(c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved

with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

(d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the department of health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (F)(1) of this section is not admissible against the defendant or child to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's or child's attorney or, if the defendant or child has no attorney, on the defendant or child.

(3) A report of the type described in division (F)(1) of this section shall not be prima-facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant or child to whom the report pertains or the defendant's or child's attorney receives a copy of the report, the defendant or child or the defendant's or child's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.

(G) Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section, and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(H) Division (A)(6) of this section does not apply to a person who operates or is in physical control of a vessel underway or manipulates any water skis, aquaplane, or similar device while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(I) As used in this section and section 1547.111 [1547.11.1] of the Revised Code:

(1) "Equivalent violation" means a violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) or (B) of this section.

(2) "National highway traffic safety administration" has the same meaning as in section 4511.19 of the Revised Code.

(3) "Operate" means that a vessel is being used on the

waters in this state when the vessel is not securely affixed to a dock or to shore or to any permanent structure to which the vessel has the right to affix or that a vessel is not anchored in a designated anchorage area or boat camping area that is established by the United States coast guard, this state, or a political subdivision and in which the vessel has the right to anchor.

(4) "Controlled substance" and "marihuana" have the same meanings as in section 3719.01 of the Revised Code.

(5) "Cocaine" and "L.S.D." have the same meanings as in section 2925.01 of the Revised Code.

HISTORY: 128 v 1004 (Eff 8-5-59); 133 v H 1002 (Eff 9-4-70); 136 v H 957 (Eff 9-3-76); 139 v H 782 (Eff 3-4-83); 141 v H 265 (Eff 7-24-86); 143 v H 522 (Eff 6-13-90); 146 v S 295 (Eff 3-18-97); 149 v S 163, § 1, Eff 4-9-2003; 149 v S 123, § 1, eff. 1-1-04; 149 v S 163, § 3, eff. 1-1-04; 150 v H 87, § 1, eff. 6-30-03; 150 v H 87, § 4, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 26 of H.B. 87.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

[§ 1547.11.1] § 1547.111 Implied consent.

(A)(1) Any person who operates or is in physical control of a vessel or manipulates any water skis, aquaplane, or similar device upon any waters in this state shall be deemed to have given consent to a chemical test or tests to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance.

(2) The test or tests under division (A) of this section shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance. The law enforcement agency by which the officer is employed shall designate which test or tests shall be administered.

(B) Any person who is dead or unconscious or who otherwise is in a condition rendering the person incapable of refusal shall be deemed to have consented as provided in division (A)(1) of this section, and the test or tests may be administered, subject to sections 313.12 to 313.16 of the Revised Code.

(C) Any person under arrest for violating section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance shall be advised of the consequences of refusing to submit to a chemical test or tests designated as provided in division (A) of this section. The advice shall be in a written form prescribed by the chief of the division of watercraft and shall be read to the person. The

form shall contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. The reading of the form shall be witnessed by one or more persons, and the witnesses shall certify to this fact by signing the form. The person must submit to the chemical test or tests, subsequent to the request of the arresting officer, within two hours of the time of the alleged violation, and if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.

(D) If a law enforcement officer asks a person under arrest for violating section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance to submit to a chemical test or tests as provided in division (A) of this section, if the arresting officer advises the person of the consequences of the person's refusal as provided in division (C) of this section, and if the person refuses to submit, no chemical test shall be given. Upon receipt of a sworn statement of the officer that the arresting law enforcement officer had reasonable grounds to believe the arrested person, violated section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance and that the person refused to submit to the chemical test upon the request of the officer, and upon receipt of the form as provided in division (C) of this section certifying that the arrested person was advised of the consequences of the refusal, the chief of the division of watercraft shall inform the person by written notice that the person is prohibited from operating or being in physical control of a vessel, from manipulating any water skis, aquaplane, or similar device, and from registering any watercraft in accordance with section 1547.54 of the Revised Code, for one year following the date of the alleged violation. The suspension of these operation, physical control, manipulation, and registration privileges shall continue for the entire one-year period, subject to review as provided in this section.

If the person under arrest is the owner of the vessel involved in the alleged violation, the law enforcement officer who arrested the person shall seize the watercraft registration certificate and tags from the vessel involved in the violation and forward them to the chief. The chief shall retain the impounded registration certificate and tags and shall impound all other registration certificates and tags issued to the person in accordance with sections 1547.54 and 1547.57 of the Revised Code, for a period of one year following the date of the alleged violation, subject to review as provided in this section.

If the arrested person fails to surrender the registration certificate because it is not on the person of the arrested person or in the watercraft, the law enforcement officer who made the arrest shall order the person to surrender it within twenty-four hours to the law enforcement officer or the law enforcement agency that employs the law enforcement officer. If the person fails to do so, the law enforcement officer shall notify the chief of that fact in the statement the officer submits to the chief under this division.

(E) Upon suspending a person's operation, physical control, manipulation, and registration privileges in accordance with division (D) of this section, the chief shall notify the person in writing, at the person's last known address, and inform the person that the person may petition for a hearing in accordance with division (F) of this section. If a person whose operation, physical control,

manipulation, and registration privileges have been suspended petitions for a hearing or appeals any adverse decision, the suspension shall begin at the termination of any hearing or appeal unless the hearing or appeal results in a decision favorable to the person.

(F) Any person who has been notified by the chief that the person is prohibited from operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device and from registering any watercraft in accordance with section 1547.54 of the Revised Code, or who has had the registration certificate and tags of the person's watercraft impounded pursuant to division (D) of this section, within twenty days of the notification or impoundment, may file a petition in the municipal court or the county court, or if the person is a minor in juvenile court, with jurisdiction over the place at which the arrest occurred, agreeing to pay the cost of the proceedings and alleging error in the action taken by the chief under division (D) of this section or alleging one or more of the matters within the scope of the hearing as provided in this section, or both. The petitioner shall notify the chief of the filing of the petition and send the chief a copy of the petition.

The scope of the hearing is limited to the issues of whether the law enforcement officer had reasonable grounds to believe the petitioner was operating or in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of section 1547.11 of the Revised Code or a substantially equivalent municipal ordinance, whether the petitioner was placed under arrest, whether the petitioner refused to submit to the chemical test upon request of the officer, and whether the petitioner was advised of the consequences of the petitioner's refusal.

(G)(1) The chief shall furnish the court a copy of the affidavit as provided in division (C) of this section and any other relevant information requested by the court.

(2) In hearing the matter and in determining whether the person has shown error in the decision taken by the chief as provided in division (D) of this section, the court shall decide the issue upon the relevant, competent, and material evidence submitted by the chief or the person whose operation, physical control, manipulation, and registration privileges have been suspended.

In the proceedings, the chief shall be represented by the prosecuting attorney of the county in which the petition is filed if the petition is filed in a county court or juvenile court, except that if the arrest occurred within a city or village within the jurisdiction of the county court in which the petition is filed, the city director of law or village solicitor of that city or village shall represent the chief. If the petition is filed in the municipal court, the chief shall be represented as provided in section 1901.34 of the Revised Code.

(3) If the court finds from the evidence submitted that the person has failed to show error in the action taken by the chief under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in division (F) of this section, or both, the court

shall assess the cost of the proceeding against the person and shall uphold the suspension of the operation, physical control, use, and registration privileges provided in division (D) of this section. If the court finds that the person has shown error in the action taken by the chief under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in division (F) of this section, or both, the cost of the proceedings shall be paid out of the county treasury of the county in which the proceedings were held, the chief shall reinstate the operation, physical control, manipulation, and registration privileges of the person without charge, and the chief shall return the registration certificate and tags, if impounded, without charge.

(4) The court shall give information in writing of any action taken under this section to the chief.

(H) At the end of any period of suspension or impoundment imposed under this section, and upon request of the person whose operation, physical control, use, and registration privileges were suspended or whose registration certificate and tags were impounded, the chief shall reinstate the person's operation, physical control, manipulation, and registration privileges by written notice and return the certificate and tags.

(I) No person who has received written notice from the chief that the person is prohibited from operating of being in physical control of a vessel, from manipulating any water skis, aquaplane, or similar device, and from registering a watercraft, or who has had the registration certificate and tags of the person's watercraft impounded, in accordance with division (D) of this section, shall operate or be in physical control of a vessel or manipulate any water skis, aquaplane, or similar device for a period of one year following the date of the person's alleged violation of section 1547.11 of the Revised Code or the substantially equivalent municipal ordinance.

HISTORY: 141 v H 265 (Eff 7-24-86); 143 v H 522 (Eff 6-13-90); 147 v S 187 (Eff 3-18-99); 149 v S 163, § 1, Eff 4-9-2003; 149 v S 123, § 1, eff. 1-1-04; 149 v S 163, § 3, eff. 1-1-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 5 of S.B. 163 (149 v —).
See provisions, § 5 of S.B. 123 (149 v —), following RC § 1547.11.

CHAPTER 1565: MINE EMPLOYEES

§ 1565.09 Employment of minors; complaint.

A deputy mine inspector shall investigate the employment of miners in and about the mines in his district, and if he finds any minors employed in violation of section 1565.10 of the Revised Code, he shall make a complaint thereof to the juvenile court, or any other court having competent jurisdiction, against the employer of such minors.

HISTORY: GC § 898-34; 119 v 457(476), § 35; Bureau of Code Revision, RC § 4155.09, 10-1-53; RC § 1565.09, 146 v S 162, Eff 10-29-95.

TITLE 17: CORPORATIONS — PARTNERSHIPS

[CORPORATIONS]

CHAPTER 1717: HUMANE SOCIETIES

§ 1717.14 Protection of children.

When an officer or agent of the Ohio humane society or of a county humane society deems it for the best interest of a child, because of cruelty inflicted upon the child or because of the child's surroundings, that the child

be removed from the possession and control of the parents or persons having charge of the child, the officer or agent shall comply with section 2151.421 [2151.42.1] of the Revised Code.

As used in this section "child" means any person under eighteen years of age.

HISTORY: RS § 3725-1; 93 v 296; GC § 10081; 121 v 538(550); Bureau of Code Revision, 10-1-53; 135 v S 1. Eff 1-1-74; 151 v S 238, § 1, eff. 9-21-06.

TITLE 21: COURTS — PROBATE — JUVENILE

CHAPTER 2101: PROBATE COURT — JURISDICTION; PROCEDURE

[§ 2101.02.4] § 2101.024 Domestic relations-juvenile-probate division of Logan county court of common pleas.

Effective January 2, 2005, the probate judge of the court of common pleas of Logan county shall have all the powers relating to the domestic relations-juvenile-probate division of the court of common pleas of Logan county, as established pursuant to division (CC)(1) of section 2301.03 of the Revised Code, and shall exercise concurrent jurisdiction with the judge of the domestic relations-juvenile-probate division of the court of common pleas of Logan county over matters that are within the jurisdiction of the domestic relations-juvenile-probate division, as set forth in division (CC)(1) of section 2301.03 of the Revised Code.

HISTORY: 150 v H 86, § 1, eff. 11-13-03.

§ 2101.17 Fees from county treasury.

The fees enumerated in this section shall be paid to the probate court from the county treasury upon the warrant of the county auditor which shall issue upon the certificate of the probate judge and shall be in full for all services rendered in the respective proceedings as follows:

- (A) For each hearing to determine if a person is a mentally ill individual subject to hospitalization when the person is committed to a state hospital or to relatives\$12.00
- (B) When the person is discharged7.00
- (C) For order of return of a mentally ill person to a state hospital or removal therefrom2.00
- (D) For proceedings for committing a person to an institution for the mentally retarded10.00
- (E) For habeas corpus proceedings when a person is confined under color of proceedings in a criminal case and is discharged10.00
- (F) When acting as a juvenile judge, for each case filed against a delinquent, dependent, unruly, or neglected child, or a juvenile traffic offender . .5.00

- (G) For proceedings to take a child from parents or other persons having control thereof5.00

HISTORY: GC § 10501-43; 114 v 320; Bureau of Code Revision, 10-1-53; 136 v S 145. Eff 1-1-76.

CHAPTER 2111: GUARDIANS; CONSERVATORSHIPS

§ 2111.01 Definitions.

As used in Chapters 2101. to 2131. of the Revised Code:

(A) "Guardian," other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.

(B) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code.

(C) "Resident guardian" means a guardian appointed by a probate court to have the care and management of property in this state that belongs to a nonresident ward.

(D) "Incompetent" means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state.

(E) "Next of kin" means any person who would be entitled to inherit from a ward under Chapter 2105. of the Revised Code if the ward dies intestate.

(F) "Conservator" means a conservator appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 [2111.02.1] of the Revised Code.

(G) "Parent" means a natural parent or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by a juvenile court or another court.

HISTORY: GC § 10507-1; 114 v 320(382); Bureau of Code Revision, 10-1-53; 129 v 1448 (Eff 10-25-61); 133 v H 688 (Eff 11-21-69); 134 v H 290 (Eff 3-23-72); 136 v H 244 (Eff 8-26-76); 137 v S 415 (Eff 7-20-78); 138 v H 900 (Eff 7-1-80); 141 v S 322 (Eff 4-4-86); 143 v S 46 (Eff 1-1-90); 145 v H 571 (Eff 10-6-94); 146 v H 258, Eff 1-14-97.

The provisions of § 3 of SB 46 (143 v —) read as follows:

SECTION 3. The amendments to the definition of an incompetent in section 2111.01 of the Revised Code that are made by this act do not affect any guardianship of the person, the estate, or the person and estate of an incompetent that was established prior to the effective date of this act and that was based upon advanced age, chronic alcoholism, or physical disability or infirmity.

§ 2111.02 Appointment of guardian or limited, interim, emergency, or standby guardian.

(A) When found necessary, the probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 [2111.12.1] of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county and, except in the case of a minor, has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian. An interested party includes, but is not limited to, a person nominated in a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or in a writing as described in division (A) of section 2111.121 [2111.12.1] of the Revised Code.

Except when the guardian of an incompetent is an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective services under sections 5123.55 to 5123.59 of the Revised Code, the guardian of an incompetent, by virtue of such appointment, shall be the guardian of the minor children of the guardian's ward, unless the court appoints some other person as their guardian.

When the primary purpose of the appointment of a guardian is, or was, the collection, disbursement, or administration of moneys awarded by the veterans administration to the ward, or assets derived from such moneys, no court costs shall be charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the veterans administration award, exceeds one thousand five hundred dollars.

(B)(1) If the probate court finds it to be in the best interest of an incompetent or minor, it may appoint pursuant to divisions (A) and (C) of this section, on its own motion or on application by an interested party, a limited guardian with specific limited powers. The sections of the Revised Code, rules, and procedures governing guardianships apply to a limited guardian, except that the order of appointment and letters of authority of a

limited guardian shall state the reasons for, and specify the limited powers of, the guardian. The court may appoint a limited guardian for a definite or indefinite period. An incompetent or minor for whom a limited guardian has been appointed retains all of the incompetent's or minor's rights in all areas not affected by the court order appointing the limited guardian.

(2) If a guardian appointed pursuant to division (A) of this section is temporarily or permanently removed or resigns, and if the welfare of the ward requires immediate action, at any time after the removal or resignation, the probate court may appoint, ex parte and with or without notice to the ward or interested parties, an interim guardian for a maximum period of fifteen days. If the court appoints the interim guardian ex parte or without notice to the ward, the court, at its first opportunity, shall enter upon its journal with specificity the reason for acting ex parte or without notice, and, as soon as possible, shall serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the ward and interested parties and after hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional thirty days.

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve such an order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of appointment, and shall be limited to those powers that are necessary to prevent injury to the person or estate of the minor or incompetent. If the court acts ex parte or without notice to the minor or incompetent, the court, at its first opportunity, shall enter upon its journal a record of the case and, with specificity, the reason for acting ex parte or without notice. For good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed an additional thirty days.

(C) Prior to the appointment of a guardian or limited guardian under division (A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment. The hearing shall be conducted in accordance with all of the following:

(1) The proposed guardian or limited guardian shall appear at the hearing and, if appointed, shall swear under oath that the proposed guardian or limited guardian has made and will continue to make diligent efforts to file a true inventory in accordance with section 2111.14 of the Revised Code and find and report all assets belonging to the estate of the ward and that the proposed guardian or limited guardian faithfully and completely will fulfill the other duties of guardian, including the filing of timely and accurate reports and accountings;

(2) If the hearing is conducted by a referee, the procedures set forth in Civil Rule 53 shall be followed;

(3) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the burden of proving incompetency shall be by clear and convincing evidence;

(4) Upon request of the applicant, the alleged incompetent for whom the appointment is sought or the alleged incompetent's counsel, or any interested party, a recording or record of the hearing shall be made;

(5) Evidence of a less restrictive alternative to guardianship may be introduced, and when introduced, shall be considered by the court;

(6) The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship exists;

(7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:

(a) The right to be represented by independent counsel of his choice;

(b) The right to have a friend or family member of his choice present;

(c) The right to have evidence of an independent expert evaluation introduced;

(d) If the alleged incompetent is indigent, upon his request:

(i) The right to have counsel and an independent expert evaluator appointed at court expense;

(ii) If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have counsel appointed and necessary transcripts for appeal prepared at court expense.

(D) When a person has been nominated to be a guardian of the estate of a minor in or pursuant to a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or a writing as described in division (A) of section 2111.121 [2111.12.1] of the Revised Code, the person nominated has preference in appointment over a person selected by the minor. A person who has been nominated to be a guardian of the person of a minor in or pursuant to a durable power of attorney or writing of that nature does not have preference in appointment over a person selected by the minor, but the probate court may appoint the person named in the durable power of attorney or the writing, the person selected by the minor, or another person as guardian of the person of the minor.

HISTORY: GC § 10507-2; 114 v 320(383); 123 v 665; Bureau of Code Revision, 10-1-53; 128 v 76 (Eff 11-9-59); 129 v 1448 (Eff 10-25-61); 140 v S 115 (Eff 10-14-83); 142 v S 228 (Eff 3-22-89); 143 v S 46 (Eff 1-1-90); 146 v H 288. Eff 1-14-97.

§ 2111.03 Application for appointment as guardian.

A person applying for appointment as a guardian, including, but not limited to, as a limited guardian, pursuant to section 2111.02 of the Revised Code, shall file with the probate court an application that contains a statement of the whole estate of the ward, its probable value, and the probable annual rents of the ward's real property, and that also contains the following:

(A) A statement whether the applicant ever has been charged with or convicted of any crime involving theft, physical violence, or sexual, alcohol, or substance abuse,

and, if the applicant has been so charged or convicted, the date and place of each charge and each conviction;

(B) A statement whether a limited guardianship is sought and, if sought, a specification of the limited powers that are requested and a statement whether the limited guardianship is to be for a definite or indefinite period;

(C) In the case of an application for the appointment of a guardian of a minor, all of the following:

(1) Name, age, and residence of the minor;

(2) Name and residence of each parent of the minor;

(3) Name, degree of kinship, age, and address of next of kin of the minor, if no parent is living or if a parent of the minor is absent, under disability, or for other reason cannot be notified;

(4) Name and residence address of the person having custody of the minor.

(D) In the case of an application for the appointment of a guardian of an alleged incompetent, all of the following:

(1) Name, age, and residence of the person for whom such appointment is sought;

(2) Facts upon which the application is based;

(3) Name, degree of kinship, age, and address of the next of kin of the alleged incompetent.

The court, on its own motion, shall proceed as provided in this chapter, upon suggestion by the bureau of workers' compensation that any person who has made application for or been awarded compensation or death benefits as an employee or the dependent of a killed employee is a minor or incompetent. In that case, no application need be filed and the bureau shall furnish the court with the name and residence of such person and the name, degree of kinship, age, and address of the father, mother, or next of kin of such person insofar as known by the bureau.

HISTORY: GC § 10507-3; 114 v 320(383); 115 v 424; Bureau of Code Revision, 10-1-53; 129 v 1448 (Eff 10-25-61); 143 v S 46 (Eff 1-1-90); 143 v H 222 (Eff 11-3-89); 144 v H 427. Eff 10-8-92.

[§ 2111.03.1] § 2111.031 Appointment of physicians and other persons to determine need for guardianship.

In connection with an application for the appointment of a guardian for an alleged incompetent, the court may appoint physicians and other qualified persons to examine, investigate, or represent the alleged incompetent, to assist the court in deciding whether a guardianship is necessary. If the person is determined to be an incompetent and a guardian is appointed for him, the costs, fees, or expenses incurred to so assist the court shall be charged either against the estate of the person or against the applicant, unless the court determines, for good cause shown, that the costs, fees, or expenses are to be recovered from the county, in which case they shall be charged against the county. If the person is not determined to be an incompetent or a guardian is not appointed for him, the costs, fees, or expenses incurred to so assist the court shall be charged against the applicant, unless the court determines, for good cause shown, that the costs, fees, or expenses are to be recovered from the county, in which case they shall be charged against the county.

A court may require the applicant to make an advance deposit of an amount that the court determines is necessary to defray the anticipated costs of examinations of an alleged incompetent and to cover fees or expenses

to be incurred to assist it in deciding whether a guardianship is necessary.

This section does not affect or apply to the duties of a probate court investigator under sections 2111.04 and 2111.041 [2111.04.1] of the Revised Code.

HISTORY: 140 v H 263 (Eff 10-4-84); 143 v S 46. Eff 1-1-90.

The effective date is set by section 4 of SB 46.

§ 2111.04 Notice of appointment.

(A) Except for an interim or emergency guardian appointed under division (B)(2) or (3) of section 2111.02 of the Revised Code, no guardian of the person, the estate, or both shall be appointed until at least seven days after the probate court has caused written notice, setting forth the time and place of the hearing, to be served as follows:

(1) In the appointment of the guardian of a minor, notice shall be served:

(a) Upon the minor, if over the age of fourteen, by personal service;

(b) Upon each parent of the minor whose name and address is known or with reasonable diligence can be ascertained, provided the parent is free from disability other than minority;

(c) Upon the next of kin of the minor who are known to reside in this state, if there is no living parent, the name and address of the parent cannot be ascertained, or the parent is under disability other than minority;

(d) Upon the person having the custody of the minor.

(2) In the appointment of the guardian of an incompetent, notice shall be served:

(a)(i) Upon the person for whom appointment is sought by personal service by a probate court investigator, or in the manner provided in division (A)(2)(a)(ii) of this section. The notice shall be in boldface type and shall inform the alleged incompetent, in boldface type, of his rights to be present at the hearing, to contest any application for the appointment of a guardian for his person, estate, or both, and to be represented by an attorney and of all of the rights set forth in division (C)(7) of section 2111.02 of the Revised Code.

(ii) If the person for whom appointment is sought is a resident of, or has a legal settlement in, the county in which the court has jurisdiction, but is absent from that county, the probate court may designate, by order, a temporary probate court investigator, in lieu of a regular probate court investigator appointed or designated under section 2101.11 of the Revised Code, to make the personal service of the notice described in division (A)(2)(a)(i) of this section upon the person for whom appointment is sought.

(b) Upon the next of kin of the person for whom appointment is sought who are known to reside in this state.

(B) After service of notice in accordance with division (A) of this section and for good cause shown, the court may appoint a guardian prior to the time limitation specified in that division.

(C) Notice may not be waived by the person for whom the appointment is sought.

(D) From the service of notice until the hearing, no sale, gift, conveyance, or encumbrance of the property of an alleged incompetent shall be valid as to persons having notice of the proceeding.

HISTORY: GC § 10507-4; 114 v 320(384); 121 v 557(569); Bureau of Code Revision, 10-1-53; 127 v 36 (Eff 9-4-57); 129 v 1448 (Eff 10-25-61); 136 v S 145 (Eff 1-1-76); 143 v S 46. Eff 1-1-90.

The effective date is set by section 4 of SB 46.

§ 2111.06 Guardian of the person.

If the powers of the person appointed as guardian of a minor or incompetent are not limited by the order of appointment, such person shall be guardian both of the person and estate of the ward. In every instance the court shall appoint the same person as guardian of the person and estate of any such ward, unless in the opinion of the court the interests of the ward will be promoted by the appointment of different persons as guardians of the person and of the estate.

A guardian of the person of a minor shall be appointed as to a minor having neither father nor mother, or whose parents are unsuitable persons to have the custody and tuition of such minor, or whose interests, in the opinion of the court, will be promoted thereby. A guardian of the person shall have the custody and provide for the maintenance of the ward, and if the ward is a minor, such guardian shall also provide for the education of such ward.

Before exercising its jurisdiction to appoint a guardian of a minor, the court shall comply with the jurisdictional standards of sections 3127.01 to 3127.53 of the Revised Code.

HISTORY: GC § 10507-6; 114 v 320(385); Bureau of Code Revision, 10-1-53; 129 v 1448 (Eff 10-25-61); 137 v S 135. Eff 10-25-77; 150 v S 185, § 1, eff. 4-11-05.

§ 2111.07 Powers of guardian of person and estate.

Each person appointed guardian of the person and estate of a minor shall have the custody and tuition of his ward and the management of such ward's estate during minority, unless such guardian is removed or discharged from such trust or the guardianship terminates from any of the causes specified in Chapters 2101. to 2131., inclusive, of the Revised Code.

HISTORY: GC § 10507-7; 114 v 320(385); Bureau of Code Revision. Eff 10-1-53.

§ 2111.08 Parents are natural guardians.

The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare, and education and the care and management of their estates. The wife and husband have equal powers, rights, and duties and neither parent has any right paramount to the right of the other concerning the parental rights and responsibilities for the care of the minor or the right to be the residential parent and legal custodian of the minor, the control of the services or the earnings of such minor, or any other matter affecting the minor; provided that if either parent, to the exclusion of the other, is maintaining and supporting the child, that parent shall have the paramount right to control the services and earnings of the child. Neither parent shall forcibly take a child from the guardianship of the parent who is the residential parent and legal custodian of the child.

If the wife and husband live apart, the court may award the guardianship of a minor to either parent, and the state in which the parent who is the residential parent and legal custodian or who otherwise has the lawful custody of the minor resides has jurisdiction to determine questions concerning the minor's guardianship.

HISTORY: GC § 10507-8; 114 v 320(385); Bureau of Code Revision, 10-1-53; 143 v S 3. Eff 4-11-91.

§ 2111.13 Duties of guardian of person; use of ward's estate; consent to autopsy or post-mortem examination; authorization of autopsy or disposition of ward's body.

(A) When a guardian is appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, the guardian's duties are as follows:

- (1) To protect and control the person of the ward;
- (2) To provide suitable maintenance for the ward when necessary, which shall be paid out of the estate of such ward upon the order of the guardian of the person;
- (3) To provide such maintenance and education for such ward as the amount of the ward's estate justifies when the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate the ward, which shall be paid out of such ward's estate upon the order of the guardian of the person;
- (4) To obey all the orders and judgments of the probate court touching the guardianship.

(B) Except as provided in section 2111.131 [2111.13.1] of the Revised Code, no part of the ward's estate shall be used for the support, maintenance, or education of such ward unless ordered and approved by the court.

(C) A guardian of the person may authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services unless the ward or an interested party files objections with the probate court, or the court, by rule or order, provides otherwise.

(D) Unless a person with the right of disposition for a ward under section 2108.70 or 2108.81 of the Revised Code has made a decision regarding whether or not consent to an autopsy or post-mortem examination on the body of the deceased ward under section 2108.50 of the Revised Code shall be given, a guardian of the person of a ward who has died may consent to the autopsy or post-mortem examination.

(E) If a deceased ward did not have a guardian of the estate, the estate is not required to be administered by a probate court, and a person with the right of disposition for a ward, as described in section 2108.70 or 2108.81 of the Revised Code, has not made a decision regarding the disposition of the ward's body or remains, the guardian of the person of the ward may authorize the burial or cremation of the ward.

(F) A guardian who gives consent or authorization as described in divisions (D) and (E) of this section shall notify the probate court as soon as possible after giving the consent or authorization.

HISTORY: GC § 10507-16; 114 v 320(387); Bureau of Code Revision, 10-1-53; 140 v H 263 (Eff 10-4-84); 143 v S 46 (Eff 1-1-90); 148 v H 538. Eff 9-22-2000; 151 v H 426, § 1, eff. 10-12-06.

§ 2111.15 Duties of guardian of person and estate.

When a person is appointed to have custody of the person and to take charge of the estate of a ward, such person shall have all the duties required of a guardian of the estate and of a guardian of the person.

HISTORY: GC § 10507-17; 114 v 320(388); Bureau of Code Revision. Eff 10-1-53.

§ 2111.23 Guardian ad litem.

Whenever a ward, for whom a guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in the probate court, such guardian shall in all such suits or proceedings act as guardian ad litem for such ward, except as to suits or proceedings in which the guardian has an adverse interest. Whenever a minor or other person under legal disability, for whom no guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in such court, the court may appoint a guardian or a guardian ad litem. In a suit or proceeding in which the guardian has an adverse interest, the court shall appoint a guardian ad litem to represent such minor or other person under legal disability.

HISTORY: GC § 10507-26; 114 v 320(389); Bureau of Code Revision, 10-1-53; 125 v 411. Eff 10-16-53.

§ 2111.46 Guardianship of minors.

When a guardian has been appointed for a minor before such minor is over fourteen years of age, such guardian's power shall continue until the ward arrives at the age of majority, unless removed for good cause or unless such ward selects another suitable guardian. After such selection is made and approved by the probate court and the person selected is appointed and qualified, the powers of the former guardian shall cease. Thereupon his final account as guardian shall be filed and settled in court.

Upon the termination of a guardianship of the person, estate, or both of a minor before such minor reaches eighteen years of age, if a successor guardian is not appointed and if the court finds that such minor is without proper care, the court shall certify a copy of its finding together with as much of the record and such further information as the court deems necessary, or as the juvenile court may request, to the juvenile court for further proceedings and thereupon such court shall have exclusive jurisdiction respecting such child.

HISTORY: GC § 10507-60; 114 v 320(398); 121 v 557(570); Bureau of Code Revision. Eff 10-1-53.

TITLE 23: COURTS — COMMON PLEAS

CHAPTER 2301: ORGANIZATION

§ 2301.03 Judges of domestic relations division; juvenile and probate court responsibility.

(A) In Franklin county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1953, January 5, 1969, January 5, 1977, and January 2, 1997, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Franklin county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to them. In addition to the judge's regular duties, the judge who is senior in point of service shall serve on the children services board and the county advisory board and shall be the administrator of the domestic relations division and its subdivisions and departments.

(B) In Hamilton county:

(1) The judge of the court of common pleas, whose term begins on January 1, 1957, and successors, and the judge of the court of common pleas, whose term begins on February 14, 1967, and successors, shall be the juvenile judges as provided in Chapters 2151. and 2152. of the Revised Code, with the powers and jurisdiction conferred by those chapters.

(2) The judges of the court of common pleas whose terms begin on January 5, 1957, January 16, 1981, and July 1, 1991, and successors, shall be elected and designated as judges of the court of common pleas, division of domestic relations, and shall have assigned to them all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court. On or after the first day of July and before the first day of August of 1991 and each year thereafter, a majority of the judges of the division of domestic relations shall elect one of the judges of the division as administrative judge of that division. If a majority of the judges of the division of domestic relations are unable for any reason to elect an administrative judge for the division before the first day of August, a majority of the judges of the Hamilton county court of common pleas, as soon as possible after that date, shall elect one of the judges of the division of domestic relations as administrative judge of that division. The term of the administrative judge shall begin on the earlier of the first day of August of the year in which the administrative judge is elected or the date on which the administrative judge is elected by a majority of the judges of the Hamilton county court of common pleas and shall terminate on the date on which the administrative judge's successor is elected in the following year.

In addition to the judge's regular duties, the administrative judge of the division of domestic relations shall be the administrator of the domestic relations division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the

personnel of the division engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, including any referees considered necessary by the judges in the discharge of their various duties.

The administrative judge of the division of domestic relations also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and shall fix the duties of its personnel. The duties of the personnel, in addition to those provided for in other sections of the Revised Code, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the division.

The board of county commissioners shall appropriate the sum of money each year as will meet all the administrative expenses of the division of domestic relations, including reasonable expenses of the domestic relations judges and the division counselors and other employees designated to conduct the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, conciliation and counseling, and all matters relating to those cases and counseling, and the expenses involved in the attendance of division personnel at domestic relations and welfare conferences designated by the division, and the further sum each year as will provide for the adequate operation of the division of domestic relations.

The compensation and expenses of all employees and the salary and expenses of the judges shall be paid by the county treasurer from the money appropriated for the operation of the division, upon the warrant of the county auditor, certified to by the administrative judge of the division of domestic relations.

The summonses, warrants, citations, subpoenas, and other writs of the division may issue to a bailiff, constable, or staff investigator of the division or to the sheriff of any county or any marshal, constable, or police officer, and the provisions of law relating to the subpoenaing of witnesses in other cases shall apply insofar as they are applicable. When a summons, warrant, citation, subpoena, or other writ is issued to an officer, other than a bailiff, constable, or staff investigator of the division, the expense of serving it shall be assessed as a part of the costs in the case involved.

(3) The judge of the court of common pleas of Hamilton county whose term begins on January 3, 1997, and the successor to that judge whose term begins on January 3, 2003, shall each be elected and designated for one term only as the drug court judge of the court of common pleas of Hamilton county. The successors to the judge whose term begins on January 3, 2003, shall be elected and designated as judges of the general division of the court of common pleas of Hamilton county and shall not have the authority granted by division (B)(3) of this section. The drug court judge may accept or reject any case referred to the drug court judge under division (B)(3) of this section. After the drug court judge accepts a referred case, the drug court judge has full authority over the case, including the authority to conduct arraignment, accept pleas, enter findings and dispositions, conduct trials, order

treatment, and if treatment is not successfully completed pronounce and enter sentence.

A judge of the general division of the court of common pleas of Hamilton county and a judge of the Hamilton county municipal court may refer to the drug court judge any case, and any companion cases, the judge determines meet the criteria described under divisions (B)(3)(a) and (b) of this section. If the drug court judge accepts referral of a referred case, the case, and any companion cases, shall be transferred to the drug court judge. A judge may refer a case meeting the criteria described in divisions (B)(3)(a) and (b) of this section that involves a violation of a condition of a community control sanction to the drug court judge, and, if the drug court judge accepts the referral, the referring judge and the drug court judge have concurrent jurisdiction over the case.

A judge of the general division of the court of common pleas of Hamilton county and a judge of the Hamilton county municipal court may refer a case to the drug court judge under division (B)(3) of this section if the judge determines that both of the following apply:

(a) One of the following applies:

(i) The case involves a drug abuse offense, as defined in section 2925.01 of the Revised Code, that is a felony of the third or fourth degree if the offense is committed prior to July 1, 1996, a felony of the third, fourth, or fifth degree if the offense is committed on or after July 1, 1996, or a misdemeanor.

(ii) The case involves a theft offense, as defined in section 2913.01 of the Revised Code, that is a felony of the third or fourth degree if the offense is committed prior to July 1, 1996, a felony of the third, fourth, or fifth degree if the offense is committed on or after July 1, 1996, or a misdemeanor, and the defendant is drug or alcohol dependent or in danger of becoming drug or alcohol dependent and would benefit from treatment.

(b) All of the following apply:

(i) The case involves an offense for which a community control sanction may be imposed or is a case in which a mandatory prison term or a mandatory jail term is not required to be imposed.

(ii) The defendant has no history of violent behavior.

(iii) The defendant has no history of mental illness.

(iv) The defendant's current or past behavior, or both, is drug or alcohol driven.

(v) The defendant demonstrates a sincere willingness to participate in a fifteen-month treatment process.

(vi) The defendant has no acute health condition.

(vii) If the defendant is incarcerated, the county prosecutor approves of the referral.

(4) If the administrative judge of the court of common pleas of Hamilton county determines that the volume of cases pending before the drug court judge does not constitute a sufficient caseload for the drug court judge, the administrative judge, in accordance with the Rules of Superintendence for Courts of Common Pleas, shall assign individual cases to the drug court judge from the general docket of the court. If the assignments so occur, the administrative judge shall cease the assignments when the administrative judge determines that the volume of cases pending before the drug court judge constitutes a sufficient caseload for the drug court judge.

(5) As used in division (B) of this section, "community control sanction," "mandatory prison term," and "mandatory jail term" have the same meanings as in section 2929.01 of the Revised Code.

(C)(1) In Lorain county:

(a) The judges of the court of common pleas whose terms begin on January 3, 1959, January 4, 1989, January 2, 1999, and February 9, 2009, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Lorain county and shall be elected and designated as the judges of the court of common pleas, division of domestic relations. They shall have all of the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to them, except cases that for some special reason are assigned to some other judge of the court of common pleas.

(b) On and after January 1, 2006, the judges of the court of common pleas, division of domestic relations, in addition to the powers and jurisdiction set forth in division (C)(1)(a) of this section, shall have jurisdiction over matters that are within the jurisdiction of the probate court under Chapter 2101. and other provisions of the Revised Code. From January 1, 2006, through February 8, 2009, the judges of the court of common pleas, division of domestic relations, shall exercise probate jurisdiction concurrently with the probate judge.

(c) The judge of the court of common pleas, division of domestic relations, whose term begins on February 9, 2009, is the successor to the probate judge who was elected in 2002 for a term that began on February 9, 2003.

(2)(a) From January 1, 2006, through February 8, 2009, with respect to Lorain county, all references in law to the probate court shall be construed as references to both the probate court and the court of common pleas, division of domestic relations, and all references in law to the probate judge shall be construed as references to both the probate judge and the judges of the court of common pleas, division of domestic relations. On and after February 9, 2009, with respect to Lorain county, all references in law to the probate court shall be construed as references to the court of common pleas, division of domestic relations, and all references to the probate judge shall be construed as references to the judges of the court of common pleas, division of domestic relations.

(b) On and after February 9, 2009, with respect to Lorain county, all references in law to the clerk of the probate court shall be construed as references to the judge who is serving pursuant to Rule 4 of the Rules of Superintendence for the Courts of Ohio as the administrative judge of the court of common pleas, division of domestic relations.

(D) In Lucas county:

(1) The judges of the court of common pleas whose terms begin on January 1, 1955, and January 3, 1965, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lucas county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. All divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to them.

The judge of the division of domestic relations, senior in point of service, shall be considered as the presiding judge of the court of common pleas, division of domestic relations, and shall be charged exclusively with the

assignment and division of the work of the division and the employment and supervision of all other personnel of the domestic relations division.

(2) The judges of the court of common pleas whose terms begin on January 5, 1977, and January 2, 1991, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lucas county, shall be elected and designated as judges of the court of common pleas, juvenile division, and shall be the juvenile judges as provided in Chapters 2151. and 2152. of the Revised Code with the powers and jurisdictions conferred by those chapters. In addition to the judge's regular duties, the judge of the court of common pleas, juvenile division, senior in point of service, shall be the administrator of the juvenile division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating juvenile cases, including any referees considered necessary by the judges of the division in the discharge of their various duties.

The judge of the court of common pleas, juvenile division, senior in point of service, also shall designate the title, compensation, expense allowance, hours, leaves of absence, and vacation of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties include the handling, servicing, and investigation of juvenile cases and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the division.

(3) If one of the judges of the court of common pleas, division of domestic relations, or one of the judges of the juvenile division is sick, absent, or unable to perform that judge's judicial duties or the volume of cases pending in that judge's division necessitates it, the duties shall be performed by the judges of the other of those divisions.

(E) In Mahoning county:

(1) The judge of the court of common pleas whose term began on January 1, 1955, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Mahoning county, shall be elected and designated as judge of the court of common pleas, division of domestic relations, and shall be assigned all the divorce, dissolution of marriage, legal separation, and annulment cases coming before the court. In addition to the judge's regular duties, the judge of the court of common pleas, division of domestic relations, shall be the administrator of the domestic relations division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, including any referees considered necessary in the discharge of the various duties of the judge's office.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and counseling and conciliation services that may be

made available to persons requesting them, whether or not the persons are parties to an action pending in the division.

(2) The judge of the court of common pleas whose term began on January 2, 1969, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Mahoning county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code, with the powers and jurisdictions conferred by those chapters. In addition to the judge's regular duties, the judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating juvenile cases, including any referees considered necessary by the judge in the discharge of the judge's various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the division.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, or unable to perform that judge's judicial duties, or the volume of cases pending in that judge's division necessitates it, that judge's duties shall be performed by another judge of the court of common pleas.

(F) In Montgomery county:

(1) The judges of the court of common pleas whose terms begin on January 2, 1953, and January 4, 1977, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Montgomery county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. These judges shall have assigned to them all divorce, dissolution of marriage, legal separation, and annulment cases.

The judge of the division of domestic relations, senior in point of service, shall be charged exclusively with the assignment and division of the work of the division and shall have charge of the employment and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, including any necessary referees, except those employees who may be appointed by the judge, junior in point of service, under this section and sections 2301.12, 2301.18, and 2301.19 of the Revised Code. The judge of the division of domestic relations, senior in point of service, also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties.

(2) The judges of the court of common pleas whose terms begin on January 1, 1953, and January 1, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same

compensation as other judges of the court of common pleas of Montgomery county, shall be elected and designated as judges of the court of common pleas, juvenile division, and shall be, and have the powers and jurisdiction of, the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code.

In addition to the judge's regular duties, the judge of the court of common pleas, juvenile division, senior in point of service, shall be the administrator of the juvenile division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division, including any necessary referees, who are engaged in handling, servicing, or investigating juvenile cases. The judge, senior in point of service, also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of juvenile cases and of any counseling and conciliation services that are available upon request to persons, whether or not they are parties to an action pending in the division.

If one of the judges of the court of common pleas, division of domestic relations, or one of the judges of the court of common pleas, juvenile division, is sick, absent, or unable to perform that judge's duties or the volume of cases pending in that judge's division necessitates it, the duties of that judge may be performed by the judge or judges of the other of those divisions.

(G) In Richland county:

(1) The judge of the court of common pleas whose term begins on January 1, 1957, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Richland county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. That judge shall be assigned and hear all divorce, dissolution of marriage, legal separation, and annulment cases, all domestic violence cases arising under section 3113.31 of the Revised Code, and all post-decree proceedings arising from any case pertaining to any of those matters. The division of domestic relations has concurrent jurisdiction with the juvenile division of the court of common pleas of Richland county to determine the care, custody, or control of any child not a ward of another court of this state, and to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judge of the division of domestic relations shall be assigned and hear all cases pertaining to paternity or parentage, the care, custody, or control of children, parenting time or visitation, child support, or the allocation of parental rights and responsibilities for the care of children, all proceedings arising under Chapter 3111. of the Revised Code, all proceedings arising under the uniform interstate family support act contained in Chapter 3115. of the Revised Code, and all post-decree proceedings arising from any case pertaining to any of those matters.

In addition to the judge's regular duties, the judge of the court of common pleas, division of domestic relations,

shall be the administrator of the domestic relations division and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the domestic relations division, including any magistrates the judge considers necessary for the discharge of the judge's duties. The judge shall also designate the title, compensation, expense allowances, hours, leaves of absence, vacation, and other employment-related matters of the personnel of the division and shall fix their duties.

(2) The judge of the court of common pleas whose term begins on January 3, 2005, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Richland county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be, and have the powers and jurisdiction of, the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judge of the juvenile division shall not have jurisdiction or the power to hear, and shall not be assigned, any case pertaining to paternity or parentage, the care, custody, or control of children, parenting time or visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters. The judge of the juvenile division shall not have jurisdiction or the power to hear, and shall not be assigned, any proceeding under the uniform interstate family support act contained in Chapter 3115. of the Revised Code.

In addition to the judge's regular duties, the judge of the juvenile division shall be the administrator of the juvenile division and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any magistrates whom the judge considers necessary for the discharge of the judge's various duties.

The judge of the juvenile division also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling, conciliation, and mediation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(H) In Stark county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1959, and January 1, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Stark county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases, except cases that are assigned to some other judge of the court of common pleas for some special reason, shall be assigned to the judges.

The judge of the division of domestic relations, second most senior in point of service, shall have charge of the employment and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, and necessary referees required for the judge's respective court.

The judge of the division of domestic relations, senior in point of service, shall be charged exclusively with the administration of sections 2151.13, 2151.16, 2151.17, and 2152.71 of the Revised Code and with the assignment and division of the work of the division and the employment and supervision of all other personnel of the division, including, but not limited to, that judge's necessary referees, but excepting those employees who may be appointed by the judge second most senior in point of service. The senior judge further shall serve in every other position in which the statutes permit or require a juvenile judge to serve.

(I) In Summit county:

(1) The judges of the court of common pleas whose terms begin on January 4, 1967, and January 6, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Summit county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. The judges of the division of domestic relations shall have assigned to them and hear all divorce, dissolution of marriage, legal separation, and annulment cases that come before the court. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judges of the division of domestic relations shall have assigned to them and hear all cases pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children and all post-decree proceedings arising from any case pertaining to any of those matters. The judges of the division of domestic relations shall have assigned to them and hear all proceedings under the uniform interstate family support act contained in Chapter 3115. of the Revised Code.

The judge of the division of domestic relations, senior in point of service, shall be the administrator of the domestic relations division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division, including any necessary referees, who are engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases. That judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and of any counseling and conciliation services that are available upon request to all persons, whether or not they are parties to an action pending in the division.

(2) The judge of the court of common pleas whose term begins on January 1, 1955, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Summit county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be, and have

the powers and jurisdiction of, the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judge of the juvenile division shall not have jurisdiction or the power to hear, and shall not be assigned, any case pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters. The judge of the juvenile division shall not have jurisdiction or the power to hear, and shall not be assigned, any proceeding under the uniform interstate family support act contained in Chapter 3115. of the Revised Code.

The juvenile judge shall be the administrator of the juvenile division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division, including any necessary referees, who are engaged in handling, servicing, or investigating juvenile cases. The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of juvenile cases and of any counseling and conciliation services that are available upon request to persons, whether or not they are parties to an action pending in the division.

(J) In Trumbull county, the judges of the court of common pleas whose terms begin on January 1, 1953, and January 2, 1977, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Trumbull county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to them, except cases that for some special reason are assigned to some other judge of the court of common pleas.

(K) In Butler county:

(1) The judges of the court of common pleas whose terms begin on January 1, 1957, and January 4, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Butler county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. The judges of the division of domestic relations shall have assigned to them all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge senior in point of service shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge senior in point of service also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in

addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(2) The judges of the court of common pleas whose terms begin on January 3, 1987, and January 2, 2003, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Butler county, shall be elected and designated as judges of the court of common pleas, juvenile division, and shall be the juvenile judges as provided in Chapters 2151. and 2152. of the Revised Code, with the powers and jurisdictions conferred by those chapters. The judge of the court of common pleas, juvenile division, who is senior in point of service, shall be the administrator of the juvenile division and its subdivisions and departments. The judge, senior in point of service, shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any referees whom the judge considers necessary for the discharge of the judge's various duties.

The judge, senior in point of service, also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, or unable to perform that judge's judicial duties or the volume of cases pending in the judge's division necessitates it, the duties of that judge shall be performed by the other judges of the domestic relations and juvenile divisions.

(L)(1) In Cuyahoga county, the judges of the court of common pleas whose terms begin on January 8, 1961, January 9, 1961, January 18, 1975, January 19, 1975, and January 13, 1987, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Cuyahoga county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to all divorce, dissolution of marriage, legal separation, and annulment cases, except in cases that are assigned to some other judge of the court of common pleas for some special reason.

(2) The administrative judge is administrator of the domestic relations division and its subdivisions and departments and has the following powers concerning division personnel:

(a) Full charge of the employment, assignment, and supervision;

(b) Sole determination of compensation, duties, expenses, allowances, hours, leaves, and vacations.

(3) "Division personnel" include persons employed or referees engaged in hearing, servicing, investigating,

counseling, or conciliating divorce, dissolution of marriage, legal separation and annulment matters.

(M) In Lake county:

(1) The judge of the court of common pleas whose term begins on January 2, 1961, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Lake county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all the divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(2) The judge of the court of common pleas whose term begins on January 4, 1979, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lake county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code, with the powers and jurisdictions conferred by those chapters. The judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile division and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any referees whom the judge considers necessary for the discharge of the judge's various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, or unable to perform that judge's judicial duties or the volume of cases pending in the judge's division necessitates it, the duties of that judge shall be performed by the other judges of the domestic relations and juvenile divisions.

(N) In Erie county:

(1) The judge of the court of common pleas whose term begins on January 2, 1971, and the successors to that

judge whose terms begin before January 2, 2007, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judge of the court of common pleas of Erie county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall have all the powers relating to juvenile courts, and shall be assigned all cases under Chapters 2151. and 2152. of the Revised Code, parentage proceedings over which the juvenile court has jurisdiction, and divorce, dissolution of marriage, legal separation, and annulment cases, except cases that for some special reason are assigned to some other judge.

On or after January 2, 2007, the judge of the court of common pleas who is elected in 2006 shall be the successor to the judge of the domestic relations division whose term expires on January 1, 2007, shall be designated as judge of the court of common pleas, juvenile division, and shall be the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code with the powers and jurisdictions conferred by those chapters.

(2) The judge of the court of common pleas, general division, whose term begins on January 1, 2005, and successors, the judge of the court of common pleas, general division whose term begins on January 2, 2005, and successors, and the judge of the court of common pleas, general division, whose term begins February 9, 2009, and successors, shall have assigned to them, in addition to all matters that are within the jurisdiction of the general division of the court of common pleas, all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, and all matters that are within the jurisdiction of the probate court under Chapter 2101., and other provisions, of the Revised Code.

(O) In Greene county:

(1) The judge of the court of common pleas whose term begins on January 1, 1961, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Greene county and shall be elected and designated as the judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, annulment, uniform reciprocal support enforcement, and domestic violence cases and all other cases related to domestic relations, except cases that for some special reason are assigned to some other judge of the court of common pleas.

The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the division. The judge also shall designate the title, compensation, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and the provision of counseling and conciliation services that the division considers necessary and makes available to persons who request the services, whether or not the persons are parties in an action pending in the division. The compensation for the personnel shall be paid from the overall court budget and shall be included in the appropriations for the existing judges of the general division of the court of common pleas.

(2) The judge of the court of common pleas whose term begins on January 1, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Greene county, shall be elected and designated as judge of the court of common pleas, juvenile division, and, on or after January 1, 1995, shall be the juvenile judge as provided in Chapters 2151. and 2152. of the Revised Code with the powers and jurisdiction conferred by those chapters. The judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile division and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any referees whom the judge considers necessary for the discharge of the judge's various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(3) If one of the judges of the court of common pleas, general division, is sick, absent, or unable to perform that judge's judicial duties or the volume of cases pending in the general division necessitates it, the duties of that judge of the general division shall be performed by the judge of the division of domestic relations and the judge of the juvenile division.

(P) In Portage county, the judge of the court of common pleas, whose term begins January 2, 1987, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Portage county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(Q) In Clermont county, the judge of the court of common pleas, whose term begins January 2, 1987, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Clermont county and shall be elected and designated as judge of the court of common pleas,

division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(R) In Warren county, the judge of the court of common pleas, whose term begins January 1, 1987, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Warren county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(S) In Licking county, the judges of the court of common pleas, whose terms begin on January 1, 1991, and January 1, 2005, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Licking county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. The judges shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The administrative judge of the division of domestic relations shall be charged with the assignment and division of the work of the division and with the

employment and supervision of the personnel of the division.

The administrative judge of the division of domestic relations shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(T) In Allen county, the judge of the court of common pleas, whose term begins January 1, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Allen county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(U) In Medina county, the judge of the court of common pleas whose term begins January 1, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Medina county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and an-

nulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and providing counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(V) In Fairfield county, the judge of the court of common pleas whose term begins January 2, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Fairfield county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge also has concurrent jurisdiction with the probate-juvenile division of the court of common pleas of Fairfield county with respect to and may hear cases to determine the custody of a child, as defined in section 2151.011 [2151.01.1] of the Revised Code, who is not the ward of another court of this state, cases that are commenced by a parent, guardian, or custodian of a child, as defined in section 2151.011 [2151.01.1] of the Revised Code, to obtain an order requiring a parent of the child to pay child support for that child when the request for that order is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, an action for support under Chapter 3115. of the Revised Code, or an action that is within the exclusive original jurisdiction of the probate-juvenile division of the court of common pleas of Fairfield county and that involves an allegation that the child is an abused, neglected, or dependent child, and post-decree proceedings and matters arising from those types of cases.

The judge of the domestic relations division shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and providing any counseling and conciliation services that the division makes available to persons, regardless of whether the persons are parties to an action pending in the division, who request the services. When the judge hears a case to determine the custody of a child, as defined in section 2151.011 [2151.01.1] of the Revised Code, who is not the ward of another court of this state or a case that is commenced by a parent, guardian, or custodian of a child, as defined in section 2151.011 [2151.01.1] of the Revised Code, to obtain an order requiring a parent of the child to pay child support for that child when the request for that order is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, an action for support under Chapter 3115. of the Revised Code, or an action that is within the exclusive original jurisdiction of the probate-juvenile division of the court of common pleas of Fairfield county and that involves an allegation that the child is an abused, neglected, or dependent child, the duties of the personnel of the domestic relations division also include the handling, servicing, and investigation of those types of cases.

(W)(1) In Clark county, the judge of the court of common pleas whose term begins on January 2, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Clark county and shall be elected and designated as judge of the court of common pleas, domestic relations division. The judge shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code and all parentage proceedings under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction shall be assigned to the judge of the division of domestic relations. All divorce, dissolution of marriage, legal separation, annulment, uniform reciprocal support enforcement, and other cases related to domestic relations shall be assigned to the domestic relations division, and the presiding judge of the court of common pleas shall assign the cases to the judge of the domestic relations division and the judges of the general division.

(2) In addition to the judge's regular duties, the judge of the division of domestic relations shall serve on the children services board and the county advisory board.

(3) If the judge of the court of common pleas of Clark county, division of domestic relations, is sick, absent, or unable to perform that judge's judicial duties or if the presiding judge of the court of common pleas of Clark county determines that the volume of cases pending in

the division of domestic relations necessitates it, the duties of the judge of the division of domestic relations shall be performed by the judges of the general division or probate division of the court of common pleas of Clark county, as assigned for that purpose by the presiding judge of that court, and the judges so assigned shall act in conjunction with the judge of the division of domestic relations of that court.

(X) In Scioto county, the judge of the court of common pleas whose term begins January 2, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Scioto county and shall be elected and designated as judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and providing counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(Y) In Auglaize county, the judge of the probate and juvenile divisions of the Auglaize county court of common pleas also shall be the administrative judge of the domestic relations division of the court and shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court. The judge shall have all powers as administrator of the domestic relations division and shall have charge of the personnel engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, including any referees considered necessary for the discharge of the judge's various duties.

(Z)(1) In Marion county, the judge of the court of common pleas whose term begins on February 9, 1999, and the successors to that judge, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Marion county and shall be elected and designated as judge of the court of common pleas, domestic relations-juvenile-probate division. Except as otherwise specified in this division, that judge, and the successors to that judge, shall have all the powers

relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all cases arising under Chapter 3111. of the Revised Code, all divorce, dissolution of marriage, legal separation, and annulment cases, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings shall be assigned to that judge and the successors to that judge. Except as provided in division (Z)(2) of this section and notwithstanding any other provision of any section of the Revised Code, on and after February 9, 2003, the judge of the court of common pleas of Marion county whose term begins on February 9, 1999, and the successors to that judge, shall have all the powers relating to the probate division of the court of common pleas of Marion county in addition to the powers previously specified in this division, and shall exercise concurrent jurisdiction with the judge of the probate division of that court over all matters that are within the jurisdiction of the probate division of that court under Chapter 2101., and other provisions, of the Revised Code in addition to the jurisdiction of the domestic relations-juvenile-probate division of that court otherwise specified in division (Z)(1) of this section.

(2) The judge of the domestic relations-juvenile-probate division of the court of common pleas of Marion county or the judge of the probate division of the court of common pleas of Marion county, whichever of those judges is senior in total length of service on the court of common pleas of Marion county, regardless of the division or divisions of service, shall serve as the clerk of the probate division of the court of common pleas of Marion county.

(3) On and after February 9, 2003, all references in law to "the probate court," "the probate judge," "the juvenile court," or "the judge of the juvenile court" shall be construed, with respect to Marion county, as being references to both "the probate division" and "the domestic relations-juvenile-probate division" and as being references to both "the judge of the probate division" and "the judge of the domestic relations-juvenile-probate division." On and after February 9, 2003, all references in law to "the clerk of the probate court" shall be construed, with respect to Marion county, as being references to the judge who is serving pursuant to division (Z)(2) of this section as the clerk of the probate division of the court of common pleas of Marion county.

(AA) In Muskingum county, the judge of the court of common pleas whose term begins on January 2, 2003, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Muskingum county and shall be elected and designated as the judge of the court of common pleas, division of domestic relations. The judge shall be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas.

The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation and providing any counseling and conciliation services that the division makes available to persons, whether or not the persons are parties to an action pending in the division, who request the services.

(BB) In Henry county, the judge of the court of common pleas whose term begins on January 1, 2005, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judge of the court of common pleas of Henry county and shall be elected and designated as the judge of the court of common pleas, division of domestic relations. The judge shall have all of the powers relating to juvenile courts, and all cases under Chapter 2151. or 2152. of the Revised Code, all parentage proceedings arising under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction, all divorce, dissolution of marriage, legal separation, and annulment cases, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings shall be assigned to that judge, except in cases that for some special reason are assigned to the other judge of the court of common pleas.

(CC)(1) In Logan county, the judge of the court of common pleas whose term begins January 2, 2005, and the successors to that judge, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Logan county and shall be elected and designated as judge of the court of common pleas, domestic relations-juvenile-probate division. Except as otherwise specified in this division, that judge, and the successors to that judge, shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all cases arising under Chapter 3111. of the Revised Code, all divorce, dissolution of marriage, legal separation, and annulment cases, all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings shall be assigned to that judge and the successors to that judge. Notwithstanding any other provision of any section of the Revised Code, on and after January 2, 2005, the judge of the court of common pleas of Logan county whose term begins on January 2, 2005, and the successors to that judge, shall

have all the powers relating to the probate division of the court of common pleas of Logan county in addition to the powers previously specified in this division and shall exercise concurrent jurisdiction with the judge of the probate division of that court over all matters that are within the jurisdiction of the probate division of that court under Chapter 2101., and other provisions, of the Revised Code in addition to the jurisdiction of the domestic relations-juvenile-probate division of that court otherwise specified in division (CC)(1) of this section.

(2) The judge of the domestic relations-juvenile-probate division of the court of common pleas of Logan county or the probate judge of the court of common pleas of Logan county who is elected as the administrative judge of the probate division of the court of common pleas of Logan county pursuant to Rule 4 of the Rules of Superintendence shall be the clerk of the probate division and the juvenile division of the court of common pleas of Logan county. The clerk of the court of common pleas who is elected pursuant to section 2303.01 of the Revised Code shall keep all of the journals, records, books, papers, and files pertaining to domestic relations cases.

(3) On and after January 2, 2005, all references in law to "the probate court," "the probate judge," "the juvenile court," or "the judge of the juvenile court" shall be construed, with respect to Logan county, as being references to both "the probate division" and the "domestic relations-juvenile-probate division" and as being references to both "the judge of the probate division" and the "judge of the domestic relations-juvenile-probate division." On and after January 2, 2005, all references in law to "the clerk of the probate court" shall be construed, with respect to Logan county, as being references to the judge who is serving pursuant to division (CC)(2) of this section as the clerk of the probate division of the court of common pleas of Logan county.

(DD) If a judge of the court of common pleas, division of domestic relations, or juvenile judge, of any of the counties mentioned in this section is sick, absent, or unable to perform that judge's judicial duties or the volume of cases pending in the judge's division necessitates it, the duties of that judge shall be performed by another judge of the court of common pleas of that county, assigned for that purpose by the presiding judge of the court of common pleas of that county to act in place of or in conjunction with that judge, as the case may require.

HISTORY: Bureau of Code Revision, 10-1-53; 125 v 896 (Eff 11-7-53); 126 v 778; 127 v 475; 128 v 147; 130 v 641; 130 v 636; 131 v 638; 132 v H 890; 133 v S 49 (Eff 8-13-69); 133 v H 7 (Eff 11-19-69); 135 v S 201 (Eff 8-17-73); 135 v H 233 (Eff 9-23-74); 135 v H 818 (Eff 9-23-74); 136 v H 1 (Eff 6-13-75); 136 v S 145 (Eff 1-1-76); 136 v H 468 (Eff 2-20-76); 137 v H 246 (Eff 3-14-78); 138 v H 961 (Eff 9-29-80); 139 v H 245 (Eff 6-29-82); 140 v H 82 (Eff 1-1-85); 140 v H 113 (Eff 1-8-85); 141 v H 815 (Eff 6-7-86); 142 v S 171 (Eff 10-20-87); 143 v H 390 (Eff 1-17-90); 143 v H 648 (Eff 3-21-90); 143 v H 837 (Eff 7-3-90); 143 v H 514 (Eff 1-1-91); 143 v H 211 (Eff 4-11-91); 144 v S 273 (Eff 3-6-92); 145 v H 21 (Eff 2-4-94); 146 v H 151 (Eff 12-4-95); 146 v S 269 (Eff 7-1-96); 146 v H 377 (Eff 10-17-96); 147 v H 408 (Eff 10-1-97); 147 v H 444 (Eff 1-15-98); 148 v H 583 (Eff 6-14-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 11, § 1 (Eff 10-31-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 11, § 3 (Eff 1-1-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 8 (Eff 8-5-2002); 149 v H 530 (Eff 12-18-2002; 150 v H 26, § 1, eff. 8-8-03; 150 v H 95, §§ 1, eff. 9-26-03; 149 v H 490, § 1, eff. 1-1-04; 150 v H 86, § 1, eff. 11-13-03; 150 v H 95, § 3.13, eff. 1-1-04; 150 v H 86, § 3, eff. 1-1-04; 150 v H 38, § 1, eff. 6-17-04; 151 v S 128, § 1, eff. 12-20-05.

The provisions of §§ 7 and 8, H.B. 38 (150 v —), read as follows:

SECTION 7. The General Assembly hereby declares that its intent in amending division (AA) of section 2301.03 of the Revised Code in Sections 1 and 2 of this act is to clarify the jurisdiction and the administration of the Division of Domestic Relations of the Muskingum County Court of Common Pleas, that it does not believe that the amendments so made to that division are substantive in nature, and that it believes that the version of that division resulting from this act is substantively the same as the version of that division in existence immediately prior to the effective date of this act.

SECTION 8. Section 2301.03 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 26, Am. Sub. H.B. 86 (effective January 1, 2004), and Am. Sub. H.B. 95 (effective January 1, 2004), all of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 7 of H.B. 86 (150 v —) read as follows:

Section 7. Section 2301.03 of the Revised Code is presented in Section 3 of this act as a composite of the section as amended by Sub. H.B. 26 of the 125th General Assembly and Am. Sub. H.B. 490 and Am. Sub. H.B. 530, both of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in Section 3 of this act.

The provisions of § 219 of H.B. 95 (150 v —) read as follows:

SECTION 219. The version of section 2301.03 of the Revised

Code that is scheduled to take effect January 1, 2004, is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 490 and Am. Sub. H.B. 530 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 7 of HB 530 (149 v —) read as follows:

SECTION 7. The amendment by this act to division (B)(3) of section 2301.33 [RC § 2301.33 is not affected by HB 530. The reference should be to 2301.03, amended by HB 8 and HB 530.] of the Revised Code is identical to the amendment of that division of that section by Sub. H.B. 8 of the 124th General Assembly. The United States District Court of the Southern District of Ohio, in *Bookfriends, Inc. v. Taft*, 232 F. Supp.2d 932 (2002), issued a preliminary injunction enjoining to an uncertain extent the operation of Sub. H.B. 8. By thus re-enacting the amendment of Sub. H.B. 8 to division (B)(3) of section 2301.33 of the Revised Code, the General Assembly intends to confirm that the amendment is nevertheless effective as part of the law.

Comment, Legislative Service Commission

Section 2301.03 of the Revised Code is amended (effective January 1, 2004) in Section 3.13 of [Am. Sub. H.B. 95 of the 125th General Assembly] and also by Am. Sub. H.B. 490 of the 124th General Assembly and Sub. H.B. 26 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

TITLE 25: COURTS — APPELLATE

CHAPTER 2501: COURT OF APPEALS

§ 2501.02 Qualifications and term of judge; jurisdiction.

Each judge of a court of appeals shall have been admitted to practice as an attorney at law in this state and have, for a total of six years preceding the judge's appointment or commencement of the judge's term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both. One judge shall be chosen in each court of appeals district every two years, and shall hold office for six years, beginning on the ninth day of February next after the judge's election.

In addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.

The court, on good cause shown, may issue writs of supersedeas in any case, and all other writs, not specially provided for or prohibited by statute, necessary to enforce the administration of justice.

HISTORY: RS §§ 444, 447; 82 v 16, 19, 20; GC § 1514; 103 v 405; 107 v 144; Bureau of Code Revision, 10-1-53; 126 v 56 (Eff 10-4-55); 129 v 582(742) (Eff 1-10-61); 134 v H 1 (Eff 3-26-71); 134 v H 18 (Eff 7-1-72); 136 v H 85 (Eff 11-28-75); 141 v H 412 (Eff 3-17-87); 146 v H 350 (Eff 1-27-97); 149 v S 108, § 2.01. Eff 7-6-2001.

Publisher's Note:

Section 2.02(B) of SB 108 (149 v —) repeals the HB 350 (146 v —) version and section 3(A)(3) revises and amends the former version.

CHAPTER 2505: PROCEDURE ON APPEAL

[§ 2505.07.3] § 2505.073 Minor may appeal denial of abortion without notice to parent, guardian or custodian.

(A) A complainant whose complaint under section 2151.85 of the Revised Code is dismissed by a juvenile court, may appeal in accordance with this section. Within four days after a notice of appeal is filed in an action arising under that section, the clerk of the juvenile court shall deliver a copy of the notice of appeal and the record on appeal to the clerk of the court of appeals named in the notice. Upon receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court.

The appellant shall file her brief within four days after the appeal is docketed. Unless the appellant waives the right to oral argument, the court of appeals shall hear oral argument within five days after the appeal is docketed. The court of appeals shall enter judgment in the appeal immediately after the oral argument or, if oral argument has been waived, within five days after the appeal is docketed.

No filing fee shall be required of, and no court costs shall be assessed against, an appellant who appeals under this section.

Upon motion of the appellant and for good cause shown, the court of appeals may shorten or extend any of the maximum times set forth in this division. However, in any case, if judgment is not entered within five days after the appeal is docketed, the failure to enter the judgment shall be considered to be a constructive order of the court authorizing the appellant to consent to the performance or inducement of an abortion without the notification of her parent, guardian, or custodian, and the appellant and any other person may rely on the constructive order to the same extent as if the court actually had entered a judgment under this section authorizing the appellant to consent to the performance or inducement of an abortion without such notification.

In the interest of justice, the court of appeals, in an appeal in accordance with this section, shall liberally modify or dispense with the formal requirements that normally apply as to the contents and form of an appellant's brief.

(B) All proceedings under division (A) of this section shall be conducted in a manner that will preserve the anonymity of the appellant on appeal. All papers and records that pertain to an appeal under this section shall be kept confidential and are not public records under section 149.43 of the Revised Code.

HISTORY: 141 v H 319 (Eff 3-24-86); 141 v H 412. Eff 3-17-87.

TITLE 27: COURTS — GENERAL PROVISIONS — SPECIAL REMEDIES

CHAPTER 2743: COURT OF CLAIMS

§ 2743.70 Additional court costs and bail to be charged.

(A)(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) Thirty dollars, if the offense is a felony;
- (b) Nine dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the thirty or nine dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund.

(2) The juvenile court in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender:

- (a) Thirty dollars, if the act, if committed by an adult, would be a felony;
- (b) Nine dollars, if the act, if committed by an adult, would be a misdemeanor.

The thirty or nine dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the thirty or nine dollars court costs is waived. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4, the court shall add to the amount of the bail the thirty or nine dollars required to be paid by division (A)(1) of this section. The thirty or nine dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the thirty or nine dollars to the treasurer of state, who shall deposit it in the reparations fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the thirty or nine dollars to the person.

(C) No person shall be placed or held in jail for failing to pay the additional thirty or nine dollars court costs or bail that are required to be paid by this section.

(D) As used in this section:

(1) "Moving violation" means any violation of any statute or ordinance, other than section 4513.263 [4513.26.3] of the Revised Code or an ordinance that is substantially equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.

(2) "Bail" means cash, a check, a money order, a credit card, or any other form of money that is posted by or for an offender pursuant to sections 2937.22 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4 to prevent the offender from being placed or held in a detention facility, as defined in section 2921.01 of the Revised Code.

HISTORY: 136 v H 82 (Eff 9-29-76); 137 v S 221 (Eff 11-23-77); 138 v H 238 (Eff 8-8-80); 139 v H 694 (Eff 11-15-81); 139 v H 552 (Eff 11-24-81); 139 v S 550 (Eff 11-26-82); 139 v S 30 (Eff 3-18-83); 140 v H 291 (Eff 7-1-83); 141 v H 201 (Eff 7-1-85); 143 v S 131 (Eff 7-25-90); 144 v H 725 (Eff 4-16-93); 145 v H 152 (Eff 7-1-93); 147 v H 426. Eff 7-22-98.

See provisions, § 3 of SB 153 (148 v —), following RC § 2743.51.

See provisions, § 10(A), (B) of SB 153 (148 v —), as amended by § 81 of SB 245 (148 v —), following RC § 2743.51.

TITLE 29: CRIMES — PROCEDURE

CHAPTER 2901: GENERAL PROVISIONS

Section

[IN GENERAL]

- 2901.01 Definitions.
- 2901.02 Classification of offenses.
- 2901.03 Common law offenses abrogated.
- 2901.04 Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.
- 2901.05 Burden and degree of proof.
- 2901.06 Battered woman syndrome testimony as evidence relevant to claim of self-defense.
- 2901.07 DNA testing of offenders.
- 2901.08 Status of juvenile adjudication as prior conviction.

[JURISDICTION, VENUE, AND LIMITATION OF PROSECUTIONS]

- 2901.11 Criminal law jurisdiction.
- 2901.12 Venue.
- 2901.13 Limitation of criminal prosecutions.

[CRIMINAL LIABILITY]

- 2901.21 Requirements for criminal liability.
- 2901.22 Culpable mental states.
- 2901.23 Organizational criminal liability.
- 2901.24 Personal accountability for organizational conduct.

[MISSING CHILDREN]

- 2901.30 Missing child report; notice of return.
- 2901.31 Cooperation in locating missing children.
- 2901.32 Improper solicitation of contributions for missing children.

[IN GENERAL]

§ 2901.01 Definitions.

(A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(4) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(6) "Serious physical harm to property" means any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211 [2903.21.1], 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161 [2923.16.1], of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

(10)(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction

authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;

(j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;

(k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 [101.31.1] of the Revised Code and an assistant house of representatives sergeant at arms;

(m) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department

of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;

(b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordinance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX [29] of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX [29] of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) "Unborn human" means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX [29] of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section

2919.151 [2919.15.1], 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.151 [2919.15.1], 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

- (i) Her delivery of a stillborn baby;
- (ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;
- (iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
- (iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;
- (v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX [29] of the Revised Code:

(1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(2) "School," "school building," and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center; or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code.

(4) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

HISTORY: 142 v H 708 (Eff 4-19-88); 143 v S 24 (Eff 7-24-90); 144 v H 77 (Eff 9-17-91); 144 v S 144 (Eff 8-8-91); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 239 (Eff 9-6-96); 146 v S 277 (Eff 3-31-97); 147 v H 565 (Eff 3-30-99); 148 v S 1 (Eff 8-6-99); 148 v H 162 (Eff 8-25-99); 148 v S 107 (Eff 3-23-2000); 148 v S 137 (Eff 5-17-2000); 148 v H 351 (Eff 8-18-2000); 148 v S 317 (Eff 3-22-2001); 149 v S 184 (Eff 5-15-2002); 149 v H 675 (Eff 3-14-2003); 149 v H 545 (Eff 3-19-2003); 149 v H 364, Eff 4-8-2003; 151 v H 241, § 1, eff. 7-1-07.

The provisions of § 3(A) of 151 v H 241 read as follows:

SECTION 3. (A) Section 2901.01 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 364, Sub. H.B. 545, and H.B. 675 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 4 of 151 v H 241 read as follows:

SECTION 4. Sections 1, 2, and 3 of this act shall take effect on July 1, 2007. If a criminal or civil forfeiture action relating to misconduct under Title XXIX of the Revised Code was or is commenced before July 1, 2007, and is still pending on that date, the court in which the case is pending shall, to the extent

practical, apply the provisions of Chapter 2981. of the Revised Code in the case.

Analogous to former RC § 2901.01 (134 v H 511; 139 v H 437; 139 v S 199; 140 v S 183; 140 v H 632; 140 v H 129, §§ 1, 3; 141 v H 49, §§ 1, 3; 141 v S 69, §§ 1, 3; 141 v H 428; 142 v H 231; 142 v H 261), repealed 142 v H 708, § 2, eff 12-31-87.

Not analogous to former RC § 2901.01 (RS § 6808; S&C 401; 33 v 33; 93 v 223; GC §§ 12399, 12400; 118 v 288; 120 v 413; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Comment, Legislative Service Commission

* * * Section 2901.01 [of] the Revised Code is amended by this act [H.B. 675] and also by Sub. H.B. 364 and Sub. H.B. 545, all of the 124th General Assembly. * * * Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2901.02 Classification of offenses.

As used in the Revised Code:

(A) Offenses include aggravated murder, murder, felonies of the first, second, third, fourth, and fifth degree, misdemeanors of the first, second, third, and fourth degree, minor misdemeanors, and offenses not specifically classified.

(B) Aggravated murder when the indictment or the count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of Revised Code, and any other offense for which death may be imposed as a penalty, is a capital offense.

(C) Aggravated murder and murder are felonies.

(D) Regardless of the penalty that may be imposed, any offense specifically classified as a felony is a felony, and any offense specifically classified as a misdemeanor is a misdemeanor.

(E) Any offense not specifically classified is a felony if imprisonment for more than one year may be imposed as a penalty.

(F) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.

(G) Any offense not specifically classified is a minor misdemeanor if the only penalty that may be imposed is one of the following:

(1) For an offense committed prior to the effective date of this amendment, a fine not exceeding one hundred dollars;

(2) For an offense committed on or after the effective date of this amendment, a fine not exceeding one hundred fifty dollars, community service under division (C) of section 2929.27 of the Revised Code, or a financial sanction other than a fine under section 2929.28 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 140 v H 380 (Eff 4-3-84); 146 v S 2, Eff 7-1-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2901.02 (RS §§ 6808, 6809; S&S 268; S&C 401; 33 v 33; 60 v 17; 93 v 223; GC § 12401; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.03 Common law offenses abrogated.

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(C) This section does not affect any power of the general assembly under section 8 of Article II, Ohio Constitution, nor does it affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment, or decree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2901.03 (RS § 7388-52; 98 v 180; GC § 12402; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2901.04 Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction or of plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction or of plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v S 107. Eff 3-23-2000; 150 v S 146, § 1, eff. 9-23-04.

Not analogous to former RC § 2901.04 (GC § 12402-1; 109 v 545; 111 v 77; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.05 Burden and degree of proof.

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (D) of this section.

(C) As used in this section, an "affirmative defense" is either of the following:

(1) A defense expressly designated as affirmative;

(2) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which he can fairly be required to adduce supporting evidence.

(D) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 1168. Eff 11-1-78.

Not analogous to former RC § 2901.05 (RS § 6810; S&C 402; 33 v 33; GC § 12403; 124 v 14; Bureau of Code Revision, eff 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.06 Battered woman syndrome testimony as evidence relevant to claim of self-defense.

(A) The general assembly hereby declares that it recognizes both of the following, in relation to the "battered woman syndrome:"

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.

HISTORY: 143 v H 484. Eff 11-5-90.

Not analogous to former RC § 2901.06 (RS § 6811; S&C 403; 33 v 33; GC § 12404; 116 v 205; Bureau of Code Revision, 10-1-53), repealed, 134 v H 511, § 2, eff 1-1-74.

§ 2901.07 DNA testing of offenders.

Effective until 1-1-08.

(A) As used in this section:

(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 [109.57.3] of the Revised Code.

(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.

(3) "Post-release control" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Regardless of when the conviction occurred or the guilty plea was entered, a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense and who is sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility for that offense pursuant to section 2929.16 of the Revised Code, and a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a misdemeanor offense listed in division (D) of this section and who is sentenced to a term of imprisonment for that offense shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is serving the term of imprisonment. If the person serves the prison term in a state correctional institution, the director of rehabilitation and correction shall cause the DNA specimen to be collected from the person during the intake process at the reception facility designated by the director. If the person serves the community residential sanction or term of imprisonment in a jail, a community-based correctional facility, or another county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, the chief administrative officer of the jail, community-based correctional facility, or detention facility shall cause the DNA specimen to be collected from the person during the intake process at the jail, community-based correctional facility, or detention facility. The DNA specimen shall be collected in accordance with division (C) of this section.

(2) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section, is serving a prison term, community residential sanction, or term of imprisonment for that offense, and does not provide a DNA specimen pursuant to division (B)(1) of this section, prior to the person's release from the prison term, community residential sanction, or imprisonment, the person shall submit to, and the director of rehabilitation and correction or the chief administrative officer of the jail, community-based correctional facility, or detention facility in which the person is serving the prison term, community residential sanction, or term of imprisonment shall administer, a DNA specimen collection procedure at the state correctional institution, jail, community-based correctional facility, or detention facility in which the person is serving the prison term, community residential sanction, or term of imprisonment. The DNA specimen shall be collected in accordance with division (C) of this section.

(3)(a) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section and the person is on probation, released on parole, under transitional control, on community control, on post-release control, or under any other type of supervised release under the supervision of a probation department or the adult parole authority for that offense, the person shall submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the adult parole authority. The DNA specimen shall be collected in accordance with division (C) of this section. If the person refuses to submit to a DNA specimen collec-

tion procedure as provided in this division, the person may be subject to the provisions of section 2967.15 of the Revised Code.

(b) If a person to whom division (B)(3)(a) of this section applies is sent to jail or is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the terms and conditions of the probation, parole, transitional control, other release, or post-release control, if the person was or will be serving a term of imprisonment, prison term, or community residential sanction for committing a felony offense or for committing a misdemeanor offense listed in division (D) of this section, and if the person did not provide a DNA specimen pursuant to division (B)(1), (2) or (3)(a) of this section, the person shall submit to, and the director of rehabilitation and correction or the chief administrative officer of the jail or community-based correctional facility shall administer, a DNA specimen collection procedure at the jail, community-based correctional facility, or state correctional institution in which the person is serving the term of imprisonment, prison term, or community residential sanction. The DNA specimen shall be collected from the person in accordance with division (C) of this section.

(4) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section, the person is not sentenced to a prison term, a community residential sanction in a jail or community-based correctional facility, a term of imprisonment, or any type of supervised release under the supervision of a probation department or the adult parole authority, and the person does not provide a DNA specimen pursuant to division (B)(1), (2), (3)(a), or (3)(b) of this section, the sentencing court shall order the person to report to the county probation department immediately after sentencing to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation office. If the person is incarcerated at the time of sentencing, the person shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is incarcerated. The DNA specimen shall be collected in accordance with division (C) of this section.

(C) If the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure, a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner shall collect in a medically approved manner the DNA specimen required to be collected pursuant to division (B) of this section. If the DNA specimen is collected by swabbing for buccal cells or a similarly noninvasive procedure, this section does not require that the DNA specimen be collected by a qualified medical practitioner of that nature. No later than fifteen days after the date of the collection of the DNA specimen, the director of rehabilitation and correction or the chief administrative officer of the jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, in which the person is serving the prison term, community residential sanction, or term of imprisonment shall cause the DNA specimen to be forwarded to the bureau of criminal identification

and investigation in accordance with procedures established by the superintendent of the bureau under division (H) of section 109.573 [109.57.3] of the Revised Code. The bureau shall provide the specimen vials, mailing tubes, labels, postage, and instructions needed for the collection and forwarding of the DNA specimen to the bureau.

(D) The director of rehabilitation and correction, the chief administrative officer of the jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, or the chief administrative officer of a county probation department or the adult parole authority shall cause a DNA specimen to be collected in accordance with divisions (B) and (C) of this section from a person in its custody or under its supervision who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to any felony offense or any of the following misdemeanor offenses:

(1) A misdemeanor violation, an attempt to commit a misdemeanor violation, or complicity in committing a misdemeanor violation of section 2907.04 of the Revised Code;

(2) A misdemeanor violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person of a violation of section 2903.01, 2903.02, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code that previously was dismissed or amended or as did a charge against the person of a violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996, that previously was dismissed or amended;

(3) A misdemeanor violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had it been committed prior to that date;

(4) A sexually oriented offense or a child-victim oriented offense, both as defined in section 2950.01 of the Revised Code, that is a misdemeanor, if, in relation to that offense, the offender has been adjudicated a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, all as defined in section 2950.01 of the Revised Code

(E) The director of rehabilitation and correction may prescribe rules in accordance with Chapter 119. of the Revised Code to collect a DNA specimen, as provided in this section, from an offender whose supervision is transferred from another state to this state in accordance with the interstate compact for adult offender supervision described in section 5149.21 of the Revised Code.

HISTORY: 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 146 v H 124 (Eff 3-31-97); 147 v S 111 (Eff 3-17-98); 147 v H 526 (Eff 9-1-98); 149 v H 427, Eff 8-29-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 525, § 1, eff. 5-18-05; 151 v H 66, § 101.01, eff. 6-30-05; 151 v S 262, § 1, eff. 7-11-06.

§ 2901.07 DNA testing of offenders.

Effective 1-1-08.

(A) As used in this section:

(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 [109.57.3] of the Revised Code.

(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.

(3) "Post-release control" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Regardless of when the conviction occurred or the guilty plea was entered, a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense and who is sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility for that offense pursuant to section 2929.16 of the Revised Code, and a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a misdemeanor offense listed in division (D) of this section and who is sentenced to a term of imprisonment for that offense shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is serving the term of imprisonment. If the person serves the prison term in a state correctional institution, the director of rehabilitation and correction shall cause the DNA specimen to be collected from the person during the intake process at the reception facility designated by the director. If the person serves the community residential sanction or term of imprisonment in a jail, a community-based correctional facility, or another county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, the chief administrative officer of the jail, community-based correctional facility, or detention facility shall cause the DNA specimen to be collected from the person during the intake process at the jail, community-based correctional facility, or detention facility. The DNA specimen shall be collected in accordance with division (C) of this section.

(2) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section, is serving a prison term, community residential sanction, or term of imprisonment for that offense, and does not provide a DNA specimen pursuant to division (B)(1) of this section, prior to the person's release from the prison term, community residential sanction, or imprisonment, the person shall submit to, and the director of rehabilitation and correction or the chief administrative officer of the jail, community-based correctional facility, or detention facility in which the person is serving the prison term, community residential sanction, or term of imprisonment shall administer, a DNA specimen collection procedure at the state correctional institution, jail, community-based correctional facility, or detention facility in which the person is serving the prison term, community residential sanction, or term of imprisonment. The DNA specimen shall be collected in accordance with division (C) of this section.

(3)(a) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section and the person is on probation, released on parole, under transitional control, on community control, on post-release control, or under any other type of supervised release under the supervision of a probation department or the adult parole authority for that offense, the person shall submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the adult parole authority. The DNA specimen shall be

collected in accordance with division (C) of this section. If the person refuses to submit to a DNA specimen collection procedure as provided in this division, the person may be subject to the provisions of section 2967.15 of the Revised Code.

(b) If a person to whom division (B)(3)(a) of this section applies is sent to jail or is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the terms and conditions of the probation, parole, transitional control, other release, or post-release control, if the person was or will be serving a term of imprisonment, prison term, or community residential sanction for committing a felony offense or for committing a misdemeanor offense listed in division (D) of this section, and if the person did not provide a DNA specimen pursuant to division (B)(1), (2) or (3)(a) of this section, the person shall submit to, and the director of rehabilitation and correction or the chief administrative officer of the jail or community-based correctional facility shall administer, a DNA specimen collection procedure at the jail, community-based correctional facility, or state correctional institution in which the person is serving the term of imprisonment, prison term, or community residential sanction. The DNA specimen shall be collected from the person in accordance with division (C) of this section.

(4) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section, the person is not sentenced to a prison term, a community residential sanction in a jail or community-based correctional facility, a term of imprisonment, or any type of supervised release under the supervision of a probation department or the adult parole authority, and the person does not provide a DNA specimen pursuant to division (B)(1), (2), (3)(a), or (3)(b) of this section, the sentencing court shall order the person to report to the county probation department immediately after sentencing to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation office. If the person is incarcerated at the time of sentencing, the person shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is incarcerated. The DNA specimen shall be collected in accordance with division (C) of this section.

(C) If the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure, a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner shall collect in a medically approved manner the DNA specimen required to be collected pursuant to division (B) of this section. If the DNA specimen is collected by swabbing for buccal cells or a similarly noninvasive procedure, this section does not require that the DNA specimen be collected by a qualified medical practitioner of that nature. No later than fifteen days after the date of the collection of the DNA specimen, the director of rehabilitation and correction or the chief administrative officer of the jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, in which the person is serving the prison term, community residential sanction,

or term of imprisonment shall cause the DNA specimen to be forwarded to the bureau of criminal identification and investigation in accordance with procedures established by the superintendent of the bureau under division (H) of section 109.573 [109.57.3] of the Revised Code. The bureau shall provide the specimen vials, mailing tubes, labels, postage, and instructions needed for the collection and forwarding of the DNA specimen to the bureau.

(D) The director of rehabilitation and correction, the chief administrative officer of the jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, or the chief administrative officer of a county probation department or the adult parole authority shall cause a DNA specimen to be collected in accordance with divisions (B) and (C) of this section from a person in its custody or under its supervision who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to any felony offense or any of the following misdemeanor offenses:

(1) A misdemeanor violation, an attempt to commit a misdemeanor violation, or complicity in committing a misdemeanor violation of section 2907.04 of the Revised Code;

(2) A misdemeanor violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person of a violation of section 2903.01, 2903.02, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code that previously was dismissed or amended or as did a charge against the person of a violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996, that previously was dismissed or amended;

(3) A misdemeanor violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had it been committed prior to that date;

(4) A sexually oriented offense or a child-victim oriented offense, both as defined in section 2950.01 of the Revised Code, that is a misdemeanor, if, in relation to that offense, the offender is a tier III sex offender/child-victim offender, as defined in section 2950.01 of the Revised Code

(E) The director of rehabilitation and correction may prescribe rules in accordance with Chapter 119. of the Revised Code to collect a DNA specimen, as provided in this section, from an offender whose supervision is transferred from another state to this state in accordance with the interstate compact for adult offender supervision described in section 5149.21 of the Revised Code.

HISTORY: 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 146 v H 124 (Eff 3-31-97); 147 v S 111 (Eff 3-17-98); 147 v H 526 (Eff 9-1-98); 149 v H 427, Eff 8-29-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 525, § 1, eff. 5-18-05; 151 v H 66, § 101.01, eff. 6-30-05; 151 v S 262, § 1, eff. 7-11-06; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of 151 v S 262 read as follows:

SECTION 3. (A) The General Assembly hereby declares that its purpose in amending section 2901.07 of the Revised Code in Sections 1 and 2 of this act is to reaffirm that it is the General Assembly's intent that, under that section as it existed prior to the effective date of this act, a person who is in any of the categories of offenders described in division (B)(1), (2), (3), or (4) of that section in relation to a conviction of or plea of guilty to a felony offense or a misdemeanor offense listed in division (D) of that section is subject to the DNA specimen collection provisions of

divisions (B) and (C) of that section regardless of when the conviction of or plea of guilty to the felony offense or the misdemeanor offense occurs or is entered.

(B) The General Assembly declares that it believes that the amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act are not substantive in nature and merely clarify that divisions (B)(1), (2), (3), and (4) and (C) of that section operate as described in division (A) of this Section, and that the amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act thus are remedial in nature. The General Assembly declares that it intends that the clarifying, remedial amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act apply to all convicted offenders described in division (A) of this Section, regardless of when they were convicted of or pleaded guilty to the felony or the specified misdemeanor or are convicted of or plead guilty to the felony or the specified misdemeanor.

(C) In compliance with the Ohio Supreme Court decision in *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, and with section 1.48 of the Revised Code, the General Assembly expressly states its intent that the amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act shall apply retrospectively.

The provisions of § 4 of 151 v S 262 read as follows:

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the amendments made in Sections 1 and 2 of this act to section 2901.07 of the Revised Code are crucially needed to protect the residents of this state from the consequences that might result if crimes go unsolved because the DNA specimen collection provisions of that section are not applied to all persons who have been convicted of or pleaded guilty to a felony offense or a misdemeanor offense listed in division (D) of that section and are in any of the categories of offenders described in division (B)(1), (2), (3), or (4) of that section. Therefore, this act shall go into immediate effect.

151 v S 262, effective July 11, 2006, rewrote the section.

The effective date is set by § 612.12 of 151 v H 66.

Not analogous to former RC § 2901.07 (GC § 12401-1; 124 v 177; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, Eff 1-1-74.

Comment, Legislative Service Commission

† Section 2901.07 of the Revised Code is amended by Am. Sub. H.B. 66 of the 126th General Assembly and Sub. H.B. 525 of the 125th General Assembly. H.B. 525 prevails, making the amendment by H.B. 66 ineffective. The amendment by H.B. 525 in effect repealed the section H.B. 66 attempted to amend.

§ 2901.08 Status of juvenile adjudication as prior conviction.

(A) If a person is alleged to have committed an offense and if the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, except as provided in division (B) of this section, the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for a violation of the law or ordinance for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person relative to the conviction or guilty plea.

(B) A previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of a law or ordinance is not a conviction for a violation of the law or ordinance for purposes of determining whether the person is a repeat violent offender, as defined in section 2929.01 of the Revised Code, or whether the person should be sentenced as a repeat violent offender under

division (D)(2) of section 2929.14 and section 2941.149 [2941.14.9] of the Revised Code.

HISTORY: 146 v H 1, Eff 1-1-96; 151 v H 95, § 1, eff. 8-3-06.

Not analogous to former RC § 2901.08 (GC § 12405; RS § 6812; S&S 266; S&C 415; 58 v 65, § 34; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, Eff 1-1-74.

The effective date is set by section 6 of HB 1.

[JURISDICTION, VENUE, AND LIMITATION OF PROSECUTIONS]

§ 2901.11 Criminal law jurisdiction.

(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

(2) While in this state, the person attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this state and the other jurisdiction, or, while in this state, the person conspires to commit an offense in another jurisdiction, which offense is an offense under both the laws of this state and the other jurisdiction, and a substantial overt act in furtherance of the conspiracy is undertaken in this state by the person or another person involved in the conspiracy, subsequent to the person's entrance into the conspiracy. In any case in which a person attempts to commit, is guilty of complicity in the commission of, or conspires to commit an offense in another jurisdiction as described in this division, the person is subject to criminal prosecution and punishment in this state for the attempt, complicity, or conspiracy, and for any resulting offense that is committed or completed in the other jurisdiction.

(3) While out of this state, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this state.

(4) While out of this state, the person omits to perform a legal duty imposed by the laws of this state, which omission affects a legitimate interest of the state in protecting, governing, or regulating any person, property, thing, transaction, or activity in this state.

(5) While out of this state, the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into this state.

(6) While out of this state, the person unlawfully takes or entices another and subsequently brings the other person into this state.

(7) The person, by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, causes or knowingly permits any writing, data, image, or other telecommunication to be disseminated or transmitted into this state in violation of the law of this state.

(B) In homicide, the element referred to in division (A)(1) of this section includes the act that causes death, the physical contact that causes death, the death itself, or any other element that is set forth in the offense in question. If any part of the body of a homicide victim is found in this state, the death is presumed to have occurred within this state.

(C)(1) This state includes the land and water within its boundaries and the air space above that land and water,

with respect to which this state has either exclusive or concurrent legislative jurisdiction. Where the boundary between this state and another state or foreign country is disputed, the disputed territory is conclusively presumed to be within this state for purposes of this section.

(2) The courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto, and Washington counties have jurisdiction beyond the north or northwest shore of the Ohio river extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. Each of those courts of common pleas has concurrent jurisdiction on the Ohio river with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio river and that has jurisdiction on the Ohio river under the law of Kentucky or the law of West Virginia, whichever is applicable, or under federal law.

(D) When an offense is committed under the laws of this state, and it appears beyond a reasonable doubt that the offense or any element of the offense took place either in this state or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, the offense or element is conclusively presumed to have taken place in this state for purposes of this section.

(E) When a person is subject to criminal prosecution and punishment in this state for an offense committed or completed outside of this state, the person is subject to all specifications for that offense that would be applicable if the offense had been committed within this state.

(F) Any act, conduct, or element that is a basis of a person being subject under this section to criminal prosecution and punishment in this state need not be committed personally by the person as long as it is committed by another person who is in complicity or conspiracy with the person.

(G) This section shall be liberally construed, consistent with constitutional limitations, to allow this state the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, this state.

(H) For purposes of division (A)(2) of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(I) As used in this section, "computer," "computer system," "computer network," "information service," "telecommunication," "telecommunications device," "telecommunications service," "data," and "writing" have the same meanings as in section 2913.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v S 371 (Eff 1-17-93); 147 v H 565. Eff 3-30-99; 151 v S 20, § 1, eff. 7-13-05.

The provisions of § 3 of 151 v S 20 read as follows:

SECTION 3. The General Assembly hereby declares that it intends by the amendments made by Sections 1 and 2 of this act to prospectively overrule the decision of the Ohio Supreme Court in *State v. Yarbrough* (2004), 104 Ohio St. 3d 1.

Not analogous to former RC § 2901.11 (RS § 7388-52; 98 v 180; GC § 12408; Bureau of Code Revision, 10-1-53; 125 v H 88; 132 v H 65; 133 v H 1), repealed 134 v H 511, § 2, Eff 1-1-74.

§ 2901.12 Venue.

(A) The trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter,

and in the territory of which the offense or any element of the offense was committed.

(B) When the offense or any element of the offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle, in transit, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in any jurisdiction through which the aircraft, motor vehicle, train, watercraft, or other vehicle passed.

(C) When the offense involved the unlawful taking or receiving of property or the unlawful taking or enticing of another, the offender may be tried in any jurisdiction from which or into which the property or victim was taken, received, or enticed.

(D) When the offense is conspiracy, attempt, or complicity cognizable under division (A)(2) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of its elements occurred. If an offense resulted outside this state from the conspiracy, attempt, or complicity, that resulting offense also may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of the elements of the conspiracy, attempt, or complicity occurred.

(E) When the offense is conspiracy or attempt cognizable under division (A)(3) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the offense that was the object of the conspiracy or attempt, or any element of that offense, was intended to or could have taken place. When the offense is complicity cognizable under division (A)(3) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the principal offender may be tried.

(F) When an offense is considered to have been committed in this state while the offender was out of this state, and the jurisdiction in this state in which the offense or any material element of the offense was committed is not reasonably ascertainable, the offender may be tried in any jurisdiction in which the offense or element reasonably could have been committed.

(G) When it appears beyond a reasonable doubt that an offense or any element of an offense was committed in any of two or more jurisdictions, but it cannot reasonably be determined in which jurisdiction the offense or element was committed, the offender may be tried in any of those jurisdictions.

(H) When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred. Without limitation on the evidence that may be used to establish the course of criminal conduct, any of the following is prima-facie evidence of a course of criminal conduct:

(1) The offenses involved the same victim, or victims of the same type or from the same group.

(2) The offenses were committed by the offender in the offender's same employment, or capacity, or relationship to another.

(3) The offenses were committed as part of the same transaction or chain of events, or in furtherance of the same purpose or objective.

(4) The offenses were committed in furtherance of the same conspiracy.

(5) The offenses involved the same or a similar modus operandi.

(6) The offenses were committed along the offender's line of travel in this state, regardless of the offender's point of origin or destination.

(I)(1) When the offense involves a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, the offender may be tried in any jurisdiction containing any location of the computer, computer system, or computer network of the victim of the offense, in any jurisdiction from which or into which, as part of the offense, any writing, data, or image is disseminated or transmitted by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, or in any jurisdiction in which the alleged offender commits any activity that is an essential part of the offense.

(2) As used in this section, "computer," "computer system," "computer network," "information service," "telecommunication," "telecommunications device," "telecommunications service," "data," and "writing" have the same meanings as in section 2913.01 of the Revised Code.

(J) When the offense involves the death of a person, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in the jurisdiction in which the dead person's body or any part of the dead person's body was found.

(K) Notwithstanding any other requirement for the place of trial, venue may be changed, upon motion of the prosecution, the defense, or the court, to any court having jurisdiction of the subject matter outside the county in which trial otherwise would be held, when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held, or when it appears that trial should be held in another jurisdiction for the convenience of the parties and in the interests of justice.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 49 (Eff 6-26-86); 143 v S 64 (Eff 10-26-89); 147 v H 565, Eff 3-30-99; 151 v S 20, § 1, eff. 7-13-05.

See provisions of § 3 of 151 v S 20 following RC § 2901.11.

Not analogous to former RC § 2901.12 (RS § 6818; S&C 406; 33 v 33; 80 v 38; GC § 12432; 109 v 612; 118 v 611; Bureau of Code Revision, 10-1-53; 129 v 1704), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.13 Limitation of criminal prosecutions.

(A)(1) Except as provided in division (A)(2) or (3) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

- (a) For a felony, six years;
 - (b) For a misdemeanor other than a minor misdemeanor, two years;
 - (c) For a minor misdemeanor, six months.
- (2) There is no period of limitation for the prosecution of a violation of section 2903.01 or 2903.02 of the Revised Code.

(3) Except as otherwise provided in divisions (B) to (H) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty years after the offense is committed:

- (a) A violation of section 2903.03, 2903.04, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02,

2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of section 2903.11 or 2903.12 of the Revised Code if the victim is a peace officer, a violation of section 2903.13 of the Revised Code that is a felony, or a violation of former section 2907.12 of the Revised Code;

(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A)(3)(a) of this section.

(B) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense.

(C) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for an offense involving misconduct in office by a public servant as defined in section 2921.01 of the Revised Code, at any time while the accused remains a public servant, or within two years thereafter.

(D) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(E) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same.

(F) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution.

(H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal.

(I) The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age or of a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred

has been notified that abuse or neglect is known, suspected, or believed to have occurred.

(J) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 147 v H 49. Eff 3-9-99; 151 v S 9, § 1, eff. 4-14-06; 151 v S 17, § 1, eff. 8-3-06.

Not analogous to former RC § 2901.13 (GC § 12432-1; 118 v 611; Bureau of Code Revision, 10-1-53; 134 v H 143), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 3 of HB 49 (147 v —) read as follows:

SECTION 3. Section 2901.13 of the Revised Code, as amended by this act, applies to an offense committed on and after the effective date of this act and applies to an offense committed prior to the effective date of this act if prosecution for that offense was not barred under section 2901.13 of the Revised Code as it existed on the day prior to the effective date of this act.

[CRIMINAL LIABILITY]

§ 2901.21 Requirements for criminal liability.

(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

(B) When the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

(C) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

(D) As used in this section:

(1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

(2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts.

(3) "Culpability" means purpose, knowledge, recklessness, or negligence, as defined in section 2901.22 of the Revised Code.

(4) "Intoxication" includes, but is not limited to, intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v H 318. Eff 10-27-2000.

Not analogous to former RC § 2901.21 (RS § 6819-1a; 98 v 124; GC § 12418; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.22 Culpable mental states.

(A) A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2901.22 (RS § 6819-2; 90 v 353; GC § 12419; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2901.23 Organizational criminal liability.

(A) An organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(2) A purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated, or performed by the board of directors, trustees, partners, or by a high managerial officer, agent, or employee acting in behalf of the organization and within the scope of his office or employment.

(B) When strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(C) In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent, or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.

(D) As used in this section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2901.23 (RS § 6820; S&S 265; S&C 411; 64 v 43; GC § 12420; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2901.24 Personal accountability for organizational conduct.

(A) An officer, agent, or employee of an organization as defined in section 2901.23 of the Revised Code may be prosecuted for an offense committed by such organization, if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility;

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

(B) When a person is convicted of an offense by reason of this section, he is subject to the same penalty as if he had acted in his own behalf.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2901.24 (RS § 6821; S&S 262; S&C 407; 62 v 77; 95 v 344; GC § 12421; Bureau of Code Revision, 10-1-53; 129 v 1704), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

[MISSING CHILDREN]

§ 2901.30 Missing child report; notice of return.

(A) As used in sections 2901.30 to 2901.32 of the Revised Code:

(1) "Information" means information that can be integrated into the computer system and that relates to the physical or mental description of a minor including, but not limited to, height, weight, color of hair and eyes, use of eyeglasses or contact lenses, skin coloring, physical or mental handicaps, special medical conditions or needs, abnormalities, problems, scars and marks, and distinguishing characteristics, and other information that could assist in identifying a minor including, but not limited to, full name and nickname, date and place of birth, age, names and addresses of parents and other relatives, fingerprints, dental records, photographs, social security number, driver's license number, credit card numbers, bank account numbers, and clothing.

(2) "Minor" means a person under eighteen years of age.

(3) "Missing children" or "missing child" means either of the following:

(a) A minor who has run away from or who otherwise is missing from the home of, or the care, custody, and control of, the minor's parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person having responsibility for the care of the minor;

(b) A minor who is missing and about whom there is reason to believe the minor could be the victim of a violation of section 2905.01, 2905.02, 2905.03, or 2919.23 of the Revised Code or of a violation of section 2905.04 of the Revised Code as it existed prior to the effective date of this amendment.

(B) When a law enforcement agency in this state that has jurisdiction in the matter is informed that a minor is or may be a missing child and that the person providing the information wishes to file a missing child report, the law enforcement agency shall take that report. Upon taking the report, the law enforcement agency shall take prompt action upon it, including, but not limited to, concerted efforts to locate the missing child. No law enforcement agency in this state shall have a rule or policy that prohibits or discourages the filing of or the taking of action upon a missing child report, within a specified period following the discovery or formulation of a belief that a minor is or could be a missing child.

(C) If a missing child report is made to a law enforcement agency in this state that has jurisdiction in the matter, the law enforcement agency shall gather readily available information about the missing child and integrate it into the national crime information center computer within twelve hours following the making of the report. The law enforcement agency shall make reasonable efforts to acquire additional information about the missing child following the transmittal of the initially available information, and promptly integrate any additional information acquired into such computer systems.

Whenever a law enforcement agency integrates information about a missing child into the national crime information center computer, the law enforcement agency promptly shall notify the missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other person responsible for the care of the missing child, that it has so integrated the information.

The parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person responsible for the care of the missing child shall provide available information upon request, and may provide information voluntarily, to the law enforcement agency

during the information gathering process. The law enforcement agency also may obtain available information about the missing child from other persons, subject to constitutional and statutory limitations.

(D) Upon the filing of a missing child report, the law enforcement agency involved promptly shall make a reasonable attempt to notify other law enforcement agencies within its county and, if the agency has jurisdiction in a municipal corporation or township that borders another county, to notify the law enforcement agency for the municipal corporation or township in the other county with which it shares the border, that it has taken a missing child report and may be requesting assistance or cooperation in the case, and provide relevant information to the other law enforcement agencies. The agency may notify additional law enforcement agencies, appropriate public children services agencies, about the case, request their assistance or cooperation in the case, and provide them with relevant information.

Upon request from a law enforcement agency, a public children services agency shall grant the law enforcement agency access to all information concerning a missing child that the agency possesses that may be relevant to the law enforcement agency in investigating a missing child report concerning that child. The information obtained by the law enforcement agency shall be used only to further the investigation to locate the missing child.

(E) Upon request, law enforcement agencies in this state shall provide assistance to, and cooperate with, other law enforcement agencies in their investigation of missing child cases.

The information in any missing child report made to a law enforcement agency shall be made available, upon request, to law enforcement personnel of this state, other states, and the federal government when the law enforcement personnel indicate that the request is to aid in identifying or locating a missing child or the possible identification of a deceased minor who, upon discovery, cannot be identified.

(F) When a missing child has not been located within thirty days after the date on which the missing child report pertaining to the child was filed with a law enforcement agency, that law enforcement agency shall request the missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other person responsible for the care of the missing child, to provide written consent for the law enforcement agency to contact the missing child's dentist and request the missing child's dental records. Upon receipt of such written consent, the dentist shall release a copy of the missing child's dental records to the law enforcement agency and shall provide and encode the records in such form as requested by the law enforcement agency. The law enforcement agency then shall integrate information in the records into the national crime information center computer in order to compare the records to those of unidentified deceased persons. This division does not prevent a law enforcement agency from seeking consent to obtain copies of a missing child's dental records, or prevent a missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other person responsible for the care of the missing child, from granting consent for the release of copies of the missing child's dental records to a law enforcement agency, at any time.

(G) A missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal

custodian, or any other persons responsible for the care of a missing child, immediately shall notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if the missing child was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of the missing child's parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person responsible for the missing child's care, has been released if the missing child was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located, the law enforcement agency involved promptly shall integrate the fact that the minor no longer is a missing child into the national crime information center computer.

(H) Nothing contained in this section shall be construed to impair the confidentiality of services provided to runaway minors by shelters for runaway minors pursuant to sections 5119.64 to 5119.68 of the Revised Code.

HISTORY: 140 v S 321 (Eff 4-9-85); 143 v S 3 (Eff 4-11-91); 146 v S 2 (Eff 7-1-96); 147 v H 408. Eff 10-1-97.

Not analogous to former RC § 2901.30 (GC § 13386-2; 115 v P.H.I., 90, § 3; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 26 of HB 408.

§ 2901.31 Cooperation in locating missing children.

Law enforcement agencies in this state shall cooperate fully with the United States attorney general in the collection of information that would assist in the identification of unidentified deceased persons and information that would assist in the location of missing persons under the "Federal Missing Children Act of 1982," 96 Stat. 1259, 28 U.S.C. 534, as amended.

Law enforcement agencies in this state that are investigating missing children cases shall utilize the records and information compiled by the United States attorney general pursuant to that act when the circumstances of an investigation indicate that the records and information may be of assistance and when the act authorizes it.

HISTORY: 140 v S 321. Eff 4-9-85.

Not analogous to former RC § 2901.31 (GC § 13386-3; 115 v P.H.I., 90, § 4; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.32 Improper solicitation of contributions for missing children.

(A) No organization shall solicit contributions for the purpose of distributing materials containing information relating to missing children unless it complies with all of the following requirements:

(1) It has been incorporated under Chapter 1702. of the Revised Code or the nonprofit corporation law of another state for a period of two years prior to the time of the solicitation of contributions.

(2) It has been exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19)

of the Internal Revenue Code of 1954, 68A Stat. 3, 26 U.S.C. 1, as now or hereafter amended, for a period of two years prior to the time of the solicitation of contributions.

(3) It does not use fund-raising counsel, professional solicitors, commercial co-venturers, or other charitable organizations, as these terms are defined in section 1716.01 of the Revised Code, to solicit such contributions.

(B) No organization that solicits contributions for the purpose of distributing materials containing information relating to missing children shall expressly state or imply in any way that it is affiliated with, or is soliciting contributions on behalf of, an organization established to assist in the location of missing children without the express written consent of that organization.

(C) Whoever violates division (A) or (B) of this section is guilty of improper solicitation of contributions for missing children, a misdemeanor of the third degree.

HISTORY: 140 v S 321 (Eff 4-9-85); 143 v H 486. Eff 11-7-90.

Not analogous to former RC § 2901.32 (GC § 13386-4; 115 v PIII, 90, § 5; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

CHAPTER 2903: HOMICIDE AND ASSAULT

Section

[HOMICIDE]

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[HOMICIDE]

§ 2903.01 Aggravated murder.

(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape.

(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:

(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.

(2) It is the offender's specific purpose to kill a law enforcement officer.

(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

(G) As used in this section:

(1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 239 (Eff 9-6-96); 147 v S 32 (Eff 8-6-97); 147 v H 5 (Eff 6-30-98); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2903.01 (GC § 12423-1; 109 v 45; 121 v 557 (572); Bureau of Code Revision, 10-1-53; 126 v 114), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.02 Murder.

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

Not analogous to former RC § 2903.02 (RS § 6998; S&S 377; 59 v 65; 83 v 202; GC §§ 12962, 12963; Bureau of Code Revision, 10-1-53; 131 v 671), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.03 Voluntary manslaughter.

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy.

(B) Whoever violates this section is guilty of voluntary manslaughter, a felony of the first degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v H 103 (Eff 5-19-82); 139 v S 199 (Eff 1-5-83); 146 v S 2 (Eff 7-1-96); 146 v S 239. Eff 9-6-96.

Not analogous to former RC § 2903.03 (RS § 6937; S&C 667; 54 v 196; GC § 12964; 103 v 864; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Publisher's Note:

† A 1982 amendment of this section changed the language "while under the influence of extreme emotional stress" to "while under the influence of sudden passion or in a sudden fit of rage." The Committee Comment to H 511 should be read in light of this amended language.

§ 2903.04 Involuntary manslaughter.

(A) No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony.

(B) No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in Title XLV of the Revised Code that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in Title XLV of the Revised Code that is a minor misdemeanor.

(C) Whoever violates this section is guilty of involuntary manslaughter. Violation of division (A) of this section is a felony of the first degree. Violation of division (B) of this section is a felony of the third degree.

(D) If an offender is convicted of or pleads guilty to a violation of division (A) or (B) of this section and if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's violation of division (A) or (B) of this section was a violation of division (A) or (B) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance or included, as an element of that felony, misdemeanor, or regulatory offense, the offender's operation or participation in the operation

of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the following apply:

(1) The court shall impose a class one suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege as specified in division (A)(1) of section 4510.02 of the Revised Code.

(2) The court shall impose a mandatory prison term for the violation of division (A) or (B) of this section from the range of prison terms authorized for the level of the offense under section 2929.14 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 144 v S 275 (Eff 7-1-93)†; 145 v H 236 (Eff 9-29-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 148 v S 107. Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

The effective date is set by section 4 of S.B. 123.

Not analogous to former RC § 2903.04 (RS §§ 4364-38, 4364-39; 90 v 235; 91 v 311; 92 v 71; GC § 12965; 101 v 133; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

† The provisions of §§ 4, 5 of SB 62 (145 v —) read as follows:

SECTION 4. That Section 3 of Sub. S.B. 275 of the 119th General Assembly be amended to read as follows:

"Sec. 3. Sections 1 and 2 of this act shall take effect September 1, 1993."

SECTION 5. That existing Section 3 of Sub. S.B. 275 of the 119th General Assembly is hereby repealed.

[§ 2903.04.1] § 2903.041 Reckless homicide.

(A) No person shall recklessly cause the death of another or the unlawful termination of another's pregnancy.

(B) Whoever violates this section is guilty of reckless homicide, a felony of the third degree.

HISTORY: 148 v H 37. Eff 9-29-99.

§ 2903.05 Negligent homicide.

(A) No person shall negligently cause the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239. Eff 9-6-96.

Not analogous to former RC § 2903.05 (RS § 6986b; 80 v 222; GC § 12966; 103 v 864; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter.

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death

of another or the unlawful termination of another's pregnancy in any of the following ways:

(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) Recklessly;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (F) of this section.

(3) In one of the following ways:

(a) Negligently;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (F) of this section.

(4) As the proximate result of committing a violation of any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor.

(B)(1) Whoever violates division (A)(1) or (2) of this section is guilty of aggravated vehicular homicide and shall be punished as provided in divisions (B)(2) and (3) of this section.

(2)(a) Except as otherwise provided in division (B)(2)(b) or (c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the second degree and the court shall impose a mandatory prison term on the offender as described in division (E) of this section.

(b) Except as otherwise provided in division (B)(2)(c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the first degree, and the court shall impose a mandatory prison term on the offender as described in division (E) of this section, if any of the following apply:

(i) At the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code.

(ii) The offender previously has been convicted of or pleaded guilty to a violation of this section.

(iii) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(c) Aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the

first degree, and the court shall sentence the offender to a mandatory prison term as provided in section 2929.142 [2929.14.2] of the Revised Code and described in division (E) of this section if any of the following apply:

(i) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(ii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(iii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(iv) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of this section within the previous six years.

(v) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.08 of the Revised Code within the previous six years.

(vi) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 2903.04 of the Revised Code within the previous six years in circumstances in which division (D) of that section applied regarding the violations.

(vii) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in division (B)(2)(c)(i), (ii), (iii), (iv), (v), or (vi) of this section within the previous six years.

(viii) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of section 4511.19 of the Revised Code.

(d) In addition to any other sanctions imposed pursuant to division (B)(2)(a), (b), or (c) of this section for aggravated vehicular homicide committed in violation of division (A)(1) of this section, the court shall impose upon the offender a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of section 4510.02 of the Revised Code.

(3) Except as otherwise provided in this division, aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the third degree. Aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division for a violation of division (A)(2) of this section, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of

the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of that section.

(C) Whoever violates division (A)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this division, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of division (A)(3) of this section is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or revocation imposed under Chapter 4507. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory jail term or a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code, or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section, or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of that section.

(D) Whoever violates division (A)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or a traffic-related murder, felonious assault, or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary li-

cense, or nonresident operating privilege from the range specified in division (A)(4) of that section.

(E) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section. If division (B)(2)(c)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this section applies to an offender who is convicted of or pleads guilty to the violation of division (A)(1) of this section, the court shall impose the mandatory prison term pursuant to section 2929.142 [2929.14.2] of the Revised Code. The court shall impose a mandatory jail term of at least fifteen days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to section 2929.24 of the Revised Code. The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(2) or (3)(a) of this section or a felony violation of division (A)(3)(b) of this section if either of the following applies:

(1) The offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.08 of the Revised Code.

(2) At the time of the offense, the offender was driving under suspension under Chapter 4510. or any other provision of the Revised Code.

(F) Divisions (A)(2)(b) and (3)(b) of this section do not apply in a particular construction zone unless signs of the type described in section 2903.081 [2903.08.1] of the Revised Code are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under section 5501.27 of the Revised Code. The failure to erect signs of the type described in section 2903.081 [2903.08.1] of the Revised Code in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a), or (A)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

(G)(1) As used in this section:

(a) "Mandatory prison term" and "mandatory jail term" have the same meanings as in section 2929.01 of the Revised Code.

(b) "Traffic-related homicide, manslaughter, or assault offense" means a violation of section 2903.04 of the Revised Code in circumstances in which division (D) of that section applies, a violation of section 2903.06 or 2903.08 of the Revised Code, or a violation of section 2903.06, 2903.07, or 2903.08 of the Revised Code as they existed prior to March 23, 2000.

(c) "Construction zone" has the same meaning as in section 5501.27 of the Revised Code.

(d) "Reckless operation offense" means a violation of section 4511.20 of the Revised Code or a municipal ordinance substantially equivalent to section 4511.20 of the Revised Code.

(e) "Speeding offense" means a violation of section 4511.21 of the Revised Code or a municipal ordinance pertaining to speed.

(f) "Traffic-related murder, felonious assault, or attempted murder offense" means a violation of section 2903.01 or 2903.02 of the Revised Code in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of division (A)(2) of

section 2903.11 of the Revised Code in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of section 2923.02 of the Revised Code in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

(g) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 139 v S 432 (Eff 3-16-83); 141 v H 265 (Eff 7-24-86); 141 v S 356 (Eff 9-24-86); 141 v S 262 (Eff 3-20-87); 141 v H 428 (Eff 12-23-86); 143 v H 381 (Eff 7-1-89); 143 v S 49 (Eff 11-3-89); 143 v S 131 (Eff 7-25-90); 144 v S 275 (Eff 7-1-93) †; 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 50, § 1, eff. 10-21-03; 150 v H 50, § 4, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 461, § 1, eff. 4-4-07.

The effective date is set by section 6 of H.B. 50.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 2903.04.

Not analogous to former RC § 2903.06 (RS § 6986a; 77 v 79; GC § 12967; 103 v 864; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

For current analogous provision to former RC § 2903.06 see RC § 2923.21.

† See provisions, §§ 4, 5 of SB 62 (145 v —) following RC § 2903.04.

§ 2903.08 Aggravated vehicular assault; vehicular assault.

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in any of the following ways:

(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (E) of this section;

(b) Recklessly.

(3) As the proximate result of committing, while operating or participating in the operation of a motor vehicle

or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (E) of this section.

(B)(1) Whoever violates division (A)(1) of this section is guilty of aggravated vehicular assault. Except as otherwise provided in this division, aggravated vehicular assault is a felony of the third degree. Aggravated vehicular assault is a felony of the second degree if any of the following apply:

(a) At the time of the offense, the offender was driving under a suspension imposed under Chapter 4510, or any other provision of the Revised Code.

(b) The offender previously has been convicted of or pleaded guilty to a violation of this section.

(c) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(d) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 4511.19 of the Revised Code or a substantially equivalent municipal ordinance within the previous six years.

(e) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(f) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(g) The offender previously has been convicted of or pleaded guilty to three or more prior violations of any combination of the offenses listed in division (B)(1)(d), (e), or (f) of this section.

(h) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of section 4511.19 of the Revised Code.

(2) In addition to any other sanctions imposed pursuant to division (B)(1) of this section, except as otherwise provided in this division, the court shall impose upon the offender a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of section 4510.02 of the Revised Code. If the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, the court shall impose either a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of that section or a class one suspension as specified in division (A)(1) of that section.

(C)(1) Whoever violates division (A)(2) or (3) of this section is guilty of vehicular assault and shall be punished as provided in divisions (C)(2) and (3) of this section.

(2) Except as otherwise provided in this division, vehicular assault committed in violation of division (A)(2) of this section is a felony of the fourth degree. Vehicular assault committed in violation of division (A)(2) of this

section is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, or if, in the same course of conduct that resulted in the violation of division (A)(2) of this section, the offender also violated section 4549.02, 4549.021 [4549.02.1], or 4549.03 of the Revised Code.

In addition to any other sanctions imposed, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section.

(3) Except as otherwise provided in this division, vehicular assault committed in violation of division (A)(3) of this section is a misdemeanor of the first degree. Vehicular assault committed in violation of division (A)(3) of this section is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of section 4510.02 of the Revised Code.

(D)(1) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section.

(2) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(2) of this section or a felony violation of division (A)(3) of this section if either of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.06 of the Revised Code.

(b) At the time of the offense, the offender was driving under suspension under Chapter 4510. or any other provision of the Revised Code.

(3) The court shall impose a mandatory jail term of at least seven days on an offender who is convicted of or

pleads guilty to a misdemeanor violation of division (A)(3) of this section and may impose upon the offender a longer jail term as authorized pursuant to section 2929.24 of the Revised Code.

(E) Divisions (A)(2)(a) and (3) of this section do not apply in a particular construction zone unless signs of the type described in section 2903.081 [2903.08.1] of the Revised Code are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under section 5501.27 of the Revised Code. The failure to erect signs of the type described in section 2903.081 [2903.08.1] of the Revised Code in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1) or (2)(b) of this section in that construction zone or the prosecution of any person who violates either of those divisions in that construction zone.

(F) As used in this section:

(1) "Mandatory prison term" and "mandatory jail term" have the same meanings as in section 2929.01 of the Revised Code.

(2) "Traffic-related homicide, manslaughter, or assault offense" and "traffic-related murder, felonious assault, or attempted murder offense" have the same meanings as in section 2903.06 of the Revised Code.

(3) "Construction zone" has the same meaning as in section 5501.27 of the Revised Code.

(4) "Reckless operation offense" and "speeding offense" have the same meanings as in section 2903.06 of the Revised Code.

(G) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

HISTORY: 143 v S 131 (Eff 7-25-90); 144 v S 275 (Eff 7-1-93) †; 145 v H 236 (Eff 9-29-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 50, § 1, eff. 10-21-03; 150 v H 50, § 4, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v H 461, § 1, eff. 4-4-07.

The provisions of § 5(A) of 151 v H 461 read as follows:

SECTION 5. (A) Section 2903.08 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 2903.04.

Not analogous to former RC § 2903.08 (RS §§ 6984a, 6985; 73 v 219, §§ 1-6; 81 v 181, 184; 83 v 27; 95 v 273; GC §§ 12970, 12971; Bureau of Code Revision, 10-1-53; 132 v S 65), repealed 134 v H 511, § 2, eff 1-1-74.

† See provisions, §§ 4, 5 of SB 62 (145 v —) following RC § 2903.04.

Comment, Legislative Service Commission

Section 2903.08 of the Revised Code is amended by Am. Sub. H.B. 163 and Sub. H.B. 52 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that

they are required by that section to be harmonized to give effect to each amendment.

[§ 2903.08.1] § 2903.081 Signs in construction zones concerning vehicular homicide and assault offenses.

(A) As used in this section:

(1) "Construction zone" has the same meaning as in section 5501.27 of the Revised Code.

(2) "Reckless operation offense" and "speeding offense" have the same meanings as in section 2903.06 of the Revised Code.

(B) The director of transportation, board of county commissioners, or board of township trustees shall cause signs to be erected in construction zones notifying motorists of the prohibitions set forth in sections 2903.06 and 2903.08 of the Revised Code regarding the death of or injury to any person in the construction zone as a proximate result of a reckless operation offense or speeding offense in the construction zone. The prohibitions set forth in divisions (A)(2)(b) and (3)(b) of section 2903.06 and divisions (A)(2)(a) and (3) of section 2903.08 of the Revised Code apply to persons who commit a reckless operation offense or speeding offense in a particular construction zone only when signs of that nature are erected in that construction zone in accordance with the guidelines and design specifications established by the director under section 5501.27 of the Revised Code. The failure to erect signs of that nature in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a), or (A)(4) of section 2903.06 or division (A)(1) or (2)(b) of section 2903.08 of the Revised Code in that construction zone or the prosecution of any person who violates either of those divisions in that construction zone.

HISTORY: 150 v H 52, § 1, eff. 6-1-04.

§ 2903.09 Legal abortions and acts or omissions of pregnant woman excepted from liability.

As used in sections 2903.01 to 2903.08, 2903.11 to 2903.14, 2903.21, and 2903.22 of the Revised Code:

(A) "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(B) "Another's unborn" or "such other person's unborn" means a member of the species homo sapiens, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

(C) Notwithstanding divisions (A) and (B) of this section, in no case shall the definitions of the terms "unlawful termination of another's pregnancy," "another's unborn," and "such other person's unborn" that are set forth in division (A) of this section be applied or construed in any of the following manners:

(1) Except as otherwise provided in division (C)(1) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the

pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.151 [2919.15.1], 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.151 [2919.15.1], 2919.17, or 2919.18 of the Revised Code, as applicable.

(2) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(a) Her delivery of a stillborn baby;

(b) Her causing, in any other manner, the death in utero of an unborn that she is carrying;

(c) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn;

(d) Her causing her child who is born alive to sustain one or more injuries while the child is an unborn;

(e) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

HISTORY: 146 v S 239 (Eff 9-6-96); 148 v S 107 (Eff 3-23-2000); 148 v H 351, Eff 8-18-2000.

Not analogous to former RC § 2903.09 (GC §§ 12970-1, 12970-2; 101 v 233; 103 v 564 (907); 113 v 281; Bureau of Code Revision; 10-1-53; 132 v S 65; 133 v H 1), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.10 Definitions: functionally impaired person; caretaker.

As used in sections 2903.13 and 2903.16 of the Revised Code:

(A) "Functionally impaired person" means any person who has a physical or mental impairment that prevents him from providing for his own care or protection or whose infirmities caused by aging prevent him from providing for his own care or protection.

(B) "Caretaker" means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "Caretaker" does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility, as defined in section 2903.33 of the Revised Code.

HISTORY: 142 v H 642, Eff 3-17-99.

Not analogous to former RC § 2903.10 (126 v 1039; 130 v 658; 130 v PIII, 143), repealed 134 v H 511, § 2, eff 1-1-74.

[ASSAULT]

§ 2903.11 Felonious assault.

(A) No person shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D)(1) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer or an investigator of the bureau of criminal identification and investigation, felonious assault is a felony of the first degree. If the victim of the offense is a peace officer, or an investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(2) In addition to any other sanctions imposed pursuant to division (D)(1) of this section for felonious assault committed in violation of division (A)(2) of this section, if the deadly weapon used in the commission of the violation is a motor vehicle, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(E) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(2) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(3) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(4) "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.

(5) "Investigator of the bureau of criminal identification and investigation" means an investigator of the bureau of criminal identification and investigation who is

commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under section 109.541 [109.54.1] of the Revised Code.

(6) "Investigator" has the same meaning as in section 109.541 [109.54.1] of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 139 v H 269 (Eff 7-1-83); 140 v S 210 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 148 v S 142 (Eff 2-3-2000); 148 v H 100. Eff 3-23-2000; 151 v H 95, § 1, eff. 8-3-06; 151 v H 347, § 1, eff. 3-14-07; 151 v H 461, § 1, eff. 4-4-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

Not analogous to former RC § 2903.11 (126 v 1039; 130 v 658), repealed 133 v H 84, § 2, eff 9-15-70.

Comment, Legislative Service Commission

Section 2903.11 of the Revised Code is amended by Am. Sub. H.B. 461 and Sub. H.B. 347 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment. Division lettering adjusted to give effect to the manifest intent of each amendment as permitted by RC 1.52(B).

§ 2903.12 Aggravated assault.

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of aggravated assault, a felony of the fourth degree. If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, aggravated assault is a felony of the third degree. If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a felony of the third degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(C) As used in this section:

(1) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.

(2) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v H 103 (Eff 5-19-82); 139 v S 199 (Eff 7-1-83); 139 v H 269 (Eff 7-1-83); 140 v S 210 (Eff 7-1-83); 140 v H 37 (Eff 6-22-84); 146 v S 239 (Eff 9-6-96); 148 v S 142. Eff 2-3-2000; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

Not analogous to former RC § 2903.12 (130 v 659), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2901.18 (RS § 6984a; 81 v

184; 83 v 27; 95 v 273; GC § 12428; Bureau of Code Revision, 10-1-53; 131 v 670), repealed 134 v H 511, § 2, eff 1-1-74.

Publisher's Note:

Three subsequent amendments to the section in 1983, S 199, H 269, S 210 picked up the original "extreme emotional stress" wording of division (A). The Legislative Service Commission advises that comparison of H 103 with S 199, H 269, and S 210 pursuant to section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment.

The most recent amendment to subdivision (A) is H 37, an act which harmonizes "multiple prior amendments" and corrects "nonsubstantive errors." This amendment uses the "sudden passion" language.

See Publisher's Note re H 511 Committee Comment following RC § 2903.03.

§ 2903.13 Assault.

(A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(B) No person shall recklessly cause serious physical harm to another or to another's unborn.

(C) Whoever violates this section is guilty of assault. Except as otherwise provided in division (C) (1), (2), (3), (4), or (5) of this section, assault is a misdemeanor of the first degree.

(1) Except as otherwise provided in this division, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.11 or 2903.16 of the Revised Code, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree.

(2) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree:

(a) The offense occurs in or on the grounds of a state correctional institution or an institution of the department of youth services, the victim of the offense is an employee of the department of rehabilitation and correction, the department of youth services, or a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is committed by a person incarcerated in the state correctional institution, by a person institutionalized in the department of youth services institution pursuant to a commitment to the department of youth services, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(b) The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the

person's being alleged to be or adjudicated a delinquent child.

(c) The offense occurs off the grounds of a state correctional institution and off the grounds of an institution of the department of youth services, the victim of the offense is an employee of the department of rehabilitation and correction, the department of youth services, or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person incarcerated in a state correctional institution or institutionalized in the department of youth services who temporarily is outside of the institution for any purpose, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(d) The offense occurs off the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the facility for any purpose or by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(e) The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises.

(3) If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree.

(4) If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation and if the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least twelve months in duration.

(5) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is either a felony of the fifth degree or, if the offender

previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(D) As used in this section:

(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(2) "Firefighter" has the same meaning as in section 3937.41 of the Revised Code.

(3) "Emergency medical service" has the same meaning as in section 4765.01 of the Revised Code.

(4) "Local correctional facility" means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail established under section 341.23 or 753.21 of the Revised Code, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.

(5) "Employee of a local correctional facility" means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.

(6) "School teacher or administrator" means either of the following:

(a) A person who is employed in the public schools of the state under a contract described in section 3319.08 of the Revised Code in a position in which the person is required to have a certificate issued pursuant to sections 3319.22 to 3319.311 of the Revised Code.

(b) A person who is employed by a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and who is certificated in accordance with section 3301.071 of the Revised Code.

(7) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(8) "Escorted visit" means an escorted visit granted under section 2967.27 of the Revised Code.

(9) "Post-release control" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.

(10) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 642 (Eff 3-17-89); 144 v H 561 (Eff 4-9-93); 145 v S 116 (Eff 9-29-94); 145 v H 571 (Eff 10-6-94); 146 v H 614 (Eff 6-16-96); 146 v S 2 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 146 v H 480 (Eff 10-16-96); 147 v H 106 (Eff 11-21-97); 147 v S 111 (Eff 3-17-98); 148 v S 1 (Eff 8-6-99); 148 v S 142 (Eff 2-3-2000); 148 v H 412, Eff 4-10-2001; 149 v H 490, § 1, eff. 1-1-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2903.13 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.14 Negligent assault.

(A) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in section 2923.11 of the Revised Code, cause physical harm to another or to another's unborn.

(B) Whoever violates this section is guilty of negligent assault, a misdemeanor of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239, Eff 9-6-96.

Not analogous to former RC § 2903.14 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.15 Permitting child abuse.

(A) No parent, guardian, custodian, or person having custody of a child under eighteen years of age or of a mentally or physically handicapped child under twenty-one years of age shall cause serious physical harm to the child, or the death of the child, as a proximate result of permitting the child to be abused, to be tortured, to be administered corporal punishment or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a prolonged period.

(B) It is an affirmative defense to a charge under this section that the defendant did not have readily available a means to prevent the harm to the child or the death of the child and that the defendant took timely and reasonable steps to summon aid.

(C) Whoever violates this section is guilty of permitting child abuse. If the violation of this section causes serious physical harm to the child, permitting child abuse is a felony of the third degree. If the violation of this section causes the death of the child, permitting child abuse is a felony of the first degree.

HISTORY: 148 v H 162, Eff 8-25-99.

Not analogous to former RC § 2903.15 (133 v H 84; 135 v S 62), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.16 Failing to provide for a functionally impaired person.

(A) No caretaker shall knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in physical harm or serious physical harm to the functionally impaired person.

(B) No caretaker shall recklessly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person.

(C)(1) Whoever violates division (A) of this section is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (A) of this section is a felony of the fourth degree.

(2) Whoever violates division (B) of this section is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (B) of this section is a felony of the fourth degree.

HISTORY: 142 v H 642 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2903.16 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[MENACING]

§ 2903.21 Aggravated menacing.

(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(B) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this division, aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 148 v H 412, Eff 4-10-2001.

[STALKING]

[§ 2903.21.1] § 2903.211 Menacing by stalking.

Effective until 1-1-08.

(A)(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section.

(B) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section 2911.211 of the Revised Code.

(b) In committing the offense under division (A)(1) or (2) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1) or (2) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends

school, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1) or (2) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section 2919.271 of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, com-

puter program, computer system, or telecommunications device, may constitute a "pattern of conduct."

(2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F)(1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

HISTORY: 144 v H 536 (Eff 11-5-92); 146 v S 2 (Eff 7-1-96); 147 v S 215 (Eff 3-30-99); 148 v H 137 (Eff 3-10-2000); 148 v H 202, § 3 (Eff 3-10-2000); 148 v H 412 (Eff 4-10-2001); 149 v S 40, Eff 1-25-2002; 150 v S 8, § 1, eff. 8-29-03; 150 v S 47, § 1, eff. 8-29-03.

[§ 2903.21.1] § 2903.211 Menacing by stalking.

Effective 1-1-08.

(A)(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section.

(3) No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section.

(B) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section 2911.211 of the Revised Code.

(b) In committing the offense under division (A)(1), (2), or (3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1), (2), or (3) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (A)(2) of this section or an offense committed under division (A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section 2919.271 of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

(2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(9) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F)(1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

HISTORY: 144 v H 536 (Eff 11-5-92); 146 v S 2 (Eff 7-1-96); 147 v S 215 (Eff 3-30-99); 148 v H 137 (Eff 3-10-2000); 148 v H 202, § 3 (Eff 3-10-2000); 148 v H 412 (Eff 4-10-2001); 149 v S 40, Eff 1-25-2002; 150 v S 8, § 1, eff. 8-29-03; 150 v S 47, § 1, eff. 8-29-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2903.21.2] § 2903.212 Considerations in setting amount and conditions of bail for certain offenses.

(A) Except when the complaint involves a person who is a family or household member as defined in section 2919.25 of the Revised Code, if a person is charged with a violation of section 2903.21, 2903.211 [2903.21.1],

2903.22, or 2911.211 [2911.21.1] of the Revised Code, a violation of a municipal ordinance that is substantially similar to one of those sections, or a sexually oriented offense and if the person, at the time of the alleged violation, was subject to the terms of any order issued pursuant to section 2903.213 [2903.21.3], 2933.08, or 2945.04 of the Revised Code or previously had been convicted of or pleaded guilty to a violation of section 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code that involves the same complainant, a violation of a municipal ordinance that is substantially similar to one of those sections and that involves the same complainant, or a sexually oriented offense that involves the same complainant, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, before setting the amount and conditions of the bail for the person:

- (1) Whether the person has a history of violence toward the complainant or a history of other violent acts;
- (2) The mental health of the person;
- (3) Whether the person has a history of violating the orders of any court or governmental entity;
- (4) Whether the person is potentially a threat to any other person;
- (5) Whether setting bail at a high level will interfere with any treatment or counseling that the person is undergoing.

(B) Any court that has jurisdiction over violations of section 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, violations of a municipal ordinance that is substantially similar to one of those sections, or sexually oriented offenses may set a schedule for bail to be used in cases involving those violations. The schedule shall require that a judge consider all of the factors listed in division (A) of this section and may require judges to set bail at a certain level or impose other reasonable conditions related to a release on bail or on recognizance if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.

(C) As used in this section, "sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

HISTORY: 144 v H 536. Eff 11-5-92; 151 v S 260, § 1, eff. 1-2-07.

[§ 2903.21.3] § 2903.213 Motion for protection order as pretrial condition of release.

(A) Except when the complaint involves a person who is a family or household member as defined in section 2919.25 of the Revised Code, upon the filing of a complaint that alleges a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, a violation of a municipal ordinance substantially similar to section 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, or the commission of a sexually oriented offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at

any time after the filing of the complaint. If the complaint involves a person who is a family or household member, the complainant, the alleged victim, or the family or household member may file a motion for a temporary protection order pursuant to section 2919.26 of the Revised Code.

(B) A motion for a protection order under this section shall be prepared on a form that is provided by the clerk of the court, and the form shall be substantially as follows:

"Motion for Protection Order
....."
Name and address of court
State of Ohio
v. No
Name of Defendant
.....
Name of Defendant
.....

(Name of person), moves the court to issue a protection order containing terms designed to ensure the safety and protection of the complainant or the alleged victim in the above-captioned case, in relation to the named defendant, pursuant to its authority to issue a protection order under section 2903.213 [2903.21.3] of the Revised Code.

A complaint, a copy of which has been attached to this motion, has been filed in this court charging the named defendant with a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, a violation of a municipal ordinance substantially similar to section 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, or the commission of a sexually oriented offense.

I understand that I must appear before the court, at a time set by the court not later than the next day that the court is in session after the filing of this motion, for a hearing on the motion, and that any protection order granted pursuant to this motion is a pretrial condition of release and is effective only until the disposition of the criminal proceeding arising out of the attached complaint or until the issuance under section 2903.214 [2903.21.4] of the Revised Code of a protection order arising out of the same activities as those that were the basis of the attached complaint.

.....
Signature of person
.....
Address of person"
.....

(C)(1) As soon as possible after the filing of a motion that requests the issuance of a protection order under this section, but not later than the next day that the court is in session after the filing of the motion, the court shall conduct a hearing to determine whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the court finds that the safety and protection of the complainant or the alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a protection order under this section, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant or the alleged victim, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or the alleged victim.

(2)(a) If the court issues a protection order under this section that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or the alleged victim, the order shall clearly state that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant, the alleged victim, or a family or household member to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant, the alleged victim, or a family or household member.

(b) Division (C)(2)(a) of this section does not limit any discretion of a court to determine that an alleged offender charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a protection order issued under this section, did not commit the violation or was not in contempt of court.

(D)(1) Except when the complaint involves a person who is a family or household member as defined in section 2919.25 of the Revised Code, upon the filing of a complaint that alleges a violation specified in division (A) of this section, the court, upon its own motion, may issue a protection order under this section as a pretrial condition of release of the alleged offender if it finds that the safety and protection of the complainant or the alleged victim may be impaired by the continued presence of the alleged offender.

(2) If the court issues a protection order under this section as an ex parte order, it shall conduct, as soon as possible after the issuance of the order but not later than the next day that the court is in session after its issuance, a hearing to determine whether the order should remain in effect, be modified, or be revoked. The hearing shall be conducted under the standards set forth in division (C) of this section.

(3) If a municipal court or a county court issues a protection order under this section and if, subsequent to the issuance of the order, the alleged offender who is the subject of the order is bound over to the court of common pleas for prosecution of a felony arising out of the same activities as those that were the basis of the complaint upon which the order is based, notwithstanding the fact that the order was issued by a municipal court or county court, the order shall remain in effect, as though it were an order of the court of common pleas, while the charges against the alleged offender are pending in the court of common pleas, for the period of time described in division (E)(2) of this section, and the court of common pleas has exclusive jurisdiction to modify the order issued by the municipal court or county court. This division applies when the alleged offender is bound over to the court of common pleas as a result of the person waiving a preliminary hearing on the felony charge, as a result of the municipal court or county court having determined at a preliminary hearing that there is probable cause to believe that the felony has been committed and that the alleged offender committed it, as a result of the alleged offender having been indicted for the felony, or in any other manner.

(E) A protection order that is issued as a pretrial condition of release under this section:

(1) Is in addition to, but shall not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the disposition, by the court that issued the order or, in the circumstances described in

division (D)(3) of this section, by the court of common pleas to which the alleged offender is bound over for prosecution, of the criminal proceeding arising out of the complaint upon which the order is based or until the issuance under section 2903.214 [2903.21.4] of the Revised Code of a protection order arising out of the same activities as those that were the basis of the complaint filed under this section;

(3) Shall not be construed as a finding that the alleged offender committed the alleged offense and shall not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

(F) A person who meets the criteria for bail under Criminal Rule 46 and who, if required to do so pursuant to that rule, executes or posts bond or deposits cash or securities as bail, shall not be held in custody pending a hearing before the court on a motion requesting a protection order under this section.

(G)(1) A copy of a protection order that is issued under this section shall be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the defendant on the same day that the order is entered. If a municipal court or a county court issues a protection order under this section and if, subsequent to the issuance of the order, the defendant who is the subject of the order is bound over to the court of common pleas for prosecution as described in division (D)(3) of this section, the municipal court or county court shall direct that a copy of the order be delivered to the court of common pleas to which the defendant is bound over.

(2) All law enforcement agencies shall establish and maintain an index for the protection orders delivered to the agencies pursuant to division (G)(1) of this section. With respect to each order delivered, each agency shall note on the index the date and time of the agency's receipt of the order.

(3) Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction, any officer of a law enforcement agency shall enforce a protection order issued pursuant to this section in accordance with the provisions of the order.

(H) Upon a violation of a protection order issued pursuant to this section, the court may issue another protection order under this section, as a pretrial condition of release, that modifies the terms of the order that was violated.

(I) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or by a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a motion pursuant to this section, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining certified copies of a protection order or consent agreement.

(J) As used in this section, "sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

HISTORY: 144 v H 536 (Eff 11-5-92); 145 v S 31 (Eff 9-27-93); 147 v H 93 (Eff 12-31-97); 147 v S 98 (Eff 3-17-98); 147 v H 302 (Eff 7-29-98); 148 v H 137 (Eff 3-10-2000); 149 v H 548. Eff 3-31-2003; 151 v S 260, § 1, eff. 1-2-07.

[§ 2903.21.4] § 2903.214 Petition for protection order to protect victim of menacing by stalking or sexually oriented offense.

(A) As used in this section:

(1) "Court" means the court of common pleas of the county in which the person to be protected by the protection order resides.

(2) "Victim advocate" means a person who provides support and protection for a person who files a petition under this section.

(3) "Family or household member" has the same meaning as in section 3113.31 of the Revised Code.

(4) "Protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

(5) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(B) The court has jurisdiction over all proceedings under this section.

(C) A person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state both of the following:

(1) An allegation that the respondent engaged in a violation of section 2903.211 [2903.21.1] of the Revised Code against the person to be protected by the protection order or committed a sexually oriented offense against the person to be protected by the protection order, including a description of the nature and extent of the violation;

(2) A request for relief under this section.

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing as soon as possible after the petition is filed, but not later than the next day that the court is in session after the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, that the court finds necessary for the safety and protection of the person to be protected by the order. Immediate and present danger to the person to be protected by the protection order constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm or in which the respondent previously has been convicted of or pleaded guilty to a violation of section 2903.211 [2903.21.1] of the Revised Code or a sexually oriented offense against the person to be protected by the protection order.

(2)(a) If the court, after an ex parte hearing, issues a protection order described in division (E) of this section, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court may grant a continuance of the full hearing to a reasonable time determined by the court:

(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

(ii) The parties consent to the continuance.

(iii) The continuance is needed to allow a party to obtain counsel.

(iv) The continuance is needed for other good cause.

(b) An ex parte order issued under this section does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under division (D)(2)(a) of this section or because the court grants a continuance under that division.

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1) After an ex parte or full hearing, the court may issue any protection order, with or without bond, that contains terms designed to ensure the safety and protection of the person to be protected by the protection order, including, but not limited to, a requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member. If the court includes a requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member in the order, it also shall include in the order provisions of the type described in division (E)(5) of this section.

(2)(a) Any protection order issued pursuant to this section shall be valid until a date certain but not later than five years from the date of its issuance.

(b) Any protection order issued pursuant to this section may be renewed in the same manner as the original order was issued.

(3) A court may not issue a protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do or to refrain from doing under division (E)(1) of this section unless all of the following apply:

(a) The respondent files a separate petition for a protection order in accordance with this section.

(b) The petitioner is served with notice of the respondent's petition at least forty-eight hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.

(c) If the petitioner has requested an ex parte order pursuant to division (D) of this section, the court does not delay any hearing required by that division beyond the time specified in that division in order to consolidate the hearing with a hearing on the petition filed by the respondent.

(d) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed a violation of section 2903.211 [2903.21.1] of the Revised Code against the person to be protected by the protection order issued pursuant to this section, has committed a sexually oriented offense against the person to be protected by the protection order, or has violated a protection order issued pursuant to section 2903.213 [2903.21.3] of the Revised Code relative to the person to be protected by the protection order issued pursuant to this section.

(4) No protection order issued pursuant to this section shall in any manner affect title to any real property.

(5)(a) If the court issues a protection order under this section that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, the order shall clearly state that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the petitioner or family or household member.

(b) Division (E)(5)(a) of this section does not limit any discretion of a court to determine that an alleged offender charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a protection order issued under this section, did not commit the violation or was not in contempt of court.

(F)(1) The court shall cause the delivery of a copy of any protection order that is issued under this section to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the respondent on the same day that the order is entered.

(2) All law enforcement agencies shall establish and maintain an index for the protection orders delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order delivered, each agency shall note on the index the date and time that it received the order.

(3) Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction pursuant to division (M) of this section, any officer of a law enforcement agency shall enforce a protection order issued pursuant to this section by any court in this state in accordance with the provisions of the order, including removing the respondent from the premises, if appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that a protection order may be obtained under this section with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order, or that refuses to grant a protection order, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.

(H) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 [2151.42.1] of the Revised Code or by any other law.

(I) Any law enforcement agency that investigates an alleged violation of section 2903.211 [2903.21.1] of the Revised Code or an alleged commission of a sexually oriented offense shall provide information to the victim and the family or household members of the victim regarding the relief available under this section and section 2903.213 [2903.21.3] of the Revised Code.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or by a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a

petition pursuant to this section, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K)(1) A person who violates a protection order issued under this section is subject to the following sanctions:

(a) Criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order constitutes a violation of that section;

(b) Punishment for contempt of court.

(2) The punishment of a person for contempt of court for violation of a protection order issued under this section does not bar criminal prosecution of the person for a violation of section 2919.27 of the Revised Code. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section shall not subsequently be punished for contempt of court arising out of the same activity.

(L) In all stages of a proceeding under this section, a petitioner may be accompanied by a victim advocate.

(M)(1) A petitioner who obtains a protection order under this section or a protection order under section 2903.213 [2903.21.3] of the Revised Code may provide notice of the issuance or approval of the order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county pursuant to division (M)(2) of this section and filing a copy of the registered order with a law enforcement agency in the other county in accordance with that division. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to section 2919.272 [2919.27.2] of the Revised Code and filing a copy of the registered order with a law enforcement agency in that county.

(2) A petitioner may register a protection order issued pursuant to this section or section 2903.213 [2903.21.3] of the Revised Code in a county other than the county in which the court that issued the order is located in the following manner:

(a) The petitioner shall obtain a certified copy of the order from the clerk of the court that issued the order and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order is to be registered.

(b) Upon accepting the certified copy of the order for registration, the clerk of the court of common pleas, municipal court, or county court shall place an endorsement of registration on the order and give the petitioner a copy of the order that bears that proof of registration.

(3) The clerk of each court of common pleas, municipal court, or county court shall maintain a registry of certified copies of protection orders that have been issued by courts in other counties pursuant to this section or section 2903.213 [2903.21.3] of the Revised Code and that have been registered with the clerk.

HISTORY: 147 v H 302 (Eff 7-29-98); 149 v H 548, Eff 3-31-2003; 151 v S 260, § 1, eff. 1-2-07.

Not analogous to former RC § 2903.21.4 (144 v H 536), repealed 146 v S 2, § 2, eff 7-1-96.

§ 2903.22 Menacing.

(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the

person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(B) Whoever violates this section is guilty of menacing. Except as otherwise provided in this division, menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 148 v H 412. Eff 4-10-2001.

§ 2903.31 Hazing.

(A) As used in this section, "hazing" means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B)(1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

(C) Whoever violates this section is guilty of hazing, a misdemeanor of the fourth degree.

HISTORY: 139 v H 444. Eff 3-3-83.

[PATIENT ABUSE AND NEGLECT IN CARE FACILITIES]

§ 2903.33 Definitions.

As used in sections 2903.33 to 2903.36 of the Revised Code:

(A) "Care facility" means any of the following:

(1) Any "home" as defined in section 3721.10 or 5111.20 of the Revised Code;

(2) Any "residential facility" as defined in section 5123.19 of the Revised Code;

(3) Any institution or facility operated or provided by the department of mental health or by the department of mental retardation and developmental disabilities pursuant to sections 5119.02 and 5123.03 of the Revised Code;

(4) Any "residential facility" as defined in section 5119.22 of the Revised Code;

(5) Any unit of any hospital, as defined in section 3701.01 of the Revised Code, that provides the same services as a nursing home, as defined in section 3721.01 of the Revised Code;

(6) Any institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others;

(7) Any "adult care facility" as defined in section 3722.01 of the Revised Code;

(8) Any adult foster home certified by the department of aging or its designee under section 173.36 of the Revised Code;

(9) Any "community alternative home" as defined in section 3724.01 of the Revised Code.

(B) "Abuse" means knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the inappropriate use of a physical or chemical restraint, medication, or isolation on the person.

(C)(1) "Gross neglect" means knowingly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in physical harm or serious physical harm to the person.

(2) "Neglect" means recklessly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

(D) "Inappropriate use of a physical or chemical restraint, medication, or isolation" means the use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

HISTORY: 141 v H 566 (Eff 9-17-86); 142 v S 156 (Eff 7-1-88); 143 v S 2 (Eff 11-1-89); 143 v H 253 (Eff 11-15-90); 145 v H 152 (Eff 7-1-93); 145 v S 21 (Eff 10-29-93); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

The provisions of § 7 of SB 2 (146 v —) read as follows:

SECTION 7. * * * Section 2903.33 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 152 and Am. Sub. S.B. 21 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 2903.34 Patient abuse; neglect.

(A) No person who owns, operates, or administers, or who is an agent or employee of, a care facility shall do any of the following:

(1) Commit abuse against a resident or patient of the facility;

(2) Commit gross neglect against a resident or patient of the facility;

(3) Commit neglect against a resident or patient of the facility.

(B)(1) A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered neglected under division (A)(3) of this section for that reason alone.

(2) It is an affirmative defense to a charge of gross neglect or neglect under this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor.

(C) Whoever violates division (A)(1) of this section is guilty of patient abuse, a felony of the fourth degree. If the offender previously has been convicted of, or pleaded

guilty to, any violation of this section, patient abuse is a felony of the third degree.

(D) Whoever violates division (A)(2) of this section is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section, gross patient neglect is a felony of the fifth degree.

(E) Whoever violates division (A)(3) of this section is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, patient neglect is a felony of the fifth degree.

HISTORY: 141 v H 566 (Eff 9-17-86); 146 v S 2, Eff 7-1-96.

The effective date is set by section 6 of SB 2.

[§ 2903.34.1] § 2903.341 Patient endangerment.

(A) As used in this section:

(1) "MR/DD caretaker" means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "MR/DD caretaker" includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. "MR/DD caretaker" does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability.

(2) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(3) "MR/DD employee" has the same meaning as in section 5123.50 of the Revised Code.

(B) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(C) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division (B) of this section and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(D)(1) It is an affirmative defense to a charge of a violation of division (B) or (C) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

(a) The person has supervisory authority over the actor.

(b) The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(2) It is an affirmative defense to a charge of a violation of division (C) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Administrative Code is being followed.

(3) It is an affirmative defense to a charge of a violation of division (C) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(E)(1) Except as provided in division (E)(2) or (E)(3) of this section, whoever violates division (B) or (C) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.

(3) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony of the third degree.

HISTORY: 150 v S 178, § 1, eff. 1-30-04.

§ 2903.35 Filing false patient abuse or neglect complaints.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, alleging a violation of section 2903.34 of the Revised Code, when the statement is made with purpose to incriminate another.

(B) Whoever violates this section is guilty of filing a false patient abuse or neglect complaint, a misdemeanor of the first degree.

HISTORY: 141 v H 566, Eff 9-17-86.

§ 2903.36 Discrimination, retaliation prohibited.

No care facility shall discharge or in any manner discriminate or retaliate against any person solely because such person, in good faith, filed a complaint, affidavit, or other document alleging a violation of section 2903.34 of the Revised Code.

HISTORY: 141 v H 566, Eff 9-17-86.

§ 2903.37 License revocation.

Any individual, who owns, operates, or administers, or who is an agent or employee of, a care facility, who is convicted of a felony violation of section 2903.34 of the Revised Code, and who is required to be licensed under any law of this state, shall have his license revoked in accordance with Chapter 119. of the Revised Code.

HISTORY: 141 v H 566, Eff 9-17-86.

CHAPTER 2905: KIDNAPPING AND EXTORTION

Section

[KIDNAPPING AND RELATED OFFENSES]

- 2905.01 Kidnapping.
- 2905.02 Abduction.
- 2905.03 Unlawful restraint.
- 2905.05 Criminal child enticement.

[EXTORTION]

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[EXTORTIONATE EXTENSION OF CREDIT; CRIMINAL USURY]

- 2905.21 Definitions.
- 2905.22 Extortionate extension of credit; criminal usury.
- 2905.23 Probable cause to believe that extension of credit was extortionate.
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[KIDNAPPING AND RELATED OFFENSES]

§ 2905.01 Kidnapping.

Effective until 1-1-08.

(A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

(B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:

- (1) Remove another from the place where the other person is found;
- (2) Restrain another of his liberty;
- (3) Hold another in a condition of involuntary servitude.

(C) Whoever violates this section is guilty of kidnapping, a felony of the first degree. If the offender releases the victim in a safe place unharmed, kidnapping is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 146 v S 2, Eff 7-1-96.

§ 2905.01 Kidnapping.

Effective 1-1-08.

(A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

(B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:

- (1) Remove another from the place where the other person is found;
- (2) Restrain another of the other person's liberty;
- (3) Hold another in a condition of involuntary servitude.

(C) Whoever violates this section is guilty of kidnapping. Except as otherwise provided in this division, kidnapping is a felony of the first degree. Except as otherwise provided in this division, if the offender releases the victim in a safe place unharmed, kidnapping is a felony of the second degree. If the victim of the offense is less than thirteen years of age and if the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, kidnapping is a felony of the first degree, and, notwithstanding the definite sentence provided for a felony of the first degree in section 2929.14 of the Revised Code, the offender shall be sentenced pursuant to section 2971.03 of the Revised Code as follows:

(1) Except as otherwise provided in division (C)(2) of this section, the offender shall be sentenced pursuant to that section to an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment.

(2) If the offender releases the victim in a safe place unharmed, the offender shall be sentenced pursuant to that section to an indefinite term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(D) As used in this section, "sexual motivation specification" has the same meaning as in section 2971.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 146 v S 2, Eff 7-1-96; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2905.01 (Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2905.02 Abduction.

Effective until 1-1-08.

(A) No person, without privilege to do so, shall knowingly do any of the following:

(1) By force or threat, remove another from the place where the other person is found;

(2) By force or threat, restrain the liberty of another person, under circumstances which create a risk of physical harm to the victim, or place the other person in fear;

(3) Hold another in a condition of involuntary servitude.

(B) Whoever violates this section is guilty of abduction, a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2, Eff 7-1-96.

§ 2905.02 Abduction.

Effective 1-1-08.

(A) No person, without privilege to do so, shall knowingly do any of the following:

(1) By force or threat, remove another from the place where the other person is found;

(2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear;

(3) Hold another in a condition of involuntary servitude.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) Whoever violates this section is guilty of abduction, a felony of the third degree.

(D) As used in this section, "sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2, Eff 7-1-96; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2905.02 (RS §§ 6816, 6817; S&C 404; 72 v 93; 84 v 65; 91 v 61; 92 v 54; 95 v 344; GC § 12413; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2905.03 Unlawful restraint.

Effective until 1-1-08.

(A) No person, without privilege to do so, shall knowingly restrain another of his liberty.

(B) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

HISTORY: 134 v H 511. Eff 1-1-74.

§ 2905.03 Unlawful restraint.

Effective 1-1-08.

(A) No person, without privilege to do so, shall knowingly restrain another of the other person's liberty.

(B) No person, without privilege to do so and with a sexual motivation, shall knowingly restrain another of the other person's liberty.

(C) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

(D) As used in this section, "sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

HISTORY: 134 v H 511. Eff 1-1-74; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2905.03 (RS §§ 6816, 6817; S&C 404; 72 v 93; 84 v 65; 91 v 61; 92 v 54; 95 v 344; GC § 12414; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2921.08 (RS § 6826; 69 v 189; 73 v 249; 95 v 69; 97 v 306; GC § 12426; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2905.05 Criminal child enticement.

Effective until 1-1-08.

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under fourteen years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(C) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, section 2907.02, 2907.03, or 2907.12† of the Revised Code, or section 2905.01 or 2907.05 of the Revised Code when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony of the fifth degree.

(D) As used in this section:

(1) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(2) "Vessel" has the same meaning as in section 1547.01 of the Revised Code.

HISTORY: 140 v S 321 (Eff 4-9-85); 146 v S 2 (Eff 7-1-96); 148 v S 312. Eff 4-9-2001; 150 v S 160, § 1, eff. 4-11-05.

† Division (C), RC § 2907.12 repealed 9-3-96, but see RC § 2907.01(A).

§ 2905.05 Criminal child enticement.

Effective 1-1-08.

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any

child under fourteen years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(D) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, section 2907.02 or 2907.03 or former section 2907.12 of the Revised Code, or section 2905.01 or 2907.05 of the Revised Code when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony of the fifth degree.

(E) As used in this section:

(1) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

(2) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(3) "Vessel" has the same meaning as in section 1547.01 of the Revised Code.

HISTORY: 140 v S 321 (Eff 4-9-85); 146 v S 2 (Eff 7-1-96); 148 v S 312, Eff 4-9-2001; 150 v S 160, § 1, eff. 4-11-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2905.05 (GC § 13444-24; 113 v 123(191), ch 23, § 24; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[EXTORTION]

§ 2905.11 Extortion.

(A) No person, with purpose to obtain any valuable thing or valuable benefit or to induce another to do an unlawful act, shall do any of the following:

(1) Threaten to commit any felony;

(2) Threaten to commit any offense of violence;

(3) Violate section 2903.21 or 2903.22 of the Revised Code;

(4) Utter or threaten any calumny against any person;

(5) Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit.

(B) Whoever violates this section is guilty of extortion, a felony of the third degree.

(C) As used in this section, "threat" includes a direct threat and a threat by innuendo.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2905.11 (RS § 7023a; 82 v 209; GC § 13028; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2905.12 Coercion.

(A) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:

(1) Threaten to commit any offense;

(2) Utter or threaten any calumny against any person;

(3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, to damage any person's personal or business repute, or to impair any person's credit;

(4) Institute or threaten criminal proceedings against any person;

(5) Take, withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

(B) Divisions (A)(4) and (5) of this section shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interests of justice:

(1) Offering or agreeing to grant, or granting immunity from prosecution pursuant to section 2945.44 of the Revised Code;

(2) In return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused in a case to which the accused is not a party, offering or agreeing to dismiss, or dismissing one or more charges pending against an accused, or offering or agreeing to impose, or imposing a certain sentence or modification of sentence;

(3) Imposing a community control sanction on certain conditions, including without limitation requiring the offender to make restitution or redress to the victim of the offense.

(C) It is an affirmative defense to a charge under division (A)(3), (4), or (5) of this section that the actor's conduct was a reasonable response to the circumstances that occasioned it, and that the actor's purpose was limited to any of the following:

(1) Compelling another to refrain from misconduct or to desist from further misconduct;

(2) Preventing or redressing a wrong or injustice;

(3) Preventing another from taking action for which the actor reasonably believed the other person to be disqualified;

(4) Compelling another to take action that the actor reasonably believed the other person to be under a duty to take.

(D) Whoever violates this section is guilty of coercion, a misdemeanor of the second degree.

(E) As used in this section:

(1) "Threat" includes a direct threat and a threat by innuendo.

(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

HISTORY: 134 v H 511. Eff 1-1-74; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2905.12 (RS § 6824; S&S 275; 65 v 87; 79 v 132; 95 v 100; GC § 13029; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[EXTORTIONATE EXTENSION OF CREDIT; CRIMINAL USURY]

§ 2905.21 Definitions.

As used in sections 2905.21 to 2905.24 of the Revised Code:

(A) "To extend credit" means to make or renew any loan, or to enter into any agreement, express or implied, for the repayment or satisfaction of any debt or claim, regardless of whether the extension of credit is acknowledged or disputed, valid or invalid, and however arising.

(B) "Creditor" means any person who extends credit, or any person claiming by, under, or through such a person.

(C) "Debtor" means any person who receives an extension of credit, any person who guarantees the repayment of an extension of credit, or any person who in any manner undertakes to indemnify the creditor against loss resulting from the failure of any recipient to repay an extension of credit.

(D) "Repayment" of an extension of credit means the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(E) "Collect an extension of credit" means an attempt to collect from a debtor all or part of an amount due from the extension of credit.

(F) "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment will result in the use of an extortionate means or if the debtor at a later time learns that failure to make repayment will result in the use of extortionate means.

(G) "Extortionate means" is any means that involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or property of the debtor or any member of his family.

(H) "Criminal usury" means illegally charging, taking, or receiving any money or other property as interest on an extension of credit at a rate exceeding twenty-five per cent per annum or the equivalent rate for a longer or shorter period, unless either:

(1) The rate of interest is otherwise authorized by law;

(2) The creditor and the debtor, or all the creditors and all the debtors are members of the same immediate family.

(I) "Immediate family" means a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, and children, including adopted children.

HISTORY: 137 v H 88. Eff 10-9-78.

Not analogous to former RC § 2905.21 (GC § 13031-6; 101 v 50, § 6; 103 v 188; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2905.22 Extortionate extension of credit; criminal usury.

(A) No person shall:

(1) Knowingly make or participate in an extortionate extension of credit;

(2) Knowingly engage in criminal usury;

(3) Possess any writing, paper, instrument, or article used to record criminally usurious transactions, knowing that the contents record a criminally usurious transaction.

(B) Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the fourth degree. Whoever violates division (A)(3) of this section is guilty of a misdemeanor of the first degree.

HISTORY: 137 v H 88 (Eff 10-9-78); 146 v S 2. Eff 7-1-96.

Not analogous to former RC § 2905.22 (GC § 13031-7; 101 v 50; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2905.23 Probable cause to believe that extension of credit was extortionate.

In any prosecution under sections 2905.21 to 2905.24 of the Revised Code, if it is shown that any of the following factors were present in connection with the extension of credit, there is probable cause to believe that the extension of credit was extortionate:

(A) The extension of credit was made at a rate of interest in excess of that established for criminal usury;

(B) At the time credit was extended, the debtor reasonably believed that:

(1) One or more extensions of credit by the creditor were collected or attempted to be collected by extortionate means, or the nonrepayment thereof was punished by extortionate means;

(2) The creditor had a reputation for the use of extortionate means to collect extensions of credit or punish the nonrepayment thereof.

HISTORY: 137 v H 88. Eff 10-9-78.

Not analogous to former RC § 2905.23 (GC § 13031-10; 103 v 188; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2905.24 Evidence of implicit threat as means of collection.

In any prosecution under sections 2905.21 to 2905.24 of the Revised Code, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat is alleged to have been made, collected, or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

HISTORY: 137 v H 88. Eff 10-9-78.

Not analogous to former RC § 2905.24 (GC § 13031-8; 101 v 50; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

CHAPTER 2907: SEX OFFENSES

Section

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Section

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- 2907.32 Pandering obscenity.
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- 2907.35 Presumptions; notice.
- 2907.36 Declaratory judgment.
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- 2907.38 Permitting unlawful operation of viewing booths depicting sexual conduct.
- 2907.39 Permitting juvenile on premises of adult entertainment establishment; use by juvenile of false information to enter adult entertainment establishment.

[IN GENERAL]**§ 2907.01 Definitions.**

Effective until 1-1-08.

As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and

cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 [2305.11.5] of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 142 v H 51 (Eff 3-17-89); 143 v H 514 (Eff 1-1-91); 146 v H 445 (Eff 9-3-96); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 8, Eff 8-5-2002; 149 v H 490, § 1, eff. 1-1-04; 151 v H 95, § 1, eff. 8-3-06; 151 v H 23, § 1, eff. 8-17-06.

§ 2907.01 Definitions.

Effective 1-1-08.

As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person

shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 [2305.11.5] of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 142 v H 51 (Eff 3-17-89); 143 v H 514 (Eff 1-1-91); 146 v H 445 (Eff 9-3-96); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 8, Eff 8-5-2002; 149 v H 490, § 1, eff. 1-1-04; 151 v H 95, § 1, eff. 8-3-06; 151 v H 23, § 1, eff. 8-17-06; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 6 of 152 v S 10 read as follows:

SECTION 6. Section 2907.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 23 and Am. Sub. H.B. 95 of the 126th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The effective date is set by section 4 of HB 490.

The provisions of § 5 of HB 490 (149 v —) read as follows:

SECTION 5. Section 2907.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 8 and Am. Sub. S.B. 9 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the specified composite is the resulting version of the specified sections in effect prior to the effective date of the section as presented in this act.

Not analogous to former RC § 2907.01 (RS § 6830-3; 95 v 649; GC § 13387; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Comment, Legislative Service Commission

Section 2907.01 of the Revised Code is amended by Am. Sub. H.B. 23 and Am. Sub. H.B. 95 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[SEXUAL ASSAULTS]

§ 2907.02 Rape.

Effective until 1-1-08.

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is

the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a sexual predator, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07.

§ 2907.02 Rape.

Effective 1-1-08.

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other

person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485, Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 4 of 151 v S 260 read as follows:

SECTION 4. It is the intent of the General Assembly that the offense of child rape described in division (A)(1)(b) of section 2907.02 of the Revised Code, as enacted by this act, prevails over the offense of sexual battery committed against a person who is under the age of thirteen as described in section 2907.03 of the Revised Code in circumstances when a person violates the prohibitions of both offenses.

Not analogous to former RC § 2907.02 (RS § 6831; S&C 406; S&S 267, 268; 33 v 33; 60 v 85; 66 v 122; 83 v 81; 86 v 3; GC § 12433; 113 v 541; Bureau of Code Revision, 10-1-53; 131 v 673), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.03 Sexual battery.

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 [3345.01.1] of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 145 v H 454 (Eff 7-19-94); 146 v S 2 (Eff 7-1-96); 147 v S 6 (Eff 6-20-97); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 510, Eff 3-31-2003; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06.

See provisions of § 4 of 151 v S 260 following RC § 2907.02.

Not analogous to former RC § 2907.03 (GC § 12433-1; 113 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Comment, Legislative Service Commission

Section 2907.03 of the Revised Code is amended by Am. Sub. H.B. 95 and Am. Sub. S.B. 17 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of

the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2907.04 Unlawful sexual conduct with minor.

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 148 v H 442. Eff 10-17-2000.

Not analogous to former RC § 2907.04 (RS § 6832; S&C 457a, 457b; 57 v 49; GC § 12434; 113 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.05 Gross sexual imposition.

Effective until 1-1-08.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or

consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) Whoever violates this section is guilty of gross sexual imposition.

(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.

(2) Gross sexual imposition committed in violation of division (A)(4) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under thirteen years of age.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary

hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06.

§ 2907.05 Gross sexual imposition.

Effective 1-1-08.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(C) Whoever violates this section is guilty of gross sexual imposition.

(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously

or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.

(2) Gross sexual imposition committed in violation of division (A)(4) or (B) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(D) A victim need not prove physical resistance to the offender in prosecutions under this section.

(E) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(F) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(G) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2907.05 (RS § 6833; S&C 425; 54 v 162; GC § 12435; 113 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.06 Sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12[†] of the Revised Code, a violation of this section is a misdemeanor of the first degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 134 (Eff 8-8-77); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 149 v S 9. Eff 5-14-2002.

[†] RC § 2907.12, repealed by 146 v H 445, § 2, effective 9-3-96. See now section 2907.01(A).

Not analogous to former RC § 2907.06 (GC § 12435-1; 113 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.07 Importuning.

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

(E) Divisions (C) and (D) of this section apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in this state or is received in this state.

(F) Whoever violates this section is guilty of importuning. A violation of division (A) or (C) of this section is a felony of the third degree on a first offense and a felony of the second degree on each subsequent offense. Notwithstanding division (C) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed for a violation of division (A) or (C) of this section as described in division (D) of section 2929.13 of the Revised Code. A violation of division (B) or (D) of this section is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v H 724 (Eff 3-22-2001); 149 v S 175. Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 151 v S 260, § 1, eff. 1-2-07.

Not analogous to former RC § 2907.07 (RS § 6834; S&C 432; 72 v 149; GC § 12436; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.30 (RS § 7026; S&S 289; 59 v 32; 89 v 127; GC § 13032; 121 v 557(573); Bureau of Code Revision, 10-1-53; 129 v 1670; 130 v 659; 131 v 672), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.08 Voyeurism.

(A) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.

(C) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the

other person in a state of nudity if the other person is a minor.

(D) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity if the other person is a minor and any of the following applies:

(1) The offender is the minor's natural or adoptive parent, stepparent, guardian, or custodian, or person in loco parentis of the minor.

(2) The minor is in custody of law or is a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the minor.

(3) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the minor is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(4) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the minor is enrolled in or attends that institution.

(5) The offender is a caregiver, administrator, or other person in authority employed by or serving in a child day-care center, type A family day-care home, or type B family day-care home, and the minor is enrolled in or attends that center or home.

(6) The offender is the minor's athletic or other type of coach, is the minor's instructor, is the leader of a scouting troop of which the minor is a member, provides babysitting care for the minor, or is a person with temporary or occasional disciplinary control over the minor.

(E) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person.†

(F)(1) Whoever violates this section is guilty of voyeurism.

(2) A violation of division (A) of this section is a misdemeanor of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the second degree.

(4) A violation of division (C) or (E) of this section is a misdemeanor of the first degree.

(5) A violation of division (D) of this section is a felony of the fifth degree.

(G) As used in this section:

(1) "Institution of higher education" means a state institution of higher education as defined in section 3345.031 [3345.03.1] of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(2) "Child day-care center," "type A family day-care home," and "type B family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(3) "Babysitting care" means care provided for a child while the parents, guardian, or legal custodian of the child is temporarily away.

HISTORY: 134 v H 511 (Eff 1-1-74); 147 v S 82 (Eff 1-30-98); 148 v H 448 (Eff 10-5-2000); 148 v H 504 (Eff 10-10-2000); 148 v H 332. Eff 1-1-2001; 151 v H 310, § 1, eff. 6-15-06.

† Division (E) was enacted in HB 504 (148 v —).

The provisions of § 3 of 151 v H 310 read as follows:

SECTION 3. The General Assembly hereby declares that its purpose in amending divisions (B), (C), and (D) of section 2907.08 of the Revised Code in Section 1 of this act is to clarify the meaning of the term "photograph" as used in those divisions. The General Assembly declares that it believes that the term "photograph," as used in those divisions as they existed prior to the effective date of this act, included within its scope all types of the recording of an image, including, but not limited to, videotaping, filming, photographing, or otherwise recording an image; that it is not its intent in amending those divisions to declare or otherwise give the impression that, prior to the effective date of this act, the term "photograph" as used in those divisions did not include within its scope videotaping, filming, or other recording of an image; and that it believes that the amendments to those divisions are not substantive in nature and merely clarify the fact that the term "photograph" as used in those divisions includes within its scope all types of the recording of an image, including, but not limited to, videotaping, filming, photographing, or otherwise recording an image. Further, the General Assembly hereby declares that the amendments to those divisions do not invalidate, and shall not be construed as invalidating, any prior convictions for violating a prohibition contained in any of those divisions prior to the effective date of this act based on conduct that involved videotaping, filming, or other recording of an image.

The provisions of § 4 of 151 v H 310 read as follows:

SECTION 4. Section 2907.08 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 332, Sub. H.B. 448, and Sub. H.B. 504 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Not analogous to former RC § 2907.08 (Bureau of Code Revision, 10-1-53; 132 v H 996), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of HB 332.

Comment, Legislative Service Commission

Section 2907.08 of the Revised Code is amended by this act [Sub. H.B. 504] and also by Sub. H.B. 332 and Sub. H.B. 448 of the 123rd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2907.09 Public indecency.

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

- (1) Expose the person's private parts;
- (2) Engage in sexual conduct or masturbation;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

- (1) Engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
- (4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C)(1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.

(2) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(4) Except as otherwise provided in division (C)(4) of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (B)(1), (2), or (3) of this section is a felony of the fifth degree.

(5) Except as otherwise provided in division (C)(5) of this section, a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, a violation of division (B)(4) of this section is a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 143 v H 214 (Eff 4-13-90); 146 v S 2, Eff 7-1-96; 151 v H 50, § 1, eff. 9-26-05; 151 v S 245, § 1, eff. 4-4-07.

Not analogous to former RC § 2907.09 (RS § 6835; 69 v 10; 82 v 161; 95 v 561; 96 v 14; 98 v 3; CC § 12437; 100 v 5; 101 v 128; Bureau of Code Revision, 10-1-53; 129 v 1426), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2907.11 Victim or offender may request temporary suppression of information.

Upon the request of the victim or offender in a prosecution under any provision of sections 2907.02 to 2907.07 of the Revised Code, the judge before whom any

person is brought on a charge of having committed an offense under a provision of one of those sections shall order that the names of the victim and offender and the details of the alleged offense as obtained by any law enforcement officer be suppressed until the preliminary hearing, the accused is arraigned in the court of common pleas, the charge is dismissed, or the case is otherwise concluded, whichever occurs first. Nothing in this section shall be construed to deny to either party in the case the name and address of the other party or the details of the alleged offense.

HISTORY: 136 v S 144 (Eff 8-27-75); 146 v H 445, Eff 9-3-96.

Not analogous to former RC § 2907.11 (RS § 6835; 69 v 10; 82 v 161; 95 v 561; 96 v 14; 98 v 3; CC § 12439; 100 v 5; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.15 Motion for withholding of restitution needed from government deferred compensation or public retirement system payment.

(A) As used in this section:

(1) "Public retirement system" means the public employees retirement system, state teachers retirement system, school employees retirement system, Ohio police and fire pension fund, state highway patrol retirement system, or a municipal retirement system of a municipal corporation of this state.

(2) "Government deferred compensation program" means such a program offered by the Ohio public employees deferred compensation board; a municipal corporation; or a governmental unit, as defined in section 148.06 of the Revised Code.

(3) "Deferred compensation program participant" means a "participating employee" or "continuing member," as defined in section 148.01 of the Revised Code, or any other public employee who has funds in a government deferred compensation program.

(4) "Alternative retirement plan" means an alternative retirement plan provided pursuant to Chapter 3305. of the Revised Code.

(5) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

In any case in which a sentencing court orders restitution to the victim under section 2929.18 or 2929.28 of the Revised Code for a violation of section 2907.02, 2907.03, 2907.04, or 2907.05 of the Revised Code and in which the offender is a government deferred compensation program participant, is an electing employee, as defined in section 3305.01 of the Revised Code, or is a member of, or receiving a pension, benefit, or allowance, other than a survivorship benefit, from, a public retirement system and committed the offense against a child, student, patient, or other person with whom the offender had contact in the context of the offender's public employment, at the request of the victim the prosecutor shall file a motion with the sentencing court specifying the government deferred compensation program, alternative retirement plan, or public retirement system and requesting that the court issue an order requiring the government deferred compensation program, alternative retirement plan, or public retirement system to withhold the amount required as restitution from one or more of the following: any payment to be made from a government deferred compensation program, any payment or benefit under an alternative retirement plan, or under a pension, annuity, allowance, or any other benefit, other

than a survivorship benefit, that has been or is in the future granted to the offender; from any payment of accumulated employee contributions standing to the offender's credit with the government deferred compensation program, alternative retirement plan, or public retirement system; or from any payment of any other amounts to be paid to the offender pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code on withdrawal of contributions. The motion may be filed at any time subsequent to the conviction of the offender or entry of a guilty plea. On the filing of the motion, the clerk of the court in which the motion is filed shall notify the offender and the government deferred compensation program, alternative retirement plan, or public retirement system, in writing, of all of the following: that the motion was filed; that the offender will be granted a hearing on the issuance of the requested order if the offender files a written request for a hearing with the clerk prior to the expiration of thirty days after the offender receives the notice; that, if a hearing is requested, the court will schedule a hearing as soon as possible and notify the offender and the government deferred compensation program, alternative retirement plan, or public retirement system of the date, time, and place of the hearing; that, if a hearing is conducted, it will be limited to a consideration of whether the offender can show good cause why the order should not be issued; that, if a hearing is conducted, the court will not issue the order if the court determines, based on evidence presented at the hearing by the offender, that there is good cause for the order not to be issued; that the court will issue the order if a hearing is not requested or if a hearing is conducted but the court does not determine, based on evidence presented at the hearing by the offender, that there is good cause for the order not to be issued; and that, if the order is issued, the government deferred compensation program, alternative retirement plan, or public retirement system specified in the motion will be required to withhold the amount required as restitution from payments to the offender.

(B) In any case in which a motion requesting the issuance of a withholding order as described in division (A) of this section is filed, the offender may receive a hearing on the motion by delivering a written request for a hearing to the court prior to the expiration of thirty days after the offender's receipt of the notice provided pursuant to division (A) of this section. If the offender requests a hearing within the prescribed time, the court shall schedule a hearing as soon as possible after the request is made and notify the offender and the government deferred compensation program, alternative retirement plan, or public retirement system of the date, time, and place of the hearing. A hearing scheduled under this division shall be limited to a consideration of whether there is good cause, based on evidence presented by the offender, for the requested order not to be issued. If the court determines, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall deny the motion and shall not issue the order. Good cause for not issuing the order includes a determination by the court that the order would severely impact the offender's ability to support the offender's dependents.

If the offender does not request a hearing within the prescribed time or the court conducts a hearing but does not determine, based on evidence presented by the offender, that there is good cause for the order not to be

issued, the court shall order the government deferred compensation program, alternative retirement plan, or public retirement system to withhold the amount required as restitution from one or more of the following: any payments to be made from a government deferred compensation program, any payment or benefit under an alternative retirement plan, or under a pension, annuity, allowance, or under any other benefit, other than a survivorship benefit, that has been or is in the future granted to the offender; from any payment of accumulated employee contributions standing to the offender's credit with the government deferred compensation program, alternative retirement plan, or public retirement system; or from any payment of any other amounts to be paid to the offender upon withdrawal of contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code and to continue the withholding for that purpose, in accordance with the order, out of each payment to be made on or after the date of issuance of the order, until further order of the court. On receipt of an order issued under this division, the government deferred compensation program, alternative retirement plan, or public retirement system shall withhold the amount required as restitution, in accordance with the order, from any such payments and immediately forward the amount withheld to the clerk of the court in which the order was issued for payment to the person to whom restitution is to be made. The order shall not apply to any portion of payments made from a government deferred compensation program, alternative retirement plan, or public retirement system to a person other than the offender pursuant to a previously issued domestic court order.

(C) Service of a notice required by division (A) or (B) of this section shall be effected in the same manner as provided in the Rules of Civil Procedure for the service of process.

(D) Upon the filing of charges under section 2907.02, 2907.03, 2907.04, or 2907.05 of the Revised Code against a person who is a deferred compensation program participant, an electing employee participating in an alternative retirement plan, or a member of, or receiving a pension benefit, or allowance, other than a survivorship benefit, from a public retirement system for an offense against a child, student, patient, or other person with whom the offender had contact in the context of the offender's public employment, the prosecutor shall send written notice that charges have been filed against that person to the appropriate government deferred compensation program, alternative retirement plan, or public retirement system. The notice shall specifically identify the person charged.

HISTORY: 146 v H 665 (Eff 12-6-96); 148 v H 222 (Eff 11-2-99); 148 v H 628 (Eff 9-21-2000); 148 v H 535. Eff 4-1-2001; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2907.15 (RS § 6837; S & C 435; 52 v 28; 88 v 432; GC § 12442; 109 v 53; Bureau of Code Revision, 10-1-53; 129 v 1426), repealed 134 v H 511, § 2, eff 1-1-74.

[NOTICE OF SEXUAL MISCONDUCT BY MENTAL HEALTH PROFESSIONAL]

§ 2907.17 Notice to administrative entity regulating mental health professional.

If a mental health professional is indicted or charged and bound over to the court of common pleas for trial for

an alleged violation of division (A)(10) of section 2907.03 or division (A)(5) of section 2907.06 of the Revised Code, the prosecuting attorney handling the case shall send written notice of the indictment or the charge and bind over to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's professional license, certification, registration, or authorization.

HISTORY: 149 v S 9, Eff 5-14-2002.

Not analogous to former RC § 2907.17 (RS § 6839; S&C 427; 29 v 144, § 2; GC § 12444; Bureau of Code Revision, 10-1-53; 129 v 1426(1428), § 1; 130 v 660, § 1), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2907.17.1] § 2907.171 Effect of prosecutor's failure to give notice.

The failure of the prosecuting attorney to give the notice required by section 2907.17 of the Revised Code does not give rise to a claim for damages against the prosecuting attorney or the county. The failure of the prosecuting attorney to give the notice does not constitute grounds for declaring a mistrial or new trial, for setting aside a conviction or sentence, or for granting postconviction relief to a defendant.

HISTORY: 149 v S 9, Eff 5-14-2002.

§ 2907.18 Notice of conviction of mental health professional.

If a mental health professional is convicted of or pleads guilty to a violation of division (A)(10) of section 2907.03 or division (A)(5) of section 2907.06 of the Revised Code, the court shall transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's professional license, certification, registration, or authorization.

HISTORY: 149 v S 9, Eff 5-14-2002.

Not analogous to former RC § 2907.18 (RS § 6840; S&S 279; 60 v 5, § 1; GC § 12445; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[PROSTITUTION]

§ 2907.21 Compelling prostitution.

(A) No person shall knowingly do any of the following:
(1) Compel another to engage in sexual activity for hire;

(2) Induce, procure, encourage, solicit, request, or otherwise facilitate a minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor;

(3) Pay or agree to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;

(4) Pay a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity, pursuant to a prior agreement, whether or not the offender knows the age of the minor;

(5) Allow a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the minor.

(B) Whoever violates this section is guilty of compelling prostitution. Except as otherwise provided in this division, compelling prostitution is a felony of the third degree. If the offender commits a violation of division (A)(1) of this section and the person compelled to engage in sexual activity for hire in violation of that division is less than sixteen years of age, compelling prostitution is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 51 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2907.21 (GC § 12447-1; 120 v 444; 124 v 466; Bureau of Code Revision, 10-1-53; 129 v 340; 130 v 660; 133 v S 346), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2907.22 Promoting prostitution.

(A) No person shall knowingly:

(1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel;

(2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;

(3) Transport another, or cause another to be transported across the boundary of this state or of any county in this state, in order to facilitate the other person's engaging in sexual activity for hire;

(4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

(B) Whoever violates this section is guilty of promoting prostitution, a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 51 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2907.22 (RS § 6857; S&C 412; 33 v 33; GC § 12448; 107 v 558; 110 v 58; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2907.23 Procuring.

(A) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel;

(2) Procure a prostitute for another to patronize, or take or direct another at his or her request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring, a misdemeanor of the first degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2907.23 (GC § 12448-1; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2907.24 Soliciting; after positive HIV test; driver's license suspension.

(A) No person shall solicit another to engage with such other person in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C)(1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the third degree.

(D) If a person is convicted of or pleads guilty to a violation of any provision of this section, an attempt to commit a violation of any provision of this section, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to any provision of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, shall impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v H 40. Eff 5-30-96; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

Not analogous to former RC § 2907.24 (GC § 12448-2; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.27 (GC § 13031-13; 108 v Ptl, 730; Bureau of Code Revision, 10-1-53; 130 v Ptl, 143), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2907.24.1] § 2907.241 Loitering to engage in solicitation; solicitation after positive HIV test.

(A) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

(1) Beckon to, stop, or attempt to stop another;

(2) Engage or attempt to engage another in conversation;

(3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;

(4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;

(5) Interfere with the free passage of another.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C) As used in this section:

(1) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(2) "Public place" means any of the following:

(a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility;

(b) A doorway or entrance way to a building that fronts on a place described in division (C)(2)(a) of this section;

(c) A place not described in division (C)(2)(a) or (b) of this section that is open to the public.

(D)(1) Whoever violates division (A) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of loitering to engage in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fourth degree. If the offender commits the violation on or after July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fifth degree.

HISTORY: 146 v H 40. Eff 5-30-96.

§ 2907.25 Prostitution; after positive HIV test.

(A) No person shall engage in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in sexual activity for hire.

(C)(1) Whoever violates division (A) of this section is guilty of prostitution, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in prostitution after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v H 40. Eff 5-30-96.

Not analogous to former RC § 2907.25 (GC § 12448-3; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.27 (GC § 13031-13; 108 v Ptl, 730; Bureau of Code Revision, 10-1-53; 130 v Ptl, 143), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.26 Rules of evidence in prostitution cases.

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such

place and as to the reputation of the persons who inhabit or frequent it, is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of sections 2907.21 to 2907.25 of the Revised Code, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

(D) The prohibition contained in division (D) of section 2317.02 of the Revised Code against testimony by a husband or wife concerning communications between them does not apply; and the accused's spouse may testify concerning any such communication, in any of the following cases:

(1) When the husband or wife is charged with a violation of section 2907.21 of the Revised Code, and the spouse testifying was the victim of the offense;

(2) When the husband or wife is charged with a violation of section 2907.22 of the Revised Code, and the spouse testifying was the prostitute involved in the offense, or the person transported, induced, or procured by the offender to engage in sexual activity for hire;

(3) When the husband or wife is charged with a violation of section 2907.23 of the Revised Code, and the spouse testifying was the prostitute involved in the offense or the person who used the offender's premises to engage in sexual activity for hire;

(4) When the husband or wife is charged with a violation of section 2907.24 or 2907.25 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 1. Eff 8-26-77.

Not analogous to former RC § 2907.26 (GC § 12448-4; 117 v 821; 119 v 554; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.27 Testing of accused for venereal diseases and HIV.

(A)(1) If a person is charged with a violation of section 2907.02, 2907.03, 2907.04, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to any of those sections, the arresting authorities or a court, upon the request of the prosecutor in the case or upon the request of the victim, shall cause the accused to submit to one or more appropriate tests to determine if the accused is suffering from a venereal disease.

(2) If the accused is found to be suffering from a venereal disease in an infectious stage, the accused shall be required to submit to medical treatment for that disease. The cost of the medical treatment shall be charged to and paid by the accused who undergoes the treatment. If the accused is indigent, the court shall order the accused to report to a facility operated by a city health district or a general health district for treatment. If the accused is convicted of or pleads guilty to the offense with which the accused is charged and is placed under a community control sanction, a condition of community control shall be that the offender submit to and faithfully follow a course of medical treatment for the venereal disease. If the offender does not seek the required

medical treatment, the court may revoke the offender's community control and order the offender to undergo medical treatment during the period of the offender's incarceration and to pay the cost of that treatment.

(B)(1)(a) Notwithstanding the requirements for informed consent in section 3701.242 [3701.24.2] of the Revised Code, if a person is charged with a violation of division (B) of section 2903.11 or of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.12, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to that division or any of those sections, the court, upon the request of the prosecutor in the case, upon the request of the victim, or upon the request of any other person whom the court reasonably believes had contact with the accused in circumstances related to the violation that could have resulted in the transmission to that person of a virus that causes acquired immunodeficiency syndrome, shall cause the accused to submit to one or more tests designated by the director of health under section 3701.241 [3701.24.1] of the Revised Code to determine if the accused is a carrier of a virus that causes acquired immunodeficiency syndrome. The court, upon the request of the prosecutor in the case, upon the request of the victim with the agreement of the prosecutor, or upon the request of any other person with the agreement of the prosecutor, may cause an accused who is charged with a violation of any other section of the Revised Code or with a violation of any other municipal ordinance to submit to one or more tests so designated by the director of health if the circumstances of the violation indicate probable cause to believe that the accused, if the accused is infected with the virus that causes acquired immunodeficiency syndrome, might have transmitted the virus to any of the following persons in committing the violation:

(i) In relation to a request made by the prosecuting attorney, to the victim or to any other person;

(ii) In relation to a request made by the victim, to the victim making the request;

(iii) In relation to a request made by any other person, to the person making the request.

(b) The results of a test performed under division (B)(1)(a) of this section shall be communicated in confidence to the court, and the court shall inform the accused of the result. The court shall inform the victim that the test was performed and that the victim has a right to receive the results on request. If the test was performed upon the request of a person other than the prosecutor in the case and other than the victim, the court shall inform the person who made the request that the test was performed and that the person has a right to receive the results upon request. Additionally, regardless of who made the request that was the basis of the test being performed, if the court reasonably believes that, in circumstances related to the violation, a person other than the victim had contact with the accused that could have resulted in the transmission of the virus to that person, the court may inform that person that the test was performed and that the person has a right to receive the results of the test on request. If the accused tests positive for a virus that causes acquired immunodeficiency syndrome, the test results shall be reported to the department of health in accordance with section 3701.24 of the Revised Code and to the sheriff, head of the state correctional institution, or other person in charge of any jail or prison in which the accused is incarcerated. If the

accused tests positive for a virus that causes acquired immunodeficiency syndrome and the accused was charged with, and was convicted of or pleaded guilty to, a violation of section 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code or a violation of a municipal ordinance that is substantially equivalent to any of those sections, the test results also shall be reported to the law enforcement agency that arrested the accused, and the law enforcement agency may use the test results as the basis for any future charge of a violation of division (B) of any of those sections or a violation of a municipal ordinance that is substantially equivalent to division (B) of any of those sections. No other disclosure of the test results or the fact that a test was performed shall be made, other than as evidence in a grand jury proceeding or as evidence in a judicial proceeding in accordance with the Rules of Evidence. If the test result is negative, and the charge has not been dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court shall order that the test be repeated not earlier than three months nor later than six months after the original test.

(2) If an accused who is free on bond refuses to submit to a test ordered by the court pursuant to division (B)(1) of this section, the court may order that the accused's bond be revoked and that the accused be incarcerated until the test is performed. If an accused who is incarcerated refuses to submit to a test ordered by the court pursuant to division (B)(1) of this section, the court shall order the person in charge of the jail or prison in which the accused is incarcerated to take any action necessary to facilitate the performance of the test, including the forcible restraint of the accused for the purpose of drawing blood to be used in the test.

(3) A state agency, a political subdivision of the state, or an employee of a state agency or of a political subdivision of the state is immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with the performance of the duties required under division (B)(2) of this section unless the acts or omissions are with malicious purpose, in bad faith, or in a wanton or reckless manner.

(C) As used in this section, "community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 143 v S 94 (Eff 9-27-89); 143 v S 2 (Eff 11-1-89); 145 v H 571 (Eff 10-6-94); 146 v H 40 (Eff 5-30-96); 148 v H 100. Eff 3-23-2000; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2907.27 (GC § 12448-5; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.28 (GC § 13031-17; 108 v PH, 730; 118 v 301; Bureau of Code Revision, 10-1-53; 130 v PH, 144), repealed 134 v H 511, § 2, eff 1-1-74.

[MEDICAL ASSISTANCE FOR VICTIMS]

§ 2907.28 Payment of cost of medical examination and test of victim or accused.

(A) Any cost incurred by a hospital or emergency medical facility in conducting a medical examination of a victim of an offense under any provision of sections

2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution, including the cost of any antibiotics administered as part of the examination, shall be paid out of the reparations fund established pursuant to section 2743.191 [2743.19.1] of the Revised Code, subject to the following conditions:

(1) The hospital or emergency facility shall follow a protocol for conducting such medical examinations that is identified by the attorney general in rule adopted in accordance with Chapter 119. of the Revised Code.

(2) The hospital or emergency facility shall submit requests for payment to the attorney general on a monthly basis, through a procedure determined by the attorney general and on forms approved by the attorney general. The requests shall identify the number of sexual assault examinations performed and shall verify that all required protocols were met for each examination form submitted for payment in the request.

(3) The attorney general shall review all requests for payment that are submitted under division (A)(2) of this section and shall submit for payment as described in division (A)(5) of this section all requests that meet the requirements of this section.

(4) The hospital or emergency facility shall accept a flat fee payment for conducting each examination in the amount determined by the attorney general pursuant to Chapter 119. of the Revised Code as payment in full for any cost incurred in conducting a medical examination and test of a victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution of a person. The attorney general shall determine a flat fee payment amount to be paid under this division that is reasonable.

(5) In approving a payment under this section, the attorney general shall order the payment against the state. The payment shall be accomplished only through the following procedure, and the procedure may be enforced through a mandamus action and a writ of mandamus directed to the appropriate official:

(a) The attorney general shall provide for payment in the amount set forth in the order.

(b) The expense of the payment of the amount described in this section shall be charged against all available unencumbered moneys in the reparations fund.

(B) No costs incurred by a hospital or emergency facility in conducting a medical examination and test of any victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution of a person shall be billed or charged directly or indirectly to the victim or the victim's insurer.

(C) Any cost incurred by a hospital or emergency medical facility in conducting a medical examination and test of any person who is charged with a violation of division (B) of section 2903.11 or of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to that division or any of those sections, pursuant to division (B) of section 2907.27 of the Revised Code, shall be charged to and paid by the accused who undergoes the examination and test, unless the court determines that the accused is unable to pay, in which case the cost shall be charged to and paid by the municipal corporation in which the offense allegedly was committed, or charged to and paid by the county if the

offense allegedly was committed within an unincorporated area. If separate counts of an alleged offense or alleged separate offenses under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code or under a municipal ordinance that is substantially equivalent to any of those sections took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments shall share the cost of the examination and test. If a hospital or other emergency medical facility has submitted charges for the cost of a medical examination and test to an accused and has been unable to collect payment for the charges after making good faith attempts to collect for a period of six months or more, the cost shall be charged to and paid by the appropriate municipal corporation or county as specified in division (C) of this section.

HISTORY: 136 v S 144 (Eff 8-27-75); 143 v S 2 (Eff 11-1-89); 146 v H 40 (Eff 5-30-96); 146 v H 445 (Eff 9-3-96); 148 v H 100 (Eff 3-23-2000); 148 v S 153. Eff 7-1-2000.

Not analogous to former RC § 2907.28 (GC § 12448-6; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of SB 153.

§ 2907.29 Hospital emergency services for victims.

Every hospital of this state that offers organized emergency services shall provide that a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife is available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses cognizable as violations of any provision of sections 2907.02 to 2907.06 of the Revised Code. The physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, upon the request of any peace officer or prosecuting attorney and with the consent of the reported victim or upon the request of the reported victim, shall examine the person for the purposes of gathering physical evidence and shall complete any written documentation of the physical examination. The public health council shall establish procedures for gathering evidence under this section.

Each reported victim shall be informed of available venereal disease, pregnancy, medical, and psychiatric services.

Notwithstanding any other provision of law, a minor may consent to examination under this section. The consent is not subject to disaffirmance because of minority, and consent of the parent, parents, or guardian of the minor is not required for an examination under this section. However, the hospital shall give written notice to the parent, parents, or guardian of a minor that an examination under this section has taken place. The parent, parents, or guardian of a minor giving consent under this section are not liable for payment for any services provided under this section without their consent.

HISTORY: 136 v S 144 (Eff 8-27-75); 146 v H 445 (Eff 9-3-96); 149 v S 245. Eff 3-31-2003.

Not analogous to former RC § 2907.29 (RS § 6818; S&C 406; 33 v 33; 80 v 38; GC § 12449; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.30 Victim to be interviewed by crisis intervention trained officer.

(A) A victim of a sexual offense cognizable as a violation of section 2907.02 of the Revised Code who is interviewed by a law enforcement agency shall be interviewed by a peace officer employed by the agency who has had crisis intervention training, if any of the peace officers employed by the agency who have had crisis intervention training is reasonably available.

(B) When a person is charged with a violation of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code and the law enforcement agency that arrested the person or a court discovers that the person arrested or a person whom the person arrested caused to engage in sexual activity has a communicable disease, the law enforcement agency that arrested the person or the court immediately shall notify the victim of the nature of the disease.

(C) As used in this section, "crisis intervention training" has the same meaning as in section 109.71 of the Revised Code.

HISTORY: 140 v H 435 (Eff 4-4-85); 141 v H 468 (Eff 9-17-86); 146 v H 445. Eff 9-3-96.

Not analogous to former RC § 2907.30 (RS § 6858; S&C 408, 412, 426, 439, 451; GC § 12450; 33 v 33, §§ 20, 26; 34 v 10; 37 v 74; 56 v 26; 69 v 68; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[OBSCENITY]

§ 2907.31 Disseminating matter harmful to juveniles.

(A) No person, with knowledge of its character or content, shall recklessly do any of the following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or to the defendant's agent or employee a draft card, driver's license, birth record, marriage license, or other official or

apparently official document purporting to show that the juvenile was eighteen years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of eighteen and unmarried.

(C)(1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D)(1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

(a) The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

(F) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, except as otherwise provided in this division, a violation of this section is a felony of the fifth degree. If the material or performance involved is obscene and the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under thirteen years of age, violation of this section is a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 51 (Eff 3-17-89); 142 v H 790 (Eff 3-16-89); 146 v S 2, Eff 7-1-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2907.31 (RS § 6859; S&C 1632; 47 v 21; GC § 12451; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 7 of SB 2 (146 v —) read as follows:

SECTION 7. * * * Section 2907.31 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 51 and Am. Sub. H.B., 790 of the 117th General Assembly, with the new language of neither of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

[§ 2907.31.1] § 2907.311 Displaying matter harmful to juveniles.

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense.

HISTORY: 142 v H 51, Eff 3-17-89.

§ 2907.32 Pandering obscenity.

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material, when the offender knows that the material is to be used for commercial exploitation or will be publicly disseminated or displayed, or when the offender is reckless in that regard;

(2) Promote or advertise for sale, delivery, or dissemination; sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide, any obscene material;

(3) Create, direct, or produce an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when the offender is reckless in that regard;

(4) Advertise or promote an obscene performance for presentation, or present or participate in presenting an obscene performance, when the performance is presented publicly, or when admission is charged;

(5) Buy, procure, possess, or control any obscene material with purpose to violate division (A)(2) or (4) of this section.

(B) It is an affirmative defense to a charge under this section, that the material or performance involved was disseminated or presented for a bona fide medical,

scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(C) Whoever violates this section is guilty of pandering obscenity, a felony of the fifth degree. If the offender previously has been convicted of a violation of this section or of section 2907.31 of the Revised Code, then pandering obscenity is a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 51 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2907.32 (RS § 6860; S&C 351; 56 v 79; 90 v 232; GC § 12452; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.35 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2907.32.1] § 2907.321 Pandering obscenity involving a minor.

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B)(1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a

felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

HISTORY: 137 v S 243 (Eff 11-17-77); 140 v H 44 (Eff 9-27-84); 142 v H 51, Eff 3-17-89.

[§ 2907.32.2] § 2907.322 Pandering sexually oriented matter involving a minor.

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;†

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

(B)(1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 [2907.32.1] or

2907.323 [2907.32.3] of the Revised Code, pandering sexually oriented matter involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

HISTORY: 140 v H 44 (Eff 9-27-84); 142 v H 51 (Eff 3-17-89); 146 v S 2 (Eff 7-1-96); 148 v H 724. Eff 3-22-2001.

† Division (A)(4) does not appear in the signed copy of HB 724, but it has not been officially removed.

[§ 2907.32.3] § 2907.323 Illegal use of minor in nudity-oriented material or performance.

(A) No person shall do any of the following:

(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consent to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) Possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies:

(a) The material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(B) Whoever violates this section is guilty of illegal use of a minor in a nudity-oriented material or performance. Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the second degree. Whoever violates division (A)(3) of this section is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 [2907.32.1] or 2907.322 [2907.32.2.] of the Revised Code, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(3) of this section is a felony of the fourth degree.

HISTORY: 140 v H 44 (Eff 9-27-84); 140 v S 321 (Eff 4-9-85); 142 v H 51 (Eff 3-17-89); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2907.33 Deception to obtain matter harmful to juveniles.

(A) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he is the parent, guardian, or spouse of such juvenile;

(2) Furnish such juvenile with any identification or document purporting to show that such juvenile is eighteen years of age or over or married.

(B) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he is eighteen years of age or over or married;

(2) Exhibit any identification or document purporting to show that he is eighteen years of age or over or married.

(C) Whoever violates this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates division (B) of this section shall be adjudged an unruly child, with such disposition of the case as may be appropriate under Chapter 2151. of the Revised Code.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2907.33 (RS § 7071; S&C 351; 56 v 79; CC § 13127; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2903.16 (133 v H 84; 135 v S 62), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2907.34 Compelling acceptance of objectionable materials.

(A) No person, as a condition to the sale, allocation, consignment, or delivery of any material or goods of any kind, shall require the purchaser or consignee to accept any other material reasonably believed to be obscene, or which if furnished or presented to a juvenile would be in violation of section 2907.31 of the Revised Code.

(B) No person shall deny or threaten to deny any franchise or impose or threaten to impose any financial or other penalty upon any purchaser or consignee because the purchaser or consignee failed or refused to accept any material reasonably believed to be obscene as a condition to the sale, allocation, consignment, or delivery of any other material or goods or because the purchaser or

consignee returned any material believed to be obscene that the purchaser or consignee initially accepted.

(C) Whoever violates this section is guilty of compelling acceptance of objectionable materials, a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 142 v H 51 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2907.34 (RS § 6842; S&C 240, 426; 55 v 84; 66 v 29; 73 v 31; 73 v 86; 78 v 156; 82 v 140; 83 v 23; 95 v 303; 97 v 67; GC § 12467; 111 v 101; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.36 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2907.35 Presumptions; notice.

(A) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business:

(1) Possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of division (A)(5) of section 2907.32 of the Revised Code;

(2) Does any of the acts prohibited by section 2907.31 or 2907.32 of the Revised Code, is presumed to have knowledge of the character of the material or performance involved, if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(B) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(C) Sections 2907.31 and 2907.32 of the Revised Code do not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(D)(1) Sections 2907.31, 2907.311 [2907.31.1], 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], and 2907.34 and division (A) of section 2907.33 of the Revised Code do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection.

(2) Division (D)(1) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of section 2907.31, 2907.311 [2907.31.1], 2907.32,

2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2907.33, or 2907.34 of the Revised Code or who knowingly advertises the availability of material of that nature.

(3) Division (D)(1) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of section 2907.31, 2907.311 [2907.31.1], 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2907.33, or 2907.34 of the Revised Code and that contains content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(E) An employer is not guilty of a violation of section 2907.31, 2907.311 [2907.31.1], 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2907.33, or 2907.34 of the Revised Code based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of employee's or agent's employment or agency, and the employer does either of the following:

(1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(2) The employer recklessly disregards the employee's or agent's conduct.

(F) It is an affirmative defense to a charge under section 2907.31 or 2907.311 [2907.31.1] of the Revised Code as the section applies to an image transmitted through the internet or another electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

(G) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v S 62 (Eff 1-1-74); 149 v H 8, Eff 8-5-2002; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2907.35 (RS § 6843; S&C 426; 37 v 74; GC § 12468; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.36 Declaratory judgment.

(A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to Chapter 2721. of the Revised Code, involving the same issue, the following persons have standing to bring a declaratory judgment action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the jurisdiction in which there is reasonable cause to believe that section 2907.31 or 2907.32 of the Revised Code is being or is about to be violated;

(2) Any person who, pursuant to division (B) of section 2907.35 of the Revised Code, has received notice in writing from a chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon the party's request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgment pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution, when the character of the particular materials or performances involved is at issue in the pending case, and either of the following applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case.

(2) A judgment in the pending case will necessarily constitute *res judicata* as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of section 2907.31 or 2907.32 of the Revised Code occurs prior to a judicial determination of the character of the material or performance involved in the violation does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v H 58, Eff 9-24-99.

Not analogous to former RC § 2907.36 (RS § 6844; S&C 426, 1425; 37 v 74; 57 v 15; 72 v 20; GC § 12469; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.38 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2907.37 Injunction.

(A) Where it appears that section 2907.31 or 2907.32 of the Revised Code is being or is about to be violated, the chief legal officer of the jurisdiction in which the violation is taking place or is about to take place may bring an action to enjoin the violation. The defendant, upon his request, is entitled to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(B) Premises used or occupied for repeated violations of section 2907.31 or 2907.32 of the Revised Code constitute a nuisance subject to abatement pursuant to sections 3767.01 to 3767.99 of the Revised Code.

HISTORY: 134 v H 511, Eff 1-1-74.

Not analogous to former RC § 2907.37 (RS § 6845; S&C 421, 423; 42 v 49; 50 v 132; 71 v 66; 78 v 15; GC § 12470; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.37 (133 v H 84), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2907.38 Permitting unlawful operation of viewing booths depicting sexual conduct.

(A) As used in this section:

(1) "Commercial establishment" means an entity that is open to the public and to which either of the following applies:

(a) It has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

(b) It has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

(2) "Visual materials or performances" means films, videos, CD-ROM discs, streaming video, or other motion pictures.

(B) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character of the visual material or performance involved, shall knowingly permit the use of, or offer the use of, viewing booths, stalls, or partitioned portions of a room located in the commercial establishment for the purpose of viewing visual materials or performances depicting sexual conduct unless both of the following apply:

(1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating nudity or sexual activity on the part of or between patrons or members of the public, and no booth, stall, or partitioned room has any aperture, hole, or opening for the purpose of encouraging or facilitating nudity or sexual activity.

(C) It is an affirmative defense to a charge under this section that either of the following applies to the involved visual materials or performances:

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the visual materials or performances.

(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political, or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political, or scientific purpose and are not pandered for their prurient appeal.

(D) Whoever violates this section is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree.

HISTORY: 151 v H 23, § 1, eff. 8-17-06.

Not analogous to former RC § 2907.38 (RS § 6849a; 82 v 247; 99 v 460; GC § 12471, 12475, 12475-1; 124 v 360; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 3 of 151 v H 23 read as follows:

SECTION 3. In enacting new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code, the General Assembly makes the following statement of intent and findings:

(A)(1) Adult entertainment establishments require special supervision from the public safety agencies of this state in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of this state.

(2) The General Assembly finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

(3) The concern over sexually transmitted diseases is a legitimate health concern of this state that demands reasonable regulation of adult entertainment establishments by the state in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.

(4) Minimal regulations enacted by local governments or the state are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them and cause increased crime, particularly in the overnight hours, and the downgrading of property values.

(6) The General Assembly desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner and by expanding the authority of local governments to regulate adult entertainment establishments and, by minimizing and controlling these adverse effects, to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

(7) The General Assembly has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of this state and that expanded local government authority to regulate adult entertainment establishments is necessary.

(8) It is not the intent of the General Assembly in enacting this act to suppress, or authorize the suppression of, any speech activities protected by the First Amendment but to enact content-neutral statutes that expand local government authority to address the secondary effects of adult entertainment establishments.

(9) It is not the intent of the General Assembly to condone or legitimize the distribution of obscene material, and the General Assembly recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in this state.

(B) It is the intent of the General Assembly in enacting new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code to regulate in the specified manner, and to expand the authority of local governments to regulate, adult entertainment establishments in order to promote the health, safety, morals, and general welfare of the citizens of this state and establish reasonable regulations to prevent the deleterious secondary effects of adult entertainment establishments within this state. The provisions of new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of the General Assembly in enacting new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, or to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the General Assembly in enacting new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code to condone or legitimize the distribution or exhibition of obscene material.

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and on findings incorporated in the cases of *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *City of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *City of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. City of Chattanooga* (6th Cir.

1997) 107 F.3d 403; *East Brooks Books, Inc. v. City of Memphis*, (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. City of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. City of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F. Supp.2d 710; *J.L. Spoons, Inc. v. City of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. City of Akron* (6th Cir. 1994) 40 F.3d 129; *Nightclubs, Inc. v. City of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. City and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. City of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma City, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellipticville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); the findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsoapple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence, the General Assembly finds:

(1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no statewide mechanism, and no general or comprehensive grant of authority enabling local governments, to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of adult entertainment establishments, as defined in section 2907.39 of the Revised Code as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "engaging in prostitution" under section 2907.25 of the Revised Code.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.

(6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, mycoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, and exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) The findings noted in divisions (C)(1) to (14) of this section raise substantial governmental concerns.

(16) Adult entertainment establishments have operational characteristics that should subject them to reasonable government regulation in order to protect those substantial governmental concerns.

(17) The enactment of new sections 503.51 and 503.52 and sections 2907.38 and 2907.39 of the Revised Code will promote the general welfare, health, morals, and safety of the citizens of this state.

§ 2907.39 Permitting juvenile on premises of adult entertainment establishment; use by juvenile of false information to enter adult entertainment establishment.

(A) As used in this section:

(1) "Adult arcade" means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

(2)(a) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following:

(i) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;

(ii) Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

(b) "Adult bookstore," "adult novelty store," or "adult video store" includes a commercial establishment as defined in section 2907.38 of the Revised Code. An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

(3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(a) Persons who appear in a state of nudity or semi-nudity;

(b) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities;

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

(4) "Adult entertainment" means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

(5) "Adult entertainment establishment" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to section 4731.15 of the Revised Code, is not an "adult entertainment establishment."

(6) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(7) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

(8) "Distinguished or characterized by their emphasis upon" means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films "that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

(9)(a) "Nude or seminude model studio" means any place where a person, who regularly appears in a state of nudity or seminudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(b) A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is operated in any of the following ways:

(i) By a college or university supported entirely or partly by taxation;

(ii) By a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation;

(iii) In a structure that has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.

(10) "Nudity," "nude," or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering; or the showing of the female breasts with less than a fully opaque covering of any part of the nipple.

(11) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

(12) "Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

(13)(a) "Sexual encounter establishment" means a business or commercial establishment that, as one of its

principal business purposes, offers for any form of consideration a place where either of the following occur:

(i) Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.

(ii) Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

(b) An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to section 4731.15 of the Revised Code, is not a "sexual encounter establishment."

(14) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast.

(15) "Specified sexual activity" means any of the following:

(a) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

(b) Excretory functions as a part of or in connection with any of the activities described in division (A)(15)(a) of this section.

(B) No person knowingly shall allow an individual, including, but not limited to, a patron, customer, or employee, who is under eighteen years of age on the premises of an adult entertainment establishment.

(C) No individual who is under eighteen years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment.

(D) A person shall not be found guilty of a violation of division (B) of this section if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following:

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued under sections 4507.50 and 4507.52 of the Revised Code showing that the individual was then at least eighteen years of age.

(2) The operator, employee, agent, or independent contractor made a bona fide effort to ascertain the true age of the individual gaining entrance to the adult entertainment establishment by checking the identification presented, at the time of entrance, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way.

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least eighteen years of age.

(E) In any criminal action in which the affirmative defense described in division (D) of this section is raised, the registrar of motor vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under sections 4507.50 and 4507.52 of the Revised Code shall be permitted to submit certified copies of the records, in the registrar's or deputy regis-

trar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the bureau of motor vehicles in the action.

(F)(1) Whoever violates division (B) of this section is guilty of permitting a juvenile on the premises of an adult entertainment establishment, a misdemeanor of the first degree. Each day a person violates this division constitutes a separate offense.

(2) Whoever violates division (C) of this section is guilty of use by a juvenile of false information to enter an adult entertainment establishment, a delinquent act that would be a misdemeanor of the fourth degree if committed by an adult.

HISTORY: 151 v H 23, § 1, eff. 8-17-06.

Not analogous to former RC § 2907.39 (RS § 6849a; 82 v 247; 99 v 460; GC §§ 12471, 12475, 12475-1; 124 v 360; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff. 1-1-74.

See provisions of § 3 of 151 v H 23 following RC § 2907.39.

CHAPTER 2909: ARSON AND RELATED OFFENSES

Section

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§ 2909.01 Definitions.

As used in sections 2909.01 to 2909.07 of the Revised Code:

(A) To "create a substantial risk of serious physical harm to any person" includes the creation of a substantial risk of serious physical harm to any emergency personnel.

(B) "Emergency personnel" means any of the following persons:

(1) A peace officer, as defined in section 2935.01 of the Revised Code;

(2) A member of a fire department or other firefighting agency of a municipal corporation, township, township fire district, joint fire district, other political subdivision, or combination of political subdivisions;

(3) A member of a private fire company, as defined in section 9.60 of the Revised Code, or a volunteer firefighter;

(4) A member of a joint ambulance district or joint emergency medical services district;

(5) An emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, ambulance operator, or other member of an emergency medical service that is owned or operated by a political subdivision or a private entity;

(6) The state fire marshal, the chief deputy state fire marshal, or an assistant state fire marshal;

(7) A fire prevention officer of a political subdivision or an arson, fire, or similar investigator of a political subdivision.

(C) "Occupied structure" means any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.

(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present.

(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present.

(4) At the time, any person is present or likely to be present in it.

(D) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(E) "Computer," "computer hacking," "computer network," "computer program," "computer software," "computer system," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(F) "Computer contaminant" means a computer program that is designed to modify, damage, destroy, disable, deny or degrade access to, allow unauthorized access to, functionally impair, record, or transmit information within a computer, computer system, or computer network without the express or implied consent of the owner or other person authorized to give consent and that is of a type or kind described in divisions (F)(1) to (4) of this section or of a type or kind similar to a type or kind described in divisions (F)(1) to (4) of this section:

(1) A group of computer programs commonly known as "viruses" and "worms" that are self-replicating or self-propagating and that are designed to contaminate other computer programs, compromise computer security, consume computer resources, modify, destroy,

record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network;

(2) A group of computer programs commonly known as “Trojans” or “Trojan horses” that are not self-replicating or self-propagating and that are designed to compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network;

(3) A group of computer programs commonly known as “zombies” that are designed to use a computer without the knowledge and consent of the owner, or other person authorized to give consent, and that are designed to send large quantities of data to a targeted computer network for the purpose of degrading the targeted computer’s or network’s performance, or denying access through the network to the targeted computer or network, resulting in what is commonly known as “Denial of Service” or “Distributed Denial of Service” attacks;

(4) A group of computer programs commonly known as “trap doors,” “back doors,” or “root kits” that are designed to bypass standard authentication software and that are designed to allow access to or use of a computer without the knowledge or consent of the owner, or other person authorized to give consent.

(G) “Internet” has the same meaning as in section 341.42 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v H 675 (Eff 3-19-93); 146 v S 150 (Eff 11-24-95); 147 v S 30 (Eff 5-6-98); 149 v S 115. Eff 3-19-2003; 150 v S 146, § 1, eff. 9-23-04.

Not analogous to former RC § 2909.01 (RS § 6863; S&S 56, 155, 162, 263, 284, 736; S&C 419, 420, 429, 430, 445, 446; 29 v 144; 43 v 92; 54 v 36; 54 v 99; 59 v 57; 60 v 20; 62 v 8; 62 v 72; 64 v 74; 64 v 128; 66 v 122; 66 v 341; 68 v 42; 68 v 87; 69 v 82; 70 v 215; 73 v 64; 73 v 94; 73 v 180; GC § 12477; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.02 Aggravated arson.

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Create a substantial risk of serious physical harm to any person other than the offender;

(2) Cause physical harm to any occupied structure;

(3) Create, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

(B)(1) Whoever violates this section is guilty of aggravated arson.

(2) A violation of division (A)(1) or (3) of this section is a felony of the first degree.

(3) A violation of division (A)(2) of this section is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 282 (Eff 5-21-76); 139 v S 199 (Eff 1-5-83); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

Not analogous to former RC § 2909.02 (RS § 6864; S&C 433, 437, 438, 1612; S&S 282—284; 29 v 470; 29 v 144; 59 v 27; 59 v 79; 62 v 139; 69 v 67; CC § 12478; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 269.

§ 2909.03 Arson.

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Cause, or create a substantial risk of, physical harm to any property of another without the other person’s consent;

(2) Cause, or create a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud;

(3) Cause, or create a substantial risk of, physical harm to the statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes;

(4) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person’s consent or to any property of the offender or another with purpose to defraud;

(5) Cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision;

(6) With purpose to defraud, cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision.

(B)(1) Whoever violates this section is guilty of arson.

(2) A violation of division (A)(1) of this section is one of the following:

(a) Except as otherwise provided in division (B)(2)(b) of this section, a misdemeanor of the first degree;

(b) If the value of the property or the amount of the physical harm involved is five hundred dollars or more, a felony of the fourth degree.

(3) A violation of division (A)(2), (3), (5), or (6) of this section is a felony of the fourth degree.

(4) A violation of division (A)(4) of this section is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 282 (Eff 5-21-76); 139 v S 199 (Eff 1-1-83); 144 v H 675 (Eff 3-19-93); 146 v S 2. Eff 7-1-96.

Not analogous to former RC § 2909.03 (CC § 12478-1; 106 v 104; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2909.04 Disrupting public services.

(A) No person, purposely by any means or knowingly by damaging or tampering with any property, shall do any of the following:

(1) Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupt or impair public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

(B) No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.

(C) Whoever violates this section is guilty of disrupting public services, a felony of the fourth degree.

(D) As used in this section:

(1) "Emergency medical services personnel" has the same meaning as in section 2133.21 of the Revised Code.

(2) "Emergency facility personnel" means any of the following:

(a) Any of the following individuals who perform services in the ordinary course of their professions in an emergency facility:

(i) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(ii) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code;

(iii) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(iv) Health care workers;

(v) Clerical staffs.

(b) Any individual who is a security officer performing security services in an emergency facility;

(c) Any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in division (D)(2)(a) or (b) of this section.

(3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(4) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(5) "Health care worker" means an individual, other than an individual specified in division (D)(2)(a), (b), or (c) of this section, who provides medical or other health-related care or treatment in an emergency facility, including medical technicians, medical assistants, orderlies, aides, or individuals acting in similar capacities.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 148 v H 137 (Eff 3-10-2000); 149 v S 40. Eff 1-25-2002; 150 v S 146, § 1, eff. 9-23-04.

Not analogous to former RC § 2909.04 (CC § 12479; 99 v 526; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.05 Vandalism.

(A) No person shall knowingly cause serious physical harm to an occupied structure or any of its contents.

(B)(1) No person shall knowingly cause physical harm to property that is owned or possessed by another, when either of the following applies:

(a) The property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and the value of the property or the amount of physical harm involved is five hundred dollars or more;

(b) Regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in

the owner's or possessor's profession, business, trade, or occupation.

(2) No person shall knowingly cause serious physical harm to property that is owned, leased, or controlled by a governmental entity. A governmental entity includes, but is not limited to, the state or a political subdivision of the state, a school district, the board of trustees of a public library or public university, or any other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

(C) No person, without privilege to do so, shall knowingly cause serious physical harm to any tomb, monument, gravestone, or other similar structure that is used as a memorial for the dead; to any fence, railing, curb, or other property that is used to protect, enclose, or ornament any cemetery; or to a cemetery.

(D) No person, without privilege to do so, shall knowingly cause physical harm to a place of burial by breaking and entering into a tomb, crypt, casket, or other structure that is used as a memorial for the dead or as an enclosure for the dead.

(E) Whoever violates this section is guilty of vandalism. Except as otherwise provided in this division, vandalism is a felony of the fifth degree that is punishable by a fine of up to two thousand five hundred dollars in addition to the penalties specified for a felony of the fifth degree in sections 2929.11 to 2929.18 of the Revised Code. If the value of the property or the amount of physical harm involved is five thousand dollars or more but less than one hundred thousand dollars, vandalism is a felony of the fourth degree. If the value of the property or the amount of physical harm involved is one hundred thousand dollars or more, vandalism is a felony of the third degree.

(F) For purposes of this section:

(1) "Cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains.

(2) "Serious physical harm" means physical harm to property that results in loss to the value of the property of five hundred dollars or more.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 741 (Eff 10-9-78); 138 v H 618 (Eff 7-31-80); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 141 v S 316 (Eff 3-19-87); 144 v H 675 (Eff 3-19-93); 146 v S 2 (Eff 7-1-96); 147 v H 429. Eff 9-30-98.

Not analogous to former RC § 2909.05 (RS § 6865; S&C 429; 29 v 144; 75 v 130; CC § 12480; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.06 Criminal damaging or endangering.

(A) No person shall cause, or create a substantial risk of physical harm to any property of another without the other person's consent:

(1) Knowingly, by any means;

(2) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

(B) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the

property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony of the fifth degree. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal damaging or endangering is a felony of the fourth degree.

HISTORY: 134 v H 511 (EFF 1-1-74); 140 v H 570 (EFF 3-28-85); 146 v S 2, EFF 7-1-96.

Not analogous to former RC § 2909.06 (GC § 12480-1; 102 v 297; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2909.07 Criminal mischief.

(A) No person shall:

(1) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with the property of another;

(2) With purpose to interfere with the use or enjoyment of property of another, employ a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm;

(3) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker;

(4) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;

(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land;

(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, knowingly do any of the following:

(a) In any manner or by any means, including, but not limited to, computer hacking, alter, damage, destroy, or modify a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program;

(b) Introduce a computer contaminant into a computer, computer system, computer network, computer software, or computer program.

(B) As used in this section, "safety device" means any fire extinguisher, fire hose, or fire axe, or any fire escape, emergency exit, or emergency escape equipment, or any life line, life-saving ring, life preserver, or life boat or raft, or any alarm, light, flare, signal, sign, or notice intended

to warn of danger or emergency, or intended for other safety purposes, or any guard railing or safety barricade, or any traffic sign or signal, or any railroad grade crossing sign, signal, or gate, or any first aid or survival equipment, or any other device, apparatus, or equipment intended for protecting or preserving the safety of persons or property.

(C)(1) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in division (C)(2) or (3) of this section.

(2) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this division, if the violation of division (A)(1), (2), (3), (4), or (5) of this section creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a misdemeanor of the first degree. If the property involved in the violation of division (A)(1), (2), (3), (4), or (5) of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is one of the following:

(a) If the violation creates a risk of physical harm to any person, except as otherwise provided in division (C)(2)(b) of this section, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fifth degree.

(b) If the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fourth degree.

(3) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(6) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division, if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is one thousand dollars or more and less than ten thousand dollars, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(6) of this section is a felony of the fifth degree. If the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is ten thousand dollars or more, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a substantial risk of physical harm to any person or the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(6) of this section is a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v H 89 (Eff 1-1-74); 140 v H 570 (Eff 3-28-85); 141 v S 316 (Eff 3-19-87); 146 v S 2, Eff 7-1-96; 150 v S 146, § 1, eff. 9-23-04.

Analogue to former RC § 2909.07 (RS § 6866; 69 v 81; GC § 12481; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2909.08 Endangering aircraft or airport operations.

(A) As used in this section:

(1) "Air gun" means a hand pistol or rifle that propels its projectile by means of releasing compressed air, carbon dioxide, or other gas.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(3) "Spring-operated gun" means a hand pistol or rifle that propels a projectile not less than four or more than five millimeters in diameter by means of a spring.

(4) "Airport operational surface" means any surface of land or water that is developed, posted, or marked so as to give an observer reasonable notice that the surface is designed and developed for the purpose of storing, parking, taxiing, or operating aircraft, or any surface of land or water that is actually being used for any of those purposes.

(B) No person shall do either of the following:

(1) Knowingly throw an object at, or drop an object upon, any moving aircraft;

(2) Knowingly shoot with a bow and arrow, or knowingly discharge a firearm, air gun, or spring-operated gun, at or toward any aircraft.

(C) No person shall knowingly or recklessly shoot with a bow and arrow, or shall knowingly or recklessly discharge a firearm, air gun, or spring-operated gun, upon or over any airport operational surface. This division does not apply to the following:

(1) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, authorized to discharge firearms and acting within the scope of the officer's, agent's, or employee's duties;

(2) A person who, with the consent of the owner or operator of the airport operational surface or the authorized agent of either, is lawfully engaged in any hunting or sporting activity or is otherwise lawfully discharging a firearm.

(D) Whoever violates division (B) of this section is guilty of endangering aircraft, a misdemeanor of the first degree. If the violation creates a risk of physical harm to any person, endangering aircraft is a felony of the fifth degree. If the violation creates a substantial risk of physical harm to any person or if the aircraft that is the subject of the violation is occupied, endangering aircraft is a felony of the fourth degree.

(E) Whoever violates division (C) of this section is guilty of endangering airport operations, a misdemeanor of the second degree. If the violation creates a risk of physical harm to any person, endangering airport operations is a felony of the fifth degree. If the violation creates a substantial risk of physical harm to any person, endangering airport operations is a felony of the fourth degree. In addition to any other penalty or sanction imposed for the violation, the hunting license or permit of a person who violates division (C) of this section while hunting shall be suspended or revoked pursuant to section 1533.68 of the Revised Code.

(F) Any bow and arrow, air gun, spring-operated gun, or firearm that has been used in a felony violation of this section shall be seized or forfeited, and shall be disposed of pursuant to Chapter 2981. of the Revised Code.

HISTORY: 140 v H 570 (Eff 3-28-85); 146 v S 2, Eff 7-1-96; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

Not analogue to former RC § 2909.08 (RS § 6868; S&S 285; S&C 436; 60 v 85; GC § 12483; Bureau of Code Revision, 10-1-53; 131 v 674), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2909.08.1] § 2909.081 Interfering with operation of aircraft with laser.

(A) No person shall knowingly discharge a laser or other device that creates visible light into the cockpit of an aircraft that is in the process of taking off or landing or is in flight.

(B) Whoever violates this section is guilty of interfering with the operation of an aircraft with a laser, a felony of the second degree.

(C) As used in this section, "laser" means both of the following:

(1) Any device that utilizes the natural oscillations of atoms or molecules between energy levels for generating coherent electromagnetic radiation in the ultraviolet, visible, or infrared region of the spectrum and when discharged exceeds one milliwatt continuous wave;

(2) Any device designed or used to amplify electromagnetic radiation by simulated emission that is visible to the human eye.

HISTORY: 151 v H 231, § 1, eff. 7-20-06.

§ 2909.09 Vehicular vandalism.

(A) As used in this section:

(1) "Highway" means any highway as defined in section 4511.01 of the Revised Code or any lane, road, street, alley, bridge, or overpass.

(2) "Alley," "street," "streetcar," "trackless trolley," and "vehicle" have the same meanings as in section 4511.01 of the Revised Code.

(3) "Vessel" and "waters in this state" have the same meanings as in section 1547.01 of the Revised Code.

(B) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following:

(1) Any vehicle, streetcar, or trackless trolley on a highway;

(2) Any boat or vessel on any of the waters in this state.

(C) Whoever violates this section is guilty of vehicular vandalism. Except as otherwise provided in this division, vehicular vandalism is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of this section creates a substantial risk of physical harm to any person or the violation of this section causes serious physical harm to property, vehicular vandalism is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of this section causes physical harm to any person, vehicular vandalism is a felony of the third degree. If the violation of this section causes serious physical harm to any person, vehicular vandalism is a felony of the second degree.

HISTORY: 149 v S 163, Eff 4-9-2003.

Not analogous to former RC § 2909.09 (RS § 6877; S&C 457b; S&S 280; 63 v 175, § 1; 70 v 216, § 73; GC § 12487; Bureau of Code Revision, 10-1-53; 131 v 674), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.10 Railroad vandalism or criminal trespass; interference with operation of train.

(A) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of, any railroad rail, railroad track, locomotive, engine, railroad car, or other vehicle of a railroad company while such vehicle is on a railroad track.

(B) No person, without privilege to do so, shall climb upon or into any locomotive, engine, railroad car, or other vehicle of a railroad company when it is on a railroad track.

(C) No person, without privilege to do so, shall disrupt, delay, or prevent the operation of any train or other vehicle of a railroad company while such vehicle is on a railroad track.

(D) No person, without privilege to do so, shall knowingly enter or remain on the land or premises of a railroad company.

(E) Whoever violates division (A) of this section is guilty of railroad vandalism. Whoever violates division (B) of this section is guilty of criminal trespass on a locomotive, engine, railroad car, or other railroad vehicle. Whoever violates division (C) of this section is guilty of interference with the operation of a train.

Except as otherwise provided in this division, railroad vandalism; criminal trespass on a locomotive, engine, railroad car, or other railroad vehicle; and interference with the operation of a train each is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of division (A), (B), or (C) of this section causes serious physical harm to property or creates a substantial risk of physical harm to any person, the violation is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of division (A), (B), or (C) of this section causes physical harm to any person, the violation is a felony of the third degree. If the violation of division (A), (B), or (C) of this section causes serious physical harm to any person, the violation is a felony of the second degree.

(F) Whoever violates division (D) of this section is guilty of criminal trespass on the land or premises of a railroad company, a misdemeanor of the fourth degree.

HISTORY: 149 v S 163. Eff 4-9-2003.

Not analogous to former RC § 2909.10 (RS § 6878; S&S 285; 63 v 8, § 1; GC § 12488; 123 v 468, § 1; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2909.10.1] § 2909.101 Railroad grade crossing device vandalism.

(A) No person shall knowingly deface, damage, obstruct, remove, or otherwise impair the operation of any railroad grade crossing warning signal or other protective device, including any gate, bell, light, crossbuck, stop sign, yield sign, advance warning sign, or advance pavement marking.

(B) Whoever violates this section is guilty of railroad grade crossing device vandalism. Except as otherwise provided in this division, railroad grade crossing device vandalism is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of this

section causes serious physical harm to property or creates a substantial risk of physical harm to any person, railroad grade crossing device vandalism is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of this section causes physical harm to any person, railroad grade crossing device vandalism is a felony of the third degree. If the violation of this section causes serious physical harm to any person, railroad grade crossing device vandalism is a felony of the second degree.

HISTORY: 149 v S 163. Eff 4-9-2003.

§ 2909.11 Determining property value or amount of physical harm.

(A) When a person is charged with a violation of division (A)(1) of section 2909.03 of the Revised Code involving property value or an amount of physical harm of five hundred dollars or more or with a violation of section 2909.05 of the Revised Code involving property value or an amount of physical harm of five hundred dollars or more, the jury or court trying the accused shall determine the value of the property or amount of physical harm and, if a guilty verdict is returned, shall return the finding as part of the verdict. In any such case, it is unnecessary to find or return the exact value or amount of physical harm, section 2945.75 of the Revised Code applies, and it is sufficient if either of the following applies, as appropriate, relative to the finding and return of the value or amount of physical harm:

(1) If the finding and return relate to a violation of division (A)(1) of section 2909.03 of the Revised Code and are that the value or amount of the physical harm was five hundred dollars or more, the finding and return shall include a statement that the value or amount was five hundred dollars or more.

(2) If the finding and return relate to a violation of division section† 2909.05 of the Revised Code and are that the value or amount of the physical harm was in any of the following categories, the finding and return shall include one of the following statements, as appropriate:

(a) If the finding and return are that the value or amount was one hundred thousand dollars or more, a statement that the value or amount was one hundred thousand dollars or more;

(b) If the finding and return are that the value or amount was five thousand dollars or more but less than one hundred thousand dollars a statement that the value or amount was five thousand dollars or more but less than one hundred thousand dollars;

(c) If the finding and return are that the value or amount was five hundred dollars or more but less than five thousand dollars, a statement that the value or amount was five hundred dollars or more but less than five thousand dollars.

(B) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of division (A)(1) of section 2909.03 or section 2909.05 of the Revised Code:

(1) If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, the value of the property or the amount of physical^h harm involved is the amount that would compensate the owner for its loss.

(2) If the property is not covered under division (B)(1) of this section and the physical harm is such that the property can be restored substantially to its former condition, the amount of physical harm involved is the reasonable cost of restoring the property.

(3) If the property is not covered under division (B)(1) of this section and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, in the case of personal property, is the cost of replacing the property with new property of like kind and quality, and, in the case of real property or real property fixtures, is the difference in the fair market value of the property immediately before and immediately after the offense.

(C) As used in this section, "fair market value" has the same meaning as in section 2913.61 of the Revised Code.

(D) Prima-facie evidence of the value of property, as provided in division (E) of section 2913.61 of the Revised Code, may be used to establish the value of property pursuant to this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 741 (Eff 10-9-78); 138 v H 618 (Eff 7-31-80); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 144 v H 675 (Eff 3-19-93); 146 v S 2, Eff 7-1-96.

† So in enrolled bill, division (A)(2).

Not analogous to former RC § 2909.11 (RS § 6879; S&C 336, 433, 1313; S&S 665; 29 v 144; 36 v 104; 65 v 14; GC § 12489; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[TERRORISM]

§ 2909.21 Definitions.

As used in sections 2909.21 to 2909.34 of the Revised Code:

(A) "Act of terrorism" means an act that is committed within or outside the territorial jurisdiction of this state or the United States, that constitutes a specified offense if committed in this state or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy of any government by intimidation or coercion;
- (3) Affect the conduct of any government by the act that constitutes the offense.

(B) "Biological agent," "delivery system," "toxin," and "vector" have the same meanings as in section 2917.33 of the Revised Code.

(C) "Biological weapon" means any biological agent, toxin, vector, or delivery system or combination of any biological agent or agents, any toxin or toxins, any vector or vectors, and any delivery system or systems.

(D) "Chemical weapon" means any one or more of the following:

(1) Any toxic chemical or precursor of a toxic chemical that is listed in Schedule 1, Schedule 2, or Schedule 3 of the international "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)," as entered into force on April 29, 1997;

(2) A device specifically designed to cause death or other harm through the toxic properties of a toxic

chemical or precursor identified in division (D)(1) of this section that would be created or released as a result of the employment of that device;

(3) Any equipment specifically designed for use directly in connection with the employment of devices identified in division (D)(2) of this section.

(E) "Radiological or nuclear weapon" means any device that is designed to create or release radiation or radioactivity at a level that is dangerous to human life or in order to cause serious physical harm to persons as a result of the radiation or radioactivity created or released.

(F) "Explosive device" has the same meaning as in section 2923.11 of the Revised Code.

(G) "Key component of a binary or multicomponent chemical system" means the precursor that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent chemical system.

(H) "Material assistance" means any of the following:

(1) Membership in an organization on the United States department of state terrorist exclusion list;

(2) Use of the person's position of prominence within any country to persuade others to support an organization on the United States department of state terrorist exclusion list;

(3) Knowingly soliciting funds or other things of value for an organization on the United States department of state terrorist exclusion list;

(4) Solicitation of any individual for membership in an organization on the United States department of state terrorist exclusion list;

(5) Commission of an act that the person knows, or reasonably should have known, affords material support or resources to an organization on the United States department of state terrorist exclusion list;

(6) Hiring or compensating a person known by the person hiring or providing the compensation to be a member of an organization on the United States department of state terrorist exclusion list or a person known by the person hiring or providing the compensation to be engaged in planning, assisting, or carrying out an act of terrorism.

(I) "Material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, financial services, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(J) "Payment instrument" means a check, draft, money order, traveler's check, cashier's check, teller's check, or other instrument or order for the transmission or payment of money, regardless of whether the item in question is negotiable.

(K) "Peace officer" and "prosecutor" have the same meanings as in section 2935.01 of the Revised Code.

(L) "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

(M) "Response costs" means all costs a political subdivision incurs as a result of, or in making any response to, a threat of a specified offense made as described in section 2909.23 of the Revised Code or a specified offense committed as described in section 2909.24 of the Revised Code, including, but not limited to, all costs so

incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the political subdivision and all costs so incurred by the political subdivision that relate to laboratory testing or hazardous material cleanup.

(N) "Specified offense" means any of the following:

(1) A felony offense of violence, a violation of section 2909.04, 2909.081 [2909.08.1], 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, or 2927.24 of the Revised Code, a felony of the first degree that is not a violation of any provision in Chapter 2925. or 3719. of the Revised Code;

(2) An attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in division (N)(1) of this section.

(O) "Toxic chemical" means any chemical that through its chemical action on life processes can cause death or serious physical harm to persons or animals, regardless of its origin or of its method of production and regardless of whether it is produced in facilities, in munitions, or elsewhere.

(P) "United States department of state terrorist exclusion list" and "terrorist exclusion list" means the list compiled by the United States secretary of state, in consultation with or upon the request of the United States attorney general, that designates terrorist organizations for immigration purposes. "United States department of state terrorist exclusion list" and "terrorist exclusion list" also mean the list of terrorist organizations the director of public safety prepares pursuant to rules adopted in accordance with Chapter 119. of the Revised Code, that is comprised of lists of organizations officials of the United States government designate as terrorist, including the "terrorist exclusion list" described in this division, the list of "foreign terrorist organizations" the United States secretary of state prepares in consultation with the United States attorney general and the United States secretary of the treasury, and the list of charities that support terrorist activities, known as "designated charities," that the United States department of treasury compiles.

(Q) "Hazardous radioactive substance" means any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

HISTORY: 149 v S 184. Eff 5-15-2002; 151 v S 9, § 1, eff. 4-14-06; 151 v H 231, § 1, eff. 7-20-06.

151 v H 231, effective July 20, 2006, rewrote (P); and corrected internal references.

Not analogous to former RC § 2909.21 (RS § 6880e; 91 v 224; GC § 12522; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.22 Soliciting or providing support for act of terrorism.

(A) No person shall raise, solicit, collect, donate, or provide any material support or resources, with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism.

(B) Whoever violates this section is guilty of soliciting or providing support for an act of terrorism, a felony of the third degree. Section 2909.25 of the Revised Code applies regarding an offender who is convicted of or pleads guilty to a violation of this section.

(C) A prosecution for a violation of this section does not preclude a prosecution for a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section, or both sections.

HISTORY: 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2909.22 (RS § 6881-1; 82 v 166; GC § 12530; 102 v 88; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.23 Making terroristic threat.

(A) No person shall threaten to commit or threaten to cause to be committed a specified offense when both of the following apply:

(1) The person makes the threat with purpose to do any of the following:

- (a) Intimidate or coerce a civilian population;
- (b) Influence the policy of any government by intimidation or coercion;
- (c) Affect the conduct of any government by the threat or by the specified offense.

(2) As a result of the threat, the person causes a reasonable expectation or fear of the imminent commission of the specified offense.

(B) It is not a defense to a charge of a violation of this section that the defendant did not have the intent or capability to commit the threatened specified offense or that the threat was not made to a person who was a subject of the threatened specified offense.

(C) Whoever violates this section is guilty of making a terroristic threat, a felony of the third degree. Section 2909.25 of the Revised Code applies regarding an offender who is convicted of or pleads guilty to a violation of this section.

HISTORY: 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2909.23 (RS § 4905; 73 v 117; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.24 Terrorism.

(A) No person shall commit a specified offense with purpose to do any of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy of any government by intimidation or coercion;
- (3) Affect the conduct of any government by the specified offense.

(B)(1) Whoever violates this section is guilty of terrorism.

(2) Except as otherwise provided in divisions (B)(3) and (4) of this section, terrorism is an offense one degree higher than the most serious underlying specified offense the defendant committed.

(3) If the most serious underlying specified offense the defendant committed is a felony of the first degree or murder, the person shall be sentenced to life imprisonment without parole.

(4) If the most serious underlying specified offense the defendant committed is aggravated murder, the offender shall be sentenced to life imprisonment without parole or death pursuant to sections 2929.02 to 2929.06 of the Revised Code.

(5) Section 2909.25 of the Revised Code applies regarding an offender who is convicted of or pleads guilty to a violation of this section.

HISTORY: 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2909.24 (127 v 810), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.25 Reimbursement of investigation, prosecution, and response costs concerning act of terrorism.

(A) In addition to the financial sanctions authorized under section 2929.18 of the Revised Code, the court imposing sentence upon an offender who is convicted of or pleads guilty to a violation of section 2909.22, 2909.23, or 2909.24 of the Revised Code or to a violation of section 2921.32 of the Revised Code when the offense or act committed by the person aided or to be aided as described in that section is an act of terrorism may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in the investigation and prosecution of the violation. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender.

(B) If a person is convicted of or pleads guilty to a violation of section 2909.23 or 2909.24 of the Revised Code and if any political subdivision incurred any response costs as a result of, or in making any response to, the threat of the specified offense involved in the violation of section 2909.23 of the Revised Code or the actual specified offense involved in the violation of section 2909.24 of the Revised Code, in addition to the financial sanctions authorized under section 2929.18 of the Revised Code, the court imposing sentence upon the offender for the violation may order the offender to reimburse the involved political subdivision for the response costs it so incurred.

HISTORY: 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2909.25 (128 v 467), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2909.26 Criminal possession of chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.

(A) No person shall knowingly possess any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to use it to cause serious physical harm or death to another person.

(B) No person shall knowingly possess any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with intent to use the weapon to do any of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy of any government by intimidation or coercion;
- (3) Affect the conduct of any government by murder, assassination, or kidnapping.

(C) Whoever violates this section is guilty of criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. A violation of division (A) of this section is a felony of the

third degree. A violation of division (B) of this section is a felony of the second degree.

(D) This section does not apply when the items described in division (A) of this section are possessed for a purpose related to the performance of official duties related to any military purpose of the United States and any law enforcement purpose, including any domestic riot control purpose.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

Not analogous to former RC § 2909.26 (132 v H 996), repealed 134 v H 511, § 2, eff 1-1-74.

This section prohibited unauthorized trespass upon premises damaged during a public emergency natural disaster.

§ 2909.27 Criminal use of chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.

(A) No person shall recklessly use, deploy, release, or cause to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device that creates a risk of death or serious physical harm to another person not a participant in the offense.

(B) No person shall knowingly use, deploy, release, or cause to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to do any of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy of any government by intimidation or coercion;
- (3) Affect the conduct of any government by murder, assassination, or kidnapping;
- (4) Cause physical harm to, or the death of, any person who is not a participant in the offense.

(C) Whoever violates this section is guilty of criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. A violation of division (A) of this section is a felony of the second degree. A violation of division (B) of this section is a felony of the first degree.

(D)(1) Division (A) of this section does not apply to any person who uses any of the following:

(a) Any household product that is generally available for sale to consumers in this state in the quantity and concentration available for sale to those consumers;

(b) A self-defense spray;

(c) A biological agent, toxin, or delivery system the person possesses solely for protective, bona fide research, or other peaceful purposes;

(d) A chemical weapon that the person possesses solely for a purpose not prohibited under this section if the type and quantity is consistent with that purpose.

(2) For purposes of this division, "a purpose not prohibited under this section" means any of the following:

(a) Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other peaceful activity;

(b) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or

other harm, when related to the performance of official duties;

(d) Any law enforcement purpose, including any domestic riot control purpose, when related to the performance of official duties.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

§ 2909.28 Illegal assembly or possession of chemicals or substances for the manufacture of chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.

(A) No person, with the intent to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, shall knowingly assemble or possess one or more toxins, toxic chemicals, precursors of toxic chemicals, vectors, biological agents, or hazardous radioactive substances, including, but not limited to, those listed in rules the director of public safety adopts, that may be used to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals or substances necessary to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. The assembly or possession of a single chemical or substance, with the intent to use that chemical or substance in the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, is sufficient to violate this section.

(C) Whoever violates this section is guilty of illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, which is a felony of the fourth degree.

(D) This section does not apply when the items described in division (A) of this section are assembled or possessed for a purpose related to the performance of official duties related to any military purpose of the United States and any law enforcement purpose, including any domestic riot control purpose.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

§ 2909.29 Money laundering in support of terrorism.

(A) No person, knowing that property is the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used in support of an act of terrorism, shall conduct or attempt to conduct any transaction involving that property or transport, transmit or transfer that monetary instrument with the intent to do any of the following:

(1) Commit or further the commission of criminal activity;

(2) Conceal or disguise the nature, location, source, ownership, or control of either the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used to support an act of terrorism;

(3) Conceal or disguise the intent to avoid a transaction reporting requirement under section 1315.53 of the Revised Code or federal law.

(B)(1) Whoever violates this section is guilty of money laundering in support of terrorism, which is a misdemeanor of the first degree, except as otherwise provided in this division.

(2) A violation of division (A) of this section is a felony of the fifth degree if the total value of the property or monetary instrument involved in the transaction equals or exceeds one thousand dollars and is less than five thousand dollars.

(3) Money laundering in support of terrorism is a felony of the fourth degree if the total value of the property or monetary instrument involved in the transaction equals or exceeds five thousand dollars and is less than twenty-five thousand dollars.

(4) Money laundering in support of terrorism is a felony of the third degree if the total value of the property or monetary instrument involved in the transaction equals or exceeds twenty-five thousand dollars and is less than seventy-five thousand dollars.

(5) Money laundering in support of terrorism is a felony of the second degree if the total value of the property or monetary instrument involved in the transaction equals or exceeds seventy-five thousand dollars.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

§ 2909.30 Suspected alien convicted of or pleading guilty to felony, or serving prison term.

(A) A judge of a court of record shall direct the clerk of that court to notify the immigration and customs enforcement section of the United States department of homeland security when a suspected alien has been convicted of or pleaded guilty to a felony.

(B) The department of rehabilitation and correction monthly shall compile a list of suspected aliens who are serving a prison term. The list shall include the earliest possible date of release of the offender, whether through expiration of prison term, parole, or other means. The department shall provide a copy of the list to the immigration and customs enforcement section of the United States department of homeland security for the section to determine whether it wishes custody of the suspected alien. If the immigration and customs enforcement section indicates it wishes custody, the department of rehabilitation and correction is responsible for the suspected alien until the section takes custody.

(C) The department of rehabilitation and correction, pursuant to a valid detainer lodged against an alien who is not legally present in the United States and who has been convicted of or pleaded guilty to a felony, shall transfer that alien to the custody of the immigration and enforcement section of the United States department of homeland security upon completion of the alien's prison term.

(D) As used in this section, "alien" means an individual who is not a citizen of the United States.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

§ 2909.31 Identification when entering critical transportation infrastructure site.

(A) No person entering an airport, train station, port, or other similar critical transportation infrastructure site shall refuse to show identification when requested by a law enforcement officer when there is a threat to security and the law enforcement officer is requiring identification of all persons entering the site.

(B) A law enforcement officer may prevent any person who refuses to show identification when asked under the circumstances described in division (A) of this section from entering the critical transportation infrastructure site.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

§ 2909.32 Identification of licenses for which holder with terrorist connections presents potential risk; declaration of material assistance/nonassistance; denial or revocation of license.

(A)(1) The director of public safety shall adopt rules in accordance with Chapter 119. of the Revised Code to identify licenses the state issues for which a holder with a connection to a terrorist organization would present a potential risk to the residents of this state. The rules shall not identify a renewable driver's license or permit as a license of this nature if the applicant is a resident of this state.

(2)(a) The director shall prepare a document to serve as a declaration of material assistance/nonassistance for agencies to use to identify whether an applicant for a license or the renewal of a license has provided material assistance to an organization listed in the United States department of state terrorist exclusion list. The declaration shall be substantially in the form and of the same content as set forth in division (A)(2)(b) of this section. The director shall make the declaration available to each issuing agency of a license the director identifies pursuant to division (A)(1) of this section, along with a then-current copy of the United States department of state terrorist exclusion list. The director may adopt rules governing the preparation of the declaration and the distribution of the declaration and the list.

(b) The declaration of material assistance/nonassistance this section requires shall be substantially as follows and shall include the following questions and the associated spaces for answering the questions:

"DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO TERRORIST ORGANIZATION

(1) Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? Yes ; No

(2) Have you used any position of prominence you have within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? Yes ; No

(3) Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? Yes ; No

(4) Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? Yes ; No

(5) Have you committed an act that you know, or reasonably should have known, affords "material support or resources" (see below) to an organization on the U.S. Department of State Terrorist Exclusion List? Yes ; No

(6) Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism? Yes ; No

For purposes of this declaration of material assistance/nonassistance, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

(B)(1) Any agency that issues a license the director identifies pursuant to division (A)(1) of this section shall include with the agency's application form a copy of the declaration of material assistance/nonassistance the director prepares pursuant to this section and a then-current copy of the terrorist exclusion list. The agency shall inform applicants that they must truthfully answer each question.

(2) Any person provided a declaration of material assistance/nonassistance pursuant to this section shall answer each question and attach the completed declaration to the application for the license or the license renewal.

(C)(1) Any answer of "yes" to any question, or the failure to answer "no" to any question, on a declaration of material assistance/nonassistance an agency provides pursuant to this section shall serve for purposes of this section as a disclosure that the applicant has provided material assistance to an organization listed on the terrorist exclusion list.

(2) Any person who discloses the provision of material assistance to any organization on the terrorist exclusion list shall be denied the license or the renewal of the license unless the department of public safety reinstates the application pursuant to division (D) of this section.

(3) Any licensing entity that denies a license or a renewal of a license pursuant to this division shall send written notice of that denial to the applicant within three business days of the decision to deny. The notice shall inform the applicant of the right to have the department of public safety review the denial if the applicant requests a review within sixty days after the mailing date of the notice. The licensing entity shall provide the department of public safety with a copy of any notice that it sends to an applicant pursuant to this division.

(D) The department of public safety shall review any decision to deny an application within thirty days of receiving an applicant's request for a review. The department shall reinstate the license application for good cause if it determines all of the following pursuant to guidelines the director adopts by rule:

(1) That the provision of material assistance to an organization on the terrorist exclusion list was made more than ten years prior to the time of the application, or the applicant provided material assistance during the ten years prior to the application and the date of the review, but at the time of the assistance, the organization was either not on the list or was not involved in any activity or conduct that would have merited inclusion on the list had it existed at the time, or at the time of the assistance it was not reasonable to know of the organization's activities that would have merited its inclusion on the list.

(2) That the applicant is unlikely in the future to provide material assistance to any organization on the terrorist exclusion list;

(3) That the applicant does not pose a risk to the residents of this state.

(E) The failure of an applicant for a license to complete and attach a declaration of material assistance/nonassistance as this section requires, the failure to disclose material assistance to an organization on the terrorist exclusion list, or the making of false statements regarding material assistance to an organization the applicant knew or should have known was on the terrorist exclusion list, shall result in the denial of the application and in the revocation of the license.

(F) The failure of an applicant for a license to disclose, as this section requires, the provision of material assistance to an organization on the terrorist exclusion list or knowingly making false statements regarding material assistance to an organization on that list is a felony of the fifth degree.

(G) An issuing agency shall notify the department of public safety if it denies an application for a license or the renewal of a license because the applicant disclosed the provision of material assistance to an organization listed on the terrorist exclusion list.

(H) An agency may revoke a license issued to any person who, after providing a declaration of material assistance/nonassistance pursuant to this section, takes an action that would result in "yes" being the correct answer to any question on the declaration, had the declaration been readministered after taking that action. The agency shall conduct a hearing pursuant to Chapter 119. of the Revised Code prior to revoking any license pursuant to this division.

(I) This section does not apply to a license issued to either of the following:

(1) A federally insured depository institution that is subject to anti-money laundering and antiterrorism requirements under federal law, any subsidiary of such a depository institution, or an officer or employee of such a depository institution or subsidiary when that license is related to the person's duties as an officer or employee;

(2) Any affiliate of a depository institution described in division (I)(1) of this section, other than an affiliate that is a subsidiary of a depository institution, when that affiliate is subject to anti-money laundering and antiterrorism requirements under federal law, or an officer or employee of such an affiliate when that license is related to the person's duties as an officer or employee.

HISTORY: 151 v S 9, § 1, eff. 4-14-06; 151 v H 461, § 1, eff. 4-4-07.

§ 2909.33 Declaration of material assistance/nonassistance to organization on terrorist exclusion list; restrictions on governmental contracts and funding.

(A)(1) The director of public safety shall prepare a document to serve as a declaration of material assistance/nonassistance by which any person, company, affiliated group, or organization, or person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization, when required by this section, shall certify any provision of material assistance to an organization listed on the United States department of state terrorist exclusion list. The declaration shall be substantially in the same format and of the same content as set forth in division (A)(2)(b) of section 2909.32 of the Revised Code.

(2) The director of public safety and the director of budget and management shall make available on their respective department web sites and by any other means

the director of public safety deems appropriate, the declaration of material assistance/nonassistance and a then-current copy of the terrorist exclusion list. The director of public safety, in consultation with the director of budget and management, may adopt rules that govern the preparation of the declaration and the distribution of the declaration and terrorist exclusion list.

(3)(a) Prior to entering into a contract to conduct business with or receive funding from any state agency, instrumentality, or political subdivision of the state any person, company, affiliated group, or organization, or person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization, may precertify that it has not provided material assistance to an organization on the terrorist exclusion list. The precertification this division describes shall be granted to any person, company, affiliated group, or organization that submits to the director of budget and management a completed copy of the declaration prepared pursuant to this section, with an answer of "no" to all questions. No person shall require any person, company, affiliated group, or organization that is precertified to complete any additional declarations prior to the expiration of a precertification. All precertifications expire the thirtieth day of June of the second year of each state biennium period. To be precertified during the two years subsequent to that expiration date, an entity shall submit a new declaration to the director of budget and management pursuant to rules the director adopts.

(b) Any person, company, affiliated group, or organization that is precertified pursuant to this division and that takes any action or learns of anything that would result in an answer of "yes" to any question on the declaration of material assistance/nonassistance this division requires, shall cease to represent that it is precertified and, within thirty days of taking that action or learning the new information, shall notify the director of budget and management to request its precertification be rescinded.

(c) When applying for a contract, falsely representing precertification, or representing precertification when that precertification has been rescinded or should have been rescinded pursuant to this division, is a felony of the fifth degree.

(B) Any person who submits a declaration of material assistance/nonassistance pursuant to this section shall complete the entire declaration. Any answer of "yes" to any question, or the failure to answer "no" to any question, on the declaration shall serve for purposes of this section as a disclosure of the provision of material assistance to an organization that is listed on the terrorist exclusion list.

(C)(1) Except as otherwise provided in divisions (C)(2) and (H) of this section, prior to entering into a contract with any state agency, instrumentality, or political subdivision to conduct business or receive funding, any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization shall certify that it does not provide material assistance to any organization on the United States department of state terrorist exclusion list. The certification shall be made by completing and submitting the declaration of material assistance/nonassistance as described in division (A) of this section.

(2) Certification pursuant to this division shall not be required unless the entity entering into a contract for

business or funding has received, or will have received as a result of the pending contract, an aggregate amount greater than one hundred thousand dollars in business or funding, excluding the amount of any personal benefit, from the state, instrumentalities, and political subdivisions during the current fiscal year, measured from the first day of July until the thirtieth day of June.

(D)(1) No state agency, instrumentality, or political subdivision shall conduct business with or provide any funding to any person, company, affiliated group or organization, or any person who has a controlling interest in a company, affiliated group, or organization unless that person, company, affiliated group, or organization is certified as this section requires.

(2) No person, company, affiliated group or organization, or any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization shall enter into a contract to conduct business with or receive funding from the state, an agency or instrumentality of the state, or a political subdivision of the state unless it is certified as this section requires.

(E) For the purposes of this section, the office of budget and management shall be the repository for all declarations received pursuant to division (A)(3)(a) of this section and the director of budget and management shall maintain a centralized database of all such declarations received. If a person, company, affiliated group, or organization discloses the provision of material assistance to an organization listed on the terrorist exclusion list, within three business days of that disclosure, the director shall send the declarant a written notice of prohibition against doing business or receiving funding. The notice shall inform the declarant of the right to a review of the prohibition by the department of public safety if the declarant requests that review within sixty days after the notice of prohibition was mailed. The director shall send copy of any notice sent pursuant to this division to the department of public safety.

The department of public safety shall review any prohibition within thirty days of the receipt of a request for a review and determine whether the prohibitions against doing business or receiving funding set forth in divisions (D)(1) and (D)(2) of this section should apply. The department of public safety shall order that the prohibitions do not apply if it determines all of the following pursuant to guidelines the director adopts by rule:

(1) That the provision of material assistance to an organization on the terrorist exclusion list was made more than ten years prior to the time the declaration of material assistance/nonassistance was filled out, or the material assistance was provided during the ten years prior to the application and the date of the review, but at the time of the assistance, the organization was either not on the list or would not have merited inclusion had it existed at the time, or at the time of the assistance it was not reasonable to know of the organization's activities that would have merited its inclusion on the list.

(2) That it is unlikely in the future that the person, company, affiliated group, or organization will provide material assistance to any organization on the terrorist exclusion list;

(3) The person, company, affiliated group, or organization does not pose a risk to the residents of this state.

(F) Any person, company, affiliated group, or organization that had not provided material assistance at the time a declaration of material assistance/nonassistance

was answered, but starts providing material assistance to an organization on the terrorist exclusion list during the course of doing business with or receiving funding from the state, an agency or instrumentality of the state, or a subdivision of the state, is prohibited from entering into additional contracts to do business with or receive funding from the state, any agency or instrumentality, or any subdivision for a period of ten years after the provision of material assistance is discovered.

(G)(1) Any person, company, affiliated group, or organization that knowingly provides a false certification pursuant to this section is permanently banned from conducting business with or receiving funding from the state, an agency or instrumentality of the state, or a political subdivision of the state is guilty of a felony of the fifth degree.

(2) Any person, company, affiliated group, or organization that fails to certify as this section requires is subject to a fine of one thousand dollars for each day of doing business or receiving funding, except that any person, company, affiliated group, or organization that first reaches the threshold of one hundred thousand dollars in business or funding, due to the contract that it is entering into, shall not be subject to the fine for the first thirty days after entering into that contract, after which it shall be subject to the fine for each day that it is not certified.

(H) This section does not apply to the following types of transactions:

(1) An investment in a company that is publicly traded in any United States market;

(2) An investment that is traded on a foreign market where United States investors regularly make investments;

(3) An investment that is made through an agent or investment manager who has a fiduciary responsibility to the investor;

(4) An investment in public agency debt;

(5) An investment in derivatives that are regulated by a government agency;

(6) Financial services provided by or through either of the following:

(a) A federally insured depository institution that is subject to anti-money laundering and antiterrorism requirements under federal law or any subsidiary of such a depository institution;

(b) An affiliate of a depository institution described in division (H)(6)(a) of this section, other than an affiliate that is a subsidiary of the depository institution, when the affiliate is subject to anti-money laundering and antiterrorism requirements under federal law.

"Financial services" include, but are not limited to, services related to currency, payment instruments, other financial securities, funds, and transfer of funds;

(7) Any contract to conduct business or receive funding between state agencies, instrumentalities, or political subdivisions of the state;

(8) Any person, company, affiliated group, or organization providing necessary, nonelective healthcare services.

(I) As used in this section, "personal benefit" means all of the following:

(1) Pensions and disability and survivor benefits;

(2) Money, goods, services, or other things of value provided by the United States, the state, or a political subdivision of the state to which the recipient is entitled by reason of age, medical condition, or a financial need

that is established pursuant to an act of congress or the general assembly;

(3) Salary or compensation a person receives as an employee of the state or a political subdivision of the state.

HISTORY: 151 v S 9, § 1, eff. 4-14-06; 151 v H 461, § 1, eff. 4-4-07.

§ 2909.34 Public employment of person with ties to terrorist organization prohibited.

(A)(1) The director of public safety shall prepare a document to serve as a declaration of material assistance/nonassistance for the state, instrumentalities of the state, and political subdivisions of the state to use to determine whether any person who is under final consideration for employment has provided material assistance to an organization listed on the United States department of state terrorist exclusion list. The declaration shall be substantially in the same format and of the same content as set forth in division (A)(2)(b) of section 2909.32 of the Revised Code.

(2) The director shall make the declaration of material assistance/nonassistance available to the state, instrumentalities of the state, and political subdivisions of the state, along with a then-current copy of the terrorist exclusion list. The director may adopt rules that govern the preparation and distribution of the declaration and the terrorist exclusion list.

(3) The director may adopt rules that establish categories of employment that are exempt from the disclosure requirements of this section.

(B) Any person under final consideration for employment who is provided a declaration of material assistance/nonassistance pursuant to this section shall complete the declaration prior to being employed. Any answer of "yes" to any question, or the failure to answer "no" to any question, shall serve for purposes of this section as a disclosure of the provision of material assistance to an organization that is listed on the terrorist exclusion list.

(C)(1) The state, a state instrumentality, or a political subdivision of the state shall provide each person who is under final consideration for a category of employment for which this section requires disclosure with a copy of the declaration of material assistance/nonassistance and a then-current copy of the terrorist exclusion list. The state, instrumentality, or subdivision shall not employ any person who discloses the provision of material assistance to an organization that is listed on the terrorist exclusion list.

(2) The state, or any instrumentality or political subdivision of the state that denies employment pursuant to this section, shall send written notice of that denial to the applicant within three business days of the decision to deny, along with notice of the applicant's right to a review of the denial by the department of public safety if the applicant requests a review within sixty days of the mailing date of the notice. An entity that denies employment pursuant to this section shall send a copy of any notice of denial of employment to the department of public safety.

(D) The department of public safety, upon receiving a request for a review from any person who has been denied employment under division (C) of this section, shall review the request within thirty days to determine if the denial of employment should be voided. The department shall void that denial if it determines all of the following pursuant to guidelines the director adopts by rule:

(1) That the provision of material assistance to an organization on the terrorist exclusion list was made more than ten years prior to the time the declaration of material assistance/nonassistance was filled out, or the material assistance was provided during the ten years prior to the application and the date of the review, but at the time of the assistance, the organization was either not on the list or would not have merited inclusion on the list had it existed at the time, or at the time of the assistance it was not reasonable to know of the organization's activities that would have merited its inclusion on the list.

(2) That it is unlikely in the future that the person will provide material assistance to any organization on the terrorist exclusion list;

(3) The person does not pose a risk to the residents of the state.

(E) The failure of an applicant for employment to disclose, as this section requires, the provision of material assistance to an organization on the terrorist exclusion list, or knowingly making false statements regarding material assistance to an organization on that list, is a felony of the fifth degree.

(F)(1) The state, or any instrumentality or political subdivision of the state, may terminate any employee who, after providing a declaration of material assistance/nonassistance pursuant to this section, takes an action that would result in "yes" being the correct answer to any question on the declaration, had the declaration been readministered after taking that action.

(2) No employer shall terminate an employee pursuant to this division unless the employer complies with one of the following hearing procedures:

(a) If the employee is entitled to termination proceedings under a collective bargaining agreement, the employer shall comply with those procedures.

(b) If the employee is entitled to termination proceedings pursuant to division (C) of section 124.34 of the Revised Code, the employer shall comply with those procedures.

(c) If the employee does not qualify for the termination proceedings described in division (F)(2)(a) or (b) of this section, the employer shall comply with the procedures set forth in division (B) of section 124.34 of the Revised Code.

HISTORY: 151 v S 9, § 1, eff. 4-14-06; 151 v H 461, § 1, eff. 4-4-07.

CHAPTER 2911: ROBBERY, BURGLARY, TRESPASS AND SAFECRACKING

Section

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Section

[SAFECRACKING]

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[ROBBERY]

§ 2911.01 Aggravated robbery.

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

(2) Have a dangerous ordnance on or about the offender's person or under the offender's control;

(3) Inflict, or attempt to inflict, serious physical harm on another.

(B) No person, without privilege to do so, shall knowingly remove or attempt to remove a deadly weapon from the person of a law enforcement officer, or shall knowingly deprive or attempt to deprive a law enforcement officer of a deadly weapon, when both of the following apply:

(1) The law enforcement officer, at the time of the removal, attempted removal, deprivation, or attempted deprivation, is acting within the course and scope of the officer's duties;

(2) The offender knows or has reasonable cause to know that the law enforcement officer is a law enforcement officer.

(C) Whoever violates this section is guilty of aggravated robbery, a felony of the first degree.

(D) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and also includes employees of the department of rehabilitation and correction who are authorized to carry weapons within the course and scope of their duties.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 147 v H 151. Eff 9-16-97.

Not analogous to former RC § 2911.01 (RS § 7076; 70 v 39; 73 v 20; 74 v 41; GC § 13104; 124 v 466; Bureau of Code Revision, 10-1-53; 129 v 344), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2911.02 Robbery.

(A) No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control;

(2) Inflict, attempt to inflict, or threaten to inflict physical harm on another;

(3) Use or threaten the immediate use of force against another.

(B) Whoever violates this section is guilty of robbery. A violation of division (A)(1) or (2) of this section is a felony

of the second degree. A violation of division (A)(3) of this section is a felony of the third degree.

(C) As used in this section:

(1) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(2) "Theft offense" has the same meaning as in section 2913.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

Not analogous to former RC § 2911.02 (RS § 7075; 59 v 193; 102 v 114; GC § 13105; 124 v 466; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 269.

§ 2911.10 Element of trespass clarified.

As used in sections 2911.11 to 2911.13 of the Revised Code, the element of trespass refers to a violation of section 2911.21 of the Revised Code.

HISTORY: 151 v H 96, § 1, eff. 8-3-06.

Not analogous to former RC § 2911.10 (GC § 13108-5, 13108-6; 111 v 258, 259; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[BURGLARY]

§ 2911.11 Aggravated burglary.

(A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:

(1) The offender inflicts, or attempts or threatens to inflict physical harm on another;

(2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

(B) Whoever violates this section is guilty of aggravated burglary, a felony of the first degree.

(C) As used in this section:

(1) "Occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

Not analogous to former RC § 2911.11 (RS § 7085; S&C 422; 50 v 132; 57 v 56; GC § 13115; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 269.

§ 2911.12 Burglary.

(A) No person, by force, stealth, or deception, shall do any of the following:

(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice

of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;

(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;

(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense;

(4) Trespass in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.

(B) As used in this section, "occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(C) Whoever violates this section is guilty of burglary. A violation of division (A)(1) or (2) of this section is a felony of the second degree. A violation of division (A)(3) of this section is a felony of the third degree. A violation of division (A)(4) of this section is a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 143 v H 837 (Eff 7-3-90); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

Not analogous to former RC § 2911.12 (RS § 7080; S&C 703; 70 v 40; GC § 13126; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 269.

§ 2911.13 Breaking and entering.

(A) No person by force, stealth, or deception, shall trespass in an unoccupied structure, with purpose to commit therein any theft offense, as defined in section 2913.01 of the Revised Code, or any felony.

(B) No person shall trespass on the land or premises of another, with purpose to commit a felony.

(C) Whoever violates this section is guilty of breaking and entering, a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2. Eff 7-1-96.

Not analogous to former RC § 2911.13 (RS §§ 7076-4—7076-6; 95 v 306; GC § 13130; 123 v 700; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[TRESPASS]

§ 2911.21 Criminal trespass.

(A) No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another;

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;

(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access

or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

(B) It is no defense to a charge under this section that the land or premises involved was owned, controlled, or in custody of a public agency.

(C) It is no defense to a charge under this section that the offender was authorized to enter or remain on the land or premises involved, when such authorization was secured by deception.

(D) Whoever violates this section is guilty of criminal trespass, a misdemeanor of the fourth degree.

(E) As used in this section, "land or premises" includes any land, building, structure, or place belonging to, controlled by, or in custody of another, and any separate enclosure or room, or portion thereof.

HISTORY: 134 v H 511. Eff 1-1-74; 150 v H 12, § 1, eff. 4-8-04.

The provisions of § 6, H.B. 12 (150 v —), read as follows:

SECTION 6. In amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.13, 2923.16, 2953.32, and 4749.10 of the Revised Code and in enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to defend the individual's person and the members of the individual's family;

(B) The fact that the right described in division (A) of this section predates the adoption of the United States Constitution, the adoption of the Ohio Constitution, and the enactment of all statutory laws by the General Assembly and may not be infringed by any enactment of the General Assembly.

The provisions of § 7, H.B. 12 (150 v —), read as follows:

SECTION 7. In enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code in this act and in amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.13, 2923.16, 2953.32, and 4749.10 of the Revised Code in this act relative to licenses to carry a concealed handgun, the General Assembly hereby declares that it is not its intent to declare or otherwise give the impression that, prior to the effective date of this act, an individual did not have an inalienable and fundamental right, or a right under the Ohio Constitution or the United States Constitution, to carry a concealed handgun or other firearm for the defense of the individual's person or a member of the individual's family while engaged in lawful activity. Further, the General Assembly declares that it is not its intent to invalidate any prior convictions for violating any section of the Revised Code or a municipal ordinance prior to the effective date of this act or to prevent the prosecution of any violation committed prior to the effective date of this act.

The provisions of § 9, H.B. 12 (150 v —), read as follows:

SECTION 9. The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly in amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2953.32, and 4749.10 and enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township

may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

The provisions of § 10, H.B. 12 (150 v —), read as follows:

SECTION 10. If any provision of sections 1547.69, 2911.21, 2913.02, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2929.14, 2953.32, and 4749.10 of the Revised Code, as amended by this act, any provision of sections 109.69, 109.731, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, and 2923.1213 of the Revised Code, as enacted by this act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable.

Not analogous to former RC § 2911.21 (RS §§ 7076-1, 7076-2; 84 v 213; GC § 13162; 109 v 406; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2911.21.1] § 2911.211 Aggravated trespass.

(A) No person shall enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him.

(B) Whoever violates this section is guilty of aggravated trespass, a misdemeanor of the first degree.

HISTORY: 144 v H 536. **EFF** 11-5-92.

§ 2911.23 Criminal trespass on place of public amusement.

(A) As used in this section, "place of public amusement" means a stadium, theater, or other facility, whether licensed or not, at which a live performance, sporting event, or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.

(B) No person, without privilege to do so, shall knowingly enter or remain on any restricted portion of a place of public amusement and, as a result of that conduct, interrupt or cause the delay of the live performance, sporting event, or other activity taking place at the place of public amusement after a printed written notice has been given as provided in division (D)(1) of this section that the general public is restricted from access to that restricted portion of the place of public amusement. A restricted portion of a place of public amusement may include, but is not limited to, a playing field, an athletic surface, or a stage located at the place of public amusement.

(C) An owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement may use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event, or other activity taking place at the place of public amusement. This division does not pro-

vide immunity from criminal liability for any use of force beyond reasonable force by an owner or lessee of a place of public amusement, an agent of either the owner or lessee, or a performer or participant at a place of public amusement.

(D)(1) Notice has been given that the general public is restricted from access to a portion of a place of public amusement if a printed written notice of the restricted access has been conspicuously posted or exhibited at the entrance to that portion of the place of public amusement. If a printed written notice is posted or exhibited as described in this division regarding a portion of a place of public amusement, in addition to that posting or exhibition, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by either of the following means:

(a) By notifying the person personally, either orally or in writing, that access to that portion of the place of public amusement is restricted;

(b) By broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the place of public amusement is restricted.

(2) If notice that the general public is restricted from access to a portion of a place of public amusement is provided by the posting or exhibition of a printed written notice as described in division (D)(1) of this section, the state, in a criminal prosecution for a violation of division (B) of this section, is not required to prove that the defendant received actual notice that the general public is restricted from access to a portion of a place of public amusement.

(E)(1) Whoever violates division (B) of this section is guilty of criminal trespass on a place of public amusement, a misdemeanor of the first degree.

(2) In addition to any jail term, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(1) of this section, a court may require an offender who violates this section to perform not less than thirty and not more than one hundred twenty hours of supervised community service work.

HISTORY: 151 v H 96, § 1, eff. 5-3-06.

Not analogous to former RC § 2911.23 (RS §§ 4355a, 7069-5; 78 v 242; 83 v 162; GC §§ 13129, 13147, 13162-1; 109 v 406; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[SAFECRACKING]

§ 2911.31 Safecracking.

(A) No person, with purpose to commit an offense, shall knowingly enter, force an entrance into, or tamper with any vault, safe, or strongbox.

(B) Whoever violates this section is guilty of safecracking, a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2. **EFF** 7-1-96.

Not analogous to former RC § 2911.31 (RS § 3184c; 86 v 374; 95 v 210; 97 v 499; GC § 13180; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2907.12 (RS § 6835-1; 95 v 122; GC § 12440; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2911.32 Tampering with coin machines.

(A) No person, with purpose to commit theft or to defraud, shall knowingly enter, force an entrance into, tamper with, or insert any part of an instrument into any coin machine.

(B) Whoever violates this section is guilty of tampering with coin machines, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section or of any theft offense as defined in section 2913.01 of the Revised Code, tampering with coin machines is a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2911.32 (RS § 3231-5; 86 v 121; GC § 13181; 107 v 181; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2907.12.1 (132 v H 656), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

CHAPTER 2913: THEFT AND FRAUD

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2913.51 Receiving stolen property.

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2913.61 Value of stolen property.

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[IN GENERAL]

§ 2913.01 Definitions.

As used in this chapter, unless the context requires that a term be given a different meaning:

(A) "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

(B) "Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

(C) "Deprive" means to do any of the following:

(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) Dispose of property so as to make it unlikely that the owner will recover it;

(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

(D) "Owner" means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.

(E) "Services" include labor, personal services, professional services, public utility services including wireless service as defined in division (F)(1) of section 4931.40 of the Revised Code, common carrier services, and food, drink, transportation, entertainment, and cable television services and, for purposes of section 2913.04 of the Revised Code, include cable services as defined in that section.

(F) "Writing" means any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, typewritten, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification.

(G) "Forge" means to fabricate or create, in whole or in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce, or otherwise

purport to authenticate any writing, when the writing in fact is not authenticated by that conduct.

(H) "Utter" means to issue, publish, transfer, use, put or send into circulation, deliver, or display.

(I) "Coin machine" means any mechanical or electronic device designed to do both of the following:

(1) Receive a coin, bill, or token made for that purpose;

(2) In return for the insertion or deposit of a coin, bill, or token, automatically dispense property, provide a service, or grant a license.

(J) "Slug" means an object that, by virtue of its size, shape, composition, or other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill, or token made for that purpose.

(K) "Theft offense" means any of the following:

(1) A violation of section 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041 [2913.04.1], 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, former section 2913.47 or 2913.48, or section 2913.51, 2915.05, or 2921.41 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state, or of the United States, substantially equivalent to any section listed in division (K)(1) of this section or a violation of section 2913.41, 2913.81, or 2915.06 of the Revised Code as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state, or of the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (K)(1), (2), or (3) of this section.

(L) "Computer services" includes, but is not limited to, the use of a computer system, computer network, computer program, data that is prepared for computer use, or data that is contained within a computer system or computer network.

(M) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature.

(N) "Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks.

(O) "Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

(P) "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data.

(Q) "Computer software" means computer programs, procedures, and other documentation associated with the operation of a computer system.

(R) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network. For purposes of section 2913.47 of the Revised Code, "data" has the additional meaning set forth in division (A) of that section.

(S) "Cable television service" means any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

(T) "Gain access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network, or any cable service or cable system both as defined in section 2913.04 of the Revised Code.

(U) "Credit card" includes, but is not limited to, a card, code, device, or other means of access to a customer's account for the purpose of obtaining money, property, labor, or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine, or a cash dispensing machine. It also includes a county procurement card issued under section 301.29 of the Revised Code.

(V) "Electronic fund transfer" has the same meaning as in 92 Stat. 3728, 15 U.S.C.A. 1693a, as amended.

(W) "Rented property" means personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the rentee generally controls the duration of possession of the property, within any applicable minimum or maximum term; and the amount of consideration generally is determined by the duration of possession of the property.

(X) "Telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method.

(Y) "Telecommunications device" means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

(Z) "Telecommunications service" means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.

(AA) "Counterfeit telecommunications device" means a telecommunications device that, alone or with another telecommunications device, has been altered, constructed, manufactured, or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service or information service without the authority or consent of the provider of the telecommunications service or information service.

"Counterfeit telecommunications device" includes, but is not limited to, a clone telephone, clone microchip, tumbler telephone, or tumbler microchip; a wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of telecommunications service or information service without immediate detection; or a device, equipment, hardware, or software designed for, or capable of, altering or changing the electronic serial number in a wireless telephone.

(BB)(1) "Information service" means, subject to division (BB)(2) of this section, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including, but not limited to, electronic publishing.

(2) "Information service" does not include any use of a capability of a type described in division (BB)(1) of this section for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(CC) "Elderly person" means a person who is sixty-five years of age or older.

(DD) "Disabled adult" means a person who is eighteen years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least twelve months without any present indication of recovery from the impairment, or who is eighteen years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.

(EE) "Firearm" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(FF) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(GG) "Dangerous drug" has the same meaning as in section 4729.01 of the Revised Code.

(HH) "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(II)(1) "Computer hacking" means any of the following:

(a) Gaining access or attempting to gain access to all or part of a computer, computer system, or a computer network without express or implied authorization with the intent to defraud or with intent to commit a crime;

(b) Misusing computer or network services including, but not limited to, mail transfer programs, file transfer programs, proxy servers, and web servers by performing functions not authorized by the owner of the computer, computer system, or computer network or other person authorized to give consent. As used in this division, "misuse of computer and network services" includes, but is not limited to, the unauthorized use of any of the following:

(i) Mail transfer programs to send mail to persons other than the authorized users of that computer or computer network;

(ii) File transfer program proxy services or proxy servers to access other computers, computer systems, or computer networks;

(iii) Web servers to redirect users to other web pages or web servers.

(c)(i) Subject to division (II)(1)(c)(ii) of this section, using a group of computer programs commonly known as

"port scanners" or "probes" to intentionally access any computer, computer system, or computer network without the permission of the owner of the computer, computer system, or computer network or other person authorized to give consent. The group of computer programs referred to in this division includes, but is not limited to, those computer programs that use a computer network to access a computer, computer system, or another computer network to determine any of the following: the presence or types of computers or computer systems on a network; the computer network's facilities and capabilities; the availability of computer or network services; the presence or versions of computer software including, but not limited to, operating systems, computer services, or computer contaminants; the presence of a known computer software deficiency that can be used to gain unauthorized access to a computer, computer system, or computer network; or any other information about a computer, computer system, or computer network not necessary for the normal and lawful operation of the computer initiating the access.

(ii) The group of computer programs referred to in division (II)(1)(c)(i) of this section does not include standard computer software used for the normal operation, administration, management, and test of a computer, computer system, or computer network including, but not limited to, domain name services, mail transfer services, and other operating system services, computer programs commonly called "ping," "tcpdump," and "traceroute" and other network monitoring and management computer software, and computer programs commonly known as "nslookup" and "whois" and other systems administration computer software.

(d) The intentional use of a computer, computer system, or a computer network in a manner that exceeds any right or permission granted by the owner of the computer, computer system, or computer network or other person authorized to give consent.

(2) "Computer hacking" does not include the introduction of a computer contaminant, as defined in section 2909.02 of the Revised Code, into a computer, computer system, computer program, or computer network.

(JJ) "Police dog or horse" has the same meaning as in section 2921.321 [2921.32.1] of the Revised Code.

(KK) "Anhydrous ammonia" is a compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the manner described in this division. Anhydrous ammonia is one part nitrogen to three parts hydrogen (NH₃). Anhydrous ammonia by weight is fourteen parts nitrogen to three parts hydrogen, which is approximately eighty-two per cent nitrogen to eighteen per cent hydrogen.

(LL) "Assistance dog" has the same meaning as in section 955.011 [955.01.1] of the Revised Code.

(MM) "Federally licensed firearms dealer" has the same meaning as in section 5502.63 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v H 437 (Eff 7-21-82); 140 v H 97 (Eff 3-20-84); 140 v S 183 (Eff 9-26-84); 141 v H 340 (Eff 5-20-86); 141 v H 49 (Eff 6-26-86); 142 v H 182 (Eff 7-7-87); 143 v H 347 (Eff 7-18-90); 146 v S 2 (Eff 7-1-96); 146 v S 277 (Eff 3-31-97); 147 v H 565 (Eff 3-30-99); 148 v H 2 (Eff 11-10-99); 149 v H 327, Eff 7-8-2002; 150 v S 82, § 1, eff. 2-12-04; 150 v S 146, § 1, eff. 9-23-04; 150 v H 369, § 1, eff. 11-26-04; 150 v H 536, § 1, eff. 4-15-05; 150 v H 361, § 1, eff. 5-6-05; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

The effective date is set by § 812.03 of 151 v H 530.

The provisions of § 831.03 of 151 v H 530 read in part as follows:

SECTION 831.03. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 2913.01 of the Revised Code as amended by Am. Sub. H.B. 361, Am. Sub. H.B. 369, Sub. H.B. 536, and Am. Sub. S.B. 146, all of the 125th General Assembly.

The finding in this section takes effect at the same time as the section referenced in the finding takes effect.

The provisions of § 3 of H.B. 536 (150 v —) read as follows:

SECTION 3. Section 2913.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 369 and Am. Sub. S.B. 146 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Not analogous to former RC § 2913.01 (RS § 7091; S&S 264; S&C 409; 73 v 59; GC § 13083; 101 v 206; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[THEFT]

§ 2913.02 Theft.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(B)(1) Whoever violates this section is guilty of theft.

(2) Except as otherwise provided in this division or division (B)(3), (4), (5), (6), (7), or (8) of this section, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of this section is theft, a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars, a violation of this section is grand theft, a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more and is less than five hundred thousand dollars, a violation of this section is aggravated theft, a felony of the third degree. If the value of the property or services is five hundred thousand dollars or more and is less than one million dollars, a violation of this section is aggravated theft, a felony of the second degree. If the value of the property or services stolen is one million dollars or more, a violation of this section is aggravated

theft of one million dollars or more, a felony of the first degree.

(3) Except as otherwise provided in division (B)(4), (5), or (6), (7), or (8) of this section, if the victim of the offense is an elderly person or disabled adult, a violation of this section is theft from an elderly person or disabled adult, and division (B)(3) of this section applies. Except as otherwise provided in this division, theft from an elderly person or disabled adult is a felony of the fifth degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars, theft from an elderly person or disabled adult is a felony of the fourth degree. If the value of the property or services stolen is five thousand dollars or more and is less than twenty-five thousand dollars, theft from an elderly person or disabled adult is a felony of the third degree. If the value of the property or services stolen is twenty-five thousand dollars or more and is less than one hundred thousand dollars, theft from an elderly person or disabled adult is a felony of the second degree. If the value of the property or services stolen is one hundred thousand dollars or more, theft from an elderly person or disabled adult is a felony of the first degree.

(4) If the property stolen is a firearm or dangerous ordnance, a violation of this section is grand theft. Except as otherwise provided in this division, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the third degree, and there is a presumption in favor of the court imposing a prison term for the offense. If the firearm or dangerous ordnance was stolen from a federally licensed firearms dealer, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the first degree. The offender shall serve a prison term imposed for grand theft when the property stolen is a firearm or dangerous ordnance consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(5) If the property stolen is a motor vehicle, a violation of this section is grand theft of a motor vehicle, a felony of the fourth degree.

(6) If the property stolen is any dangerous drug, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree.

(7) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, a violation of this section is theft of a police dog or horse or an assistance dog, a felony of the third degree.

(8) If the property stolen is anhydrous ammonia, a violation of this section is theft of anhydrous ammonia, a felony of the third degree.

(9) In addition to the penalties described in division (B)(2) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(a) Unless division (B)(9)(b) of this section applies, suspend for not more than six months the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(b) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (B)(9)(a) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, provided that the suspension shall be for at least six months.

(C) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (B)(9) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Chapter 4510. of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 138 v S 191 (Eff 6-20-80); 139 v S 199 (Eff 1-1-83); 140 v H 632 (Eff 3-28-85); 141 v H 49 (Eff 6-26-86); 143 v H 347 (Eff 7-18-90); 143 v S 258 (Eff 11-20-90); 146 v H 4 (Eff 11-9-95); 146 v S 2 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v H 2, Eff 11-10-99; 150 v H 7, § 1, eff. 9-16-03; 150 v H 179, § 1, eff. 3-9-04; 150 v H 12, § 1, eff. 4-8-04; 150 v H 369, § 1, eff. 11-26-04; 150 v H 536, § 1, eff. 4-15-05; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

The effective date is set by § 812.03 of 151 v H 530.

The provisions of § 3 of H.B. 369 (150 v —) read as follows:

SECTION 3. Section 2913.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 7, Am. Sub. H.B. 12, and Sub. H.B. 179, all of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 10, H.B. 12 (150 v —), read as follows:

SECTION 10. If any provision of sections 1547.69, 2911.21, 2913.02, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2929.14, 2953.32, and 4749.10 of the Revised Code, as amended by this act, any provision of sections 109.69, 109.731, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, and 2923.1213 of the Revised Code, as enacted by this act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable.

The provisions of § 3, H.B. 179 (150 v —), read as follows:

SECTION 3. The General Assembly declares that the sections of the Revised Code that regulate persons who leave the premises of establishments at which gasoline is offered for retail sale without the person making full payment for gasoline that was dispensed at that establishment, including section 2913.02 of the Revised Code, are general laws that completely fill the field of regulation of that nature. Any municipal ordinance that prohibits establishments at which gasoline is offered for retail sale from requiring the prepayment of gasoline is in conflict with those general laws.

Not analogous to former RC § 2913.02 (RS § 7092; 71 v 3; GC § 13084; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2913.03 Unauthorized use of a vehicle.

(A) No person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(B) No person shall knowingly use or operate an aircraft, motor vehicle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent, and either remove it from this state or keep possession of it for more than forty-eight hours.

(C) The following are affirmative defenses to a charge under this section:

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that the actor was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

(D)(1) Whoever violates this section is guilty of unauthorized use of a vehicle.

(2) Except as otherwise provided in division (D)(4) of this section, a violation of division (A) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, a violation of division (B) of this section is a felony of the fifth degree.

(4) If the victim of the offense is an elderly person or disabled adult and if the victim incurs a loss as a result of the violation, a violation of division (A) or (B) of this section is whichever of the following is applicable:

(a) Except as otherwise provided in division (D)(4)(b), (c), (d), or (e)† of this section, a felony of the fifth degree;

(b) If the loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(c) If the loss to the victim is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(d) If the loss to the victim is twenty-five thousand dollars or more, a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 148 v H 2, Eff 11-10-99.

† So in enrolled bill, division (D)(4)(a). There is no division (D)(4)(e).

Not analogous to former RC § 2913.03 (RS § 7092a; 81 v 165; GC § 13085; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2913.04 Unauthorized use of property; computer, cable, or telecommunication property or service.

(A) No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent.

(B) No person, in any manner and by any means, including, but not limited to, computer hacking, shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent.

(C) No person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or

disseminate information gained from access to the law enforcement automated database system created pursuant to section 5503.10 of the Revised Code without the consent of, or beyond the scope of the express or implied consent of, the chair of the law enforcement automated data system steering committee.

(D) The affirmative defenses contained in division (C) of section 2913.03 of the Revised Code are affirmative defenses to a charge under this section.

(E)(1) Whoever violates division (A) of this section is guilty of unauthorized use of property.

(2) Except as otherwise provided in division (E)(3) or (4) of this section, unauthorized use of property is a misdemeanor of the fourth degree.

(3) Except as otherwise provided in division (E)(4) of this section, if unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable:

(a) Except as otherwise provided in division (E)(3)(b), (c), or (d) of this section, a misdemeanor of the first degree.

(b) If the value of the property or services or the loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fifth degree.

(c) If the value of the property or services or the loss to the victim is five thousand dollars or more and is less than one hundred thousand dollars, a felony of the fourth degree.

(d) If the value of the property or services or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.

(4) If the victim of the offense is an elderly person or disabled adult, unauthorized use of property is whichever of the following is applicable:

(a) Except as otherwise provided in division (E)(4)(b), (c), or (d) of this section, a felony of the fifth degree;

(b) If the value of the property or services or loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(c) If the value of the property or services or loss to the victim is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(d) If the value of the property or services or loss to the victim is twenty-five thousand dollars or more, a felony of the second degree.

(F)(1) Whoever violates division (B) of this section is guilty of unauthorized use of computer, cable, or telecommunication property, and shall be punished as provided in division (F)(2), (3), or (4) of this section.

(2) Except as otherwise provided in division (F)(3) or (4) of this section, unauthorized use of computer, cable, or telecommunication property is a felony of the fifth degree.

(3) Except as otherwise provided in division (F)(4) of this section, if unauthorized use of computer, cable, or telecommunication property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, for obtaining money, property, or services by false or fraudulent pretenses, or for committing any other criminal offense, unauthorized use of computer, cable, or telecommunication property is whichever of the following is applicable:

(a) Except as otherwise provided in division (F)(3)(b) of this section, if the value of the property or services involved or the loss to the victim is five thousand dollars

or more and less than one hundred thousand dollars, a felony of the fourth degree;

(b) If the value of the property or services involved or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.

(4) If the victim of the offense is an elderly person or disabled adult, unauthorized use of computer, cable, or telecommunication property is whichever of the following is applicable:

(a) Except as otherwise provided in division (F)(4)(b), (c), or (d) of this section, a felony of the fifth degree;

(b) If the value of the property or services or loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(c) If the value of the property or services or loss to the victim is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(d) If the value of the property or services or loss to the victim is twenty-five thousand dollars or more, a felony of the second degree.

(G) Whoever violates division (C) of this section is guilty of unauthorized use of the law enforcement automated database system, a felony of the fifth degree.

(H) As used in this section:

(1) "Cable operator" means any person or group of persons that does either of the following:

(a) Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system;

(b) Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

(2) "Cable service" means any of the following:

(a) The one-way transmission to subscribers of video programming or of information that a cable operator makes available to all subscribers generally;

(b) Subscriber interaction, if any, that is required for the selection or use of video programming or of information that a cable operator makes available to all subscribers generally, both as described in division (H)(2)(a) of this section;

(c) Any cable television service.

(3) "Cable system" means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. "Cable system" does not include any of the following:

(a) Any facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) Any facility that serves subscribers without using any public right-of-way;

(c) Any facility of a common carrier that, under 47 U.S.C.A. 522(7)(c), is excluded from the term "cable system" as defined in 47 U.S.C.A. 522(7);

(d) Any open video system that complies with 47 U.S.C.A. 573;

(e) Any facility of any electric utility used solely for operating its electric utility system.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 49 (Eff 6-26-86); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v H 565 (Eff 3-30-99); 148 v H 2 (Eff 11-10-99); 149 v H 327, Eff 7-8-2002; 150 v H 12, § 1, eff. 4-8-04; 150 v S 146, § 1, eff. 9-23-04.

Not analogous to former RC § 2913.04 (RS § 7093; S&S 57; 64 v 128; 66 v 99; 70 v 156; GC § 13086; Bureau of Code Revision, 10-1-53; 129 v 1594), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2913.04.1] § 2913.041 Possession or sale of unauthorized cable television device.

(A) No person shall knowingly possess any device, including any instrument, apparatus, computer chip, equipment, decoder, descrambler, converter, software, or other device specially adapted, modified, or remanufactured for gaining access to cable television service, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the cable television service.

(B) No person shall knowingly sell, distribute, or manufacture any device, including any instrument, apparatus, computer chip, equipment, decoder, descrambler, converter, software, or other device specially adapted, modified, or remanufactured for gaining access to cable television service, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the cable television service.

(C) Whoever violates division (A) of this section is guilty of possession of an unauthorized device, a felony of the fifth degree. Whoever violates division (B) of this section is guilty of sale of an unauthorized device, a felony of the fourth degree.

(D) A person commits a separate violation of this section with regard to each device that is sold, distributed, manufactured, or possessed in violation of division (A) or (B) of this section.

HISTORY: 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2913.05 Telecommunications fraud.

(A) No person, having devised a scheme to defraud, shall knowingly disseminate, transmit, or cause to be disseminated or transmitted by means of a wire, radio, satellite, telecommunication, telecommunications device, or telecommunications service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.

(B) Whoever violates this section is guilty of telecommunications fraud. Except as otherwise provided in this division, telecommunications fraud is a felony of the fifth degree. If the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is five thousand dollars or more but less than one hundred thousand dollars, telecommunications fraud is a felony of the fourth degree. If the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is one hundred thousand dollars or more, telecommunications fraud is a felony of the third degree.

HISTORY: 147 v H 565. Eff 3-30-99.

Not analogous to former RC § 2913.05 (RS § 7094; S & S 57; 64 v 128, §§ 7, 8; 66 v 99, § 1; 70 v 156, § 2; GC § 13087; 114 v 119, § 1; Bureau of Code Revision, 10-1-53; 129 v 1594, § 1), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2913.06 Unlawful use of telecommunications device.

(A) No person shall knowingly manufacture, possess, deliver, offer to deliver, or advertise a counterfeit telecommunications device with purpose to use it criminally.

(B) No person shall knowingly manufacture, possess, deliver, offer to deliver, or advertise a counterfeit tele-

communications device with purpose to use that device or to allow that device to be used, or knowing or having reason to know that another person may use that device, to do any of the following:

(1) Obtain or attempt to obtain telecommunications service or information service with purpose to avoid a lawful charge for that service or aid or cause another person to obtain or attempt to obtain telecommunications service or information service with purpose to avoid a lawful charge for that service;

(2) Conceal the existence, place of origin, or destination of a telecommunications service or information service.

(C) Whoever violates this section is guilty of unlawful use of a telecommunications device, a felony of the fifth degree.

(D) This section does not prohibit or restrict a person who holds an amateur service license issued by the federal communications commission from possessing a radio receiver or transceiver that is intended primarily or exclusively for use in the amateur radio service and is used for lawful purposes.

(E) This section does not preclude a person from disputing charges imposed for telecommunications service or information service by the provider of that service.

HISTORY: 147 v H 565. Eff 3-30-99.

Not analogous to former RC § 2913.06 (RS § 7095; 67 v 17, § 1; GC § 13088; Bureau of Code Revision, 10-1-53; 127 v 1039 (1095), § 1), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2913.07 Motion picture piracy.

(A) As used in this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology existing on, or developed after, the effective date of this section.

(2) "Facility" means a movie theater.

(B) No person, without the written consent of the owner or lessee of the facility and of the licensor of the motion picture, shall knowingly operate an audiovisual recording function of a device in a facility in which a motion picture is being shown.

(C) Whoever violates division (B) of this section is guilty of motion picture piracy, a misdemeanor of the first degree on the first offense and a felony of the fifth degree on each subsequent offense.

(D) This section does not prohibit or restrict a lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the government of this state or a political subdivision of this state, or of the federal government, when acting in an official capacity, from operating an audiovisual recording function of a device in any facility in which a motion picture is being shown.

(E) Division (B) of this section does not limit or affect the application of any other prohibition in the Revised Code. Any act that is a violation of both division (B) of this section and another provision of the Revised Code may be prosecuted under this section, under the other provision of the Revised Code, or under both this section and the other provision of the Revised Code.

HISTORY: 150 v H 179, § 1, eff. 3-9-04; 150 v S 57, § 1, eff. 3-9-04.

Not analogous to former RC § 2913.07 (RS §§ 7094—7096; S&C 454; S&S 57, 286; 56 v 86; 62 v 179; 64 v 128; 66 v 99; 67 v 17; 70 v

156; GC §§ 13087—13089; 114 v 119; Bureau of Code Revision, 10-1-53; 127 v 1039(1095); 129 v 1594), repealed, 134 v H 511, eff. 1-1-74.

The provisions of § 3, H.B. 57 (150 v —), read as follows:

SECTION 3. The amendment by this act of section 2913.07 of the Revised Code is contingent upon Sub. H.B. 179 of the 125th General Assembly becoming law in the same form as it passed the Senate and was concurred in by the House of Representatives.

[PASSING BAD CHECKS]

§ 2913.11 Passing bad checks.

(A) As used in this section:

(1) "Check" includes any form of debit from a demand deposit account, including, but not limited to any of the following:

(a) A check, bill of exchange, draft, order of withdrawal, or similar negotiable or non-negotiable instrument;

(b) An electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearing house transaction.

(2) "Issue a check" means causing any form of debit from a demand deposit account.

(B) No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.

(C) For purposes of this section, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored if either of the following occurs:

(1) The drawer had no account with the drawee at the time of issue or the stated date, whichever is later;

(2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within thirty days after issue or the stated date, whichever is later, and the liability of the drawer, indorser, or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor.

(D) For purposes of this section, a person who issues or transfers a check, bill of exchange, or other draft is presumed to have the purpose to defraud if the drawer fails to comply with section 1349.16 of the Revised Code by doing any of the following when opening a checking account intended for personal, family, or household purposes at a financial institution:

(1) Falsely stating that the drawer has not been issued a valid driver's or commercial driver's license or identification card issued under section 4507.50 of the Revised Code;

(2) Furnishing such license or card, or another identification document that contains false information;

(3) Making a false statement with respect to the drawer's current address or any additional relevant information reasonably required by the financial institution.

(E) In determining the value of the payment for purposes of division (F) of this section, the court may aggregate all checks and other negotiable instruments that the offender issued or transferred or caused to be issued or transferred in violation of division (A) of this

section within a period of one hundred eighty consecutive days.

(F) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this division, passing bad checks is a misdemeanor of the first degree. If the check or checks or other negotiable instrument or instruments are issued or transferred to a single vendor or single other person for the payment of five hundred dollars or more but less than five thousand dollars or if the check or checks or other negotiable instrument or instruments are issued or transferred to multiple vendors or persons for the payment of one thousand dollars or more but less than five thousand dollars, passing bad checks is a felony of the fifth degree. If the check or checks or other negotiable instrument or instruments are for the payment of five thousand dollars or more but less than one hundred thousand dollars, passing bad checks is a felony of the fourth degree. If the check or checks or other negotiable instrument or instruments are for the payment of one hundred thousand dollars or more, passing bad checks is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 141 v H 49 (Eff 6-26-86); 143 v H 711 (Eff 10-16-90); 146 v S 2, Eff 7-1-96; 150 v H 401, § 1, eff. 5-18-05.

Not analogous to former RC § 2913.11 (GC § 13097-1; 115 v 46; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff. 1-1-74.

Analogous to former RC § 2911.11.1 (132 v S 97), repealed 134 v H 511, § 2, eff. 1-1-74.

The effective date is set by section 6 of SB 2.

[MISUSE OF CREDIT CARDS]

§ 2913.21 Misuse of credit cards.

(A) No person shall do any of the following:

(1) Practice deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon;

(2) Knowingly buy or sell a credit card from or to a person other than the issuer.

(B) No person, with purpose to defraud, shall do any of the following:

(1) Obtain control over a credit card as security for a debt;

(2) Obtain property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law;

(3) Furnish property or services upon presentation of a credit card, knowing that the card is being used in violation of law;

(4) Represent or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

(C) No person, with purpose to violate this section, shall receive, possess, control, or dispose of a credit card.

(D)(1) Whoever violates this section is guilty of misuse of credit cards.

(2) Except as otherwise provided in division (D)(4) of this section, a violation of division (A), (B)(1), or (C) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in this division or division (D)(4) of this section, a violation of division

(B)(2), (3), or (4) of this section is a misdemeanor of the first degree. If the cumulative retail value of the property and services involved in one or more violations of division (B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of ninety consecutive days commencing on the date of the first violation, is five hundred dollars or more and is less than five thousand dollars, misuse of credit cards in violation of any of those divisions is a felony of the fifth degree. If the cumulative retail value of the property and services involved in one or more violations of division (B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of ninety consecutive days commencing on the date of the first violation, is five thousand dollars or more and is less than one hundred thousand dollars, misuse of credit cards in violation of any of those divisions is a felony of the fourth degree. If the cumulative retail value of the property and services involved in one or more violations of division (B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of ninety consecutive days commencing on the date of the first violation, is one hundred thousand dollars or more, misuse of credit cards in violation of any of those divisions is a felony of the third degree.

(4) If the victim of the offense is an elderly person or disabled adult, and if the offense involves a violation of division (B)(1) or (2) of this section, division (D)(4) of this section applies. Except as otherwise provided in division (D)(4) of this section, a violation of division (B)(1) or (2) of this section is a felony of the fifth degree. If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is five hundred dollars or more and is less than five thousand dollars, a violation of either of those divisions is a felony of the fourth degree. If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is five thousand dollars or more and is less than twenty-five thousand dollars, a violation of either of those divisions is a felony of the third degree. If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is twenty-five thousand dollars or more, a violation of either of those divisions is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v S 289 (Eff 5-23-78); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 141 v H 49 (Eff 6-26-86); 146 v S 2 (Eff 7-1-96); 148 v H 2. Eff 11-10-99.

Analogous to former RC § 2907.20.1 (133 v S 346; 134 v S 302), repealed 134 v H 511, § 2, eff 1-1-74.

[FORGERY]

§ 2913.31 Forgery; identification card offenses.

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Forge any writing of another without the other person's authority;

(2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another

who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;

(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

(B) No person shall knowingly do either of the following:

(1) Forge an identification card;

(2) Sell or otherwise distribute a card that purports to be an identification card, knowing it to have been forged.

As used in this division, "identification card" means a card that includes personal information or characteristics of an individual, a purpose of which is to establish the identity of the bearer described on the card, whether the words "identity," "identification," "identification card," or other similar words appear on the card.

(C)(1)(a) Whoever violates division (A) of this section is guilty of forgery.

(b) Except as otherwise provided in this division or division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss, forgery is one of the following:

(i) If the value of the property or services or the loss to the victim is five thousand dollars or more and is less than one hundred thousand dollars, a felony of the fourth degree;

(ii) If the value of the property or services or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.

(c) If the victim of the offense is an elderly person or disabled adult, division (C)(1)(c) of this section applies to the forgery. Except as otherwise provided in division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or if the victim suffers a loss, forgery is one of the following:

(i) If the value of the property or services or the loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(ii) If the value of the property or services or the loss to the victim is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(iii) If the value of the property or services or the loss to the victim is twenty-five thousand dollars or more, a felony of the second degree.

(2) Whoever violates division (B) of this section is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this division, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (B) of this section, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree and, in addition, the court shall impose upon the offender a fine of not less than two hundred fifty dollars.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v H 162 (Eff 11-11-91); 146 v S 2 (Eff 7-1-96); 148 v H 2. Eff 11-10-99.

§ 2913.32 Criminal simulation.

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Make or alter any object so that it appears to have value because of antiquity, rarity, curiosity, source, or authorship, which it does not in fact possess;

(2) Practice deception in making, retouching, editing, or reproducing any photograph, movie film, video tape, phonograph record, or recording tape;

(3) Falsely or fraudulently make, simulate, forge, alter, or counterfeit any wrapper, label, stamp, cork, or cap prescribed by the liquor control commission under Chapters 4301. and 4303. of the Revised Code, falsely or fraudulently cause to be made, simulated, forged, altered, or counterfeited any wrapper, label, stamp, cork, or cap prescribed by the liquor control commission under Chapters 4301. and 4303. of the Revised Code.

(4) Utter, or possess with purpose to utter, any object that the person knows to have been simulated as provided in division (A)(1), (2), or (3) of this section.

(B) Whoever violates this section is guilty of criminal simulation. Except as otherwise provided in this division, criminal simulation is a misdemeanor of the first degree. If the loss to the victim is five hundred dollars or more and is less than five thousand dollars, criminal simulation is a felony of the fifth degree. If the loss to the victim is five thousand dollars or more and is less than one hundred thousand dollars, criminal simulation is a felony of the fourth degree. If the loss to the victim is one hundred thousand dollars or more, criminal simulation is a felony of the third degree.

HISTORY: 134 v H 511 (EFF 1-1-74); 146 v S 2. EFF 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2913.33 Making or using slugs.

(A) No person shall do any of the following:

(1) Insert or deposit a slug in a coin machine, with purpose to defraud;

(2) Make, possess, or dispose of a slug, with purpose of enabling another to defraud by inserting or depositing it in a coin machine.

(B) Whoever violates this section is guilty of making or using slugs, a misdemeanor of the second degree.

HISTORY: 134 v H 511. EFF 1-1-74.

§ 2913.34 Trademark counterfeiting.

(A) No person shall knowingly do any of the following:

(1) Attach, affix, or otherwise use a counterfeit mark in connection with the manufacture of goods or services, whether or not the goods or services are intended for sale or resale;

(2) Possess, sell, or offer for sale tools, machines, instruments, materials, articles, or other items of personal property with the knowledge that they are designed for the production or reproduction of counterfeit marks;

(3) Purchase or otherwise acquire goods, and keep or otherwise have the goods in the person's possession, with the knowledge that a counterfeit mark is attached to, affixed to, or otherwise used in connection with the goods and with the intent to sell or otherwise dispose of the goods;

(4) Sell, offer for sale, or otherwise dispose of goods with the knowledge that a counterfeit mark is attached to,

affixed to, or otherwise used in connection with the goods;

(5) Sell, offer for sale, or otherwise provide services with the knowledge that a counterfeit mark is used in connection with that sale, offer for sale, or other provision of the services.

(B)(1) Whoever violates this section is guilty of trademark counterfeiting.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a felony of the fifth degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is five thousand dollars or more but less than one hundred thousand dollars or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is more than one hundred units but less than one thousand units, a violation of division (A)(1) of this section is a felony of the fourth degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one hundred thousand dollars or more or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one thousand units or more, a violation of division (A)(1) of this section is a felony of the third degree.

(3) Except as otherwise provided in this division, a violation of division (A)(2) of this section is a misdemeanor of the first degree. If the circumstances of the violation indicate that the tools, machines, instruments, materials, articles, or other items of personal property involved in the violation were intended for use in the commission of a felony, a violation of division (A)(2) of this section is a felony of the fifth degree.

(4) Except as otherwise provided in this division, a violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which the counterfeit mark is attached, affixed, or otherwise used in the offense is five hundred dollars or more but less than five thousand dollars, a violation of division (A)(3), (4), or (5) of this section is a felony of the fifth degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is five thousand dollars or more but less than one hundred thousand dollars or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is more than one hundred units but less than one thousand units, a violation of division (A)(3), (4), or (5) of this section is a felony of the fourth degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one hundred thousand dollars or more or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one thousand units or more, a violation of division (A)(3), (4), or (5) of this section is a felony of the third degree.

(C) A defendant may assert as an affirmative defense to a charge of a violation of this section defenses, affirmative defenses, and limitations on remedies that would be available in a civil, criminal, or administrative action or proceeding under the "Lanham Act," 60 Stat. 427-443 (1946), 15 U.S.C. 1051-1127, as amended, "The Trademark Counterfeiting Act of 1984," 98 Stat. 2178, 18 U.S.C. 2320, as amended, Chapter 1329. or another section of the Revised Code, or common law.

(D)(1) Law enforcement officers may seize pursuant to Criminal Rule 41 or Chapter 2933. or 2981. of the Revised Code either of the following:

(a) Goods to which or in connection with which a person attached, affixed, otherwise used, or intended to attach, affix, or otherwise use a counterfeit mark in violation of this section;

(b) Tools, machines, instruments, materials, articles, vehicles, or other items of personal property that are possessed, sold, offered for sale, or used in a violation of this section or in an attempt to commit or complicity in the commission of a violation of this section.

(2) Notwithstanding any contrary provision of Chapter 2981. of the Revised Code, if a person is convicted of or pleads guilty to a violation of this section, an attempt to violate this section, or complicity in a violation of this section, the court involved shall declare that the goods described in division (D)(1)(a) of this section and the personal property described in division (D)(1)(b) of this section are contraband and are forfeited. Prior to the court's entry of judgment under Criminal Rule 32, the owner of a registered trademark or service mark that is the subject of the counterfeit mark may recommend a manner in which the forfeited goods and forfeited personal property should be disposed of. If that owner makes a timely recommendation of a manner of disposition, the court is not bound by the recommendation. If that owner makes a timely recommendation of a manner of disposition, the court may include in its entry of judgment an order that requires appropriate persons to dispose of the forfeited goods and forfeited personal property in the recommended manner. If that owner fails to make a timely recommendation of a manner of disposition or if that owner makes a timely recommendation of the manner of disposition but the court determines to not follow the recommendation, the court shall include in its entry of judgment an order that requires the law enforcement agency that employs the law enforcement officer who seized the forfeited goods or the forfeited personal property to destroy them or cause their destruction.

(E) This section does not affect the rights of an owner of a trademark or a service mark, or the enforcement in a civil action or in administrative proceedings of the rights of an owner of a trademark or a service mark, under the "Lanham Act," 60 Stat. 427-443 (1946), 15 U.S.C. 1051-1127, as amended, "The Trademark Counterfeiting Act of 1984," 92 Stat. 2178, 18 U.S.C. 2320, as amended, Chapter 1329. or another section of the Revised Code, or common law.

(F) As used in this section:

(1)(a) Except as provided in division (F)(1)(b) of this section, "counterfeit mark" means a spurious trademark or a spurious service mark that satisfies both of the following:

(i) It is identical with or substantially indistinguishable from a mark that is registered on the principal register in the United States patent and trademark office for the same goods or services as the goods or services to which

or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used or from a mark that is registered with the secretary of state pursuant to sections 1329.54 to 1329.67 of the Revised Code for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used, and the owner of the registration uses the registered mark, whether or not the offender knows that the mark is registered in a manner described in division (F)(1)(a)(i) of this section.

(ii) Its use is likely to cause confusion or mistake or to deceive other persons.

(b) "Counterfeit mark" does not include a mark or other designation that is attached to, affixed to, or otherwise used in connection with goods or services if the holder of the right to use the mark or other designation authorizes the manufacturer, producer, or vendor of those goods or services to attach, affix, or otherwise use the mark or other designation in connection with those goods or services at the time of their manufacture, production, or sale.

(2) "Cumulative sales price" means the product of the lowest single unit sales price charged or sought to be charged by an offender for goods to which or in connection with which a counterfeit mark is attached, affixed, or otherwise used or of the lowest single service transaction price charged or sought to be charged by an offender for services in connection with which a counterfeit mark is used, multiplied by the total number of those goods or services, whether or not units of goods are sold or are in an offender's possession, custody, or control.

(3) "Registered trademark or service mark" means a trademark or service mark that is registered in a manner described in division (F)(1) of this section.

(4) "Trademark" and "service mark" have the same meanings as in section 1329.54 of the Revised Code.

HISTORY: 146 v S 277. Eff 3-31-97; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

[FRAUDS]

§ 2913.40 Medicaid fraud.

(A) As used in this section:

(1) "Statement or representation" means any oral, written, electronic, electronic impulse, or magnetic communication that is used to identify an item of goods or a service for which reimbursement may be made under the medical assistance program or that states income and expense and is or may be used to determine a rate of reimbursement under the medical assistance program.

(2) "Medical assistance program" means the program established by the department of job and family services to provide medical assistance under section 5111.01 of the Revised Code and the medicaid program of Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

(3) "Provider" means any person who has signed a provider agreement with the department of job and family services to provide goods or services pursuant to the medical assistance program or any person who has signed an agreement with a party to such a provider agreement under which the person agrees to provide

goods or services that are reimbursable under the medical assistance program.

(4) "Provider agreement" means an oral or written agreement between the department of job and family services and a person in which the person agrees to provide goods or services under the medical assistance program.

(5) "Recipient" means any individual who receives goods or services from a provider under the medical assistance program.

(6) "Records" means any medical, professional, financial, or business records relating to the treatment or care of any recipient, to goods or services provided to any recipient, or to rates paid for goods or services provided to any recipient and any records that are required by the rules of the director of job and family services to be kept for the medical assistance program.

(B) No person shall knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the medical assistance program.

(C) No person, with purpose to commit fraud or knowing that the person is facilitating a fraud, shall do either of the following:

(1) Contrary to the terms of the person's provider agreement, charge, solicit, accept, or receive for goods or services that the person provides under the medical assistance program any property, money, or other consideration in addition to the amount of reimbursement under the medical assistance program and the person's provider agreement for the goods or services and any cost-sharing expenses authorized by section 5111.0112 [5111.01.12] of the Revised Code or rules adopted pursuant to section 5111.01, 5111.011 [5111.01.1], or 5111.02 of the Revised Code.

(2) Solicit, offer, or receive any remuneration, other than any cost-sharing expenses authorized by section 5111.0112 [5111.01.12] of the Revised Code or rules adopted under section 5111.01, 5111.011 [5111.01.1], or 5111.02 of the Revised Code, in cash or in kind, including, but not limited to, a kickback or rebate, in connection with the furnishing of goods or services for which whole or partial reimbursement is or may be made under the medical assistance program.

(D) No person, having submitted a claim for or provided goods or services under the medical assistance program, shall do either of the following for a period of at least six years after a reimbursement pursuant to that claim, or a reimbursement for those goods or services, is received under the medical assistance program:

(1) Knowingly alter, falsify, destroy, conceal, or remove any records that are necessary to fully disclose the nature of all goods or services for which the claim was submitted, or for which reimbursement was received, by the person;

(2) Knowingly alter, falsify, destroy, conceal, or remove any records that are necessary to disclose fully all income and expenditures upon which rates of reimbursements were based for the person.

(E) Whoever violates this section is guilty of medicaid fraud. Except as otherwise provided in this division, medicaid fraud is a misdemeanor of the first degree. If the value of property, services, or funds obtained in violation of this section is five hundred dollars or more and is less than five thousand dollars, medicaid fraud is a felony of the fifth degree. If the value of property, services, or funds obtained in violation of this section is five thousand dollars or more and is less than one

hundred thousand dollars, medicaid fraud is a felony of the fourth degree. If the value of the property, services, or funds obtained in violation of this section is one hundred thousand dollars or more, medicaid fraud is a felony of the third degree.

(F) Upon application of the governmental agency, office, or other entity that conducted the investigation and prosecution in a case under this section, the court shall order any person who is convicted of a violation of this section for receiving any reimbursement for furnishing goods or services under the medical assistance program to which the person is not entitled to pay to the applicant its cost of investigating and prosecuting the case. The costs of investigation and prosecution that a defendant is ordered to pay pursuant to this division shall be in addition to any other penalties for the receipt of that reimbursement that are provided in this section, section 5111.03 of the Revised Code, or any other provision of law.

(G) The provisions of this section are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this section.

HISTORY: 141 v H 340 (Eff 5-20-86); 143 v H 672 (Eff 11-14-89); 146 v S 2 (Eff 7-1-96); 148 v H 471 (Eff 7-1-2000); 149 v S 261. Eff 6-5-2002; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is set by § 812.03 of 152 v H 119.

The effective date is set by § 612.03 of 151 v H 66.

The effective date is set by section 37 of SB 261.

[§ 2913.40.1] § 2913.401 Medicaid eligibility fraud.

(A) As used in this section:

(1) "Medicaid benefits" means benefits under the medical assistance program established under Chapter 5111. of the Revised Code.

(2) "Property" means any real or personal property or other asset in which a person has any legal title or interest.

(B) No person shall knowingly do any of the following in an application for medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive medicaid benefits:

(1) Make or cause to be made a false or misleading statement;

(2) Conceal an interest in property;

(3)(a) Except as provided in division (B)(3)(b) of this section, fail to disclose a transfer of property that occurred during the period beginning thirty-six months before submission of the application or document and ending on the date the application or document was submitted;

(b) Fail to disclose a transfer of property that occurred during the period beginning sixty months before submission of the application or document and ending on the date the application or document was submitted and that was made to an irrevocable trust a portion of which is not distributable to the applicant for medicaid benefits or the recipient of medicaid benefits or to a revocable trust.

(C)(1) Whoever violates this section is guilty of medicaid eligibility fraud. Except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the value of the medicaid benefits paid as a result of the violation is five hundred dollars or more

and is less than five thousand dollars, a violation of this section is a felony of the fifth degree. If the value of the medicaid benefits paid as a result of the violation is five thousand dollars or more and is less than one hundred thousand dollars, a violation of this section is a felony of the fourth degree. If the value of the medicaid benefits paid as a result of the violation is one hundred thousand dollars or more, a violation of this section is a felony of the third degree.

(2) In addition to imposing a sentence under division (C)(1) of this section, the court shall order that a person who is guilty of medicaid eligibility fraud make restitution in the full amount of any medicaid benefits paid on behalf of an applicant for or recipient of medicaid benefits for which the applicant or recipient was not eligible, plus interest at the rate applicable to judgments on unreimbursed amounts from the date on which the benefits were paid to the date on which restitution is made.

(3) The remedies and penalties provided in this section are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this section.

(D) This section does not apply to a person who fully disclosed in an application for medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive medicaid benefits all of the interests in property of the applicant for or recipient of medicaid benefits, all transfers of property by the applicant for or recipient of medicaid benefits, and the circumstances of all those transfers.

(E) Any amounts of medicaid benefits recovered as restitution under this section and any interest on those amounts shall be credited to the general revenue fund, and any applicable federal share shall be returned to the appropriate agency or department of the United States.

HISTORY: 151 v H 66, § 101.01, eff. 9-29-05.

The effective date is set by § 612.03 of 151 v H 66.

§ 2913.41 Defrauding a livery or hostelery.

In a prosecution of a person for a theft offense that alleges that the person, with purpose to defraud or knowing that the person was facilitating a fraud, hired or rented an aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, kept or operated any of the same that has been hired or rented, or engaged accommodations at a hotel, motel, inn, campground, or other hostelery, it is prima-facie evidence of purpose to defraud if the person did any of the following:

(A) Used deception to induce the rental agency to furnish the person with the aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, or used deception to induce the hostelery to furnish the person with accommodations;

(B) Hired or rented any aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, or engaged accommodations, knowing the person was without sufficient means to pay the hire or rental;

(C) Absconded without paying the hire or rental;

(D) Knowingly failed to pay the hire or rental as required by the contract of hire or rental, without reasonable excuse for such failure;

(E) Knowingly failed to return hired or rented prop-

erty as required by the contract of hire or rental, without reasonable excuse for the failure.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 148 v H 263, Eff 4-10-2001.

§ 2913.42 Tampering with records.

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

(B)(1) Whoever violates this section is guilty of tampering with records.

(2) Except as provided in division (B)(4) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:

(a) If division (B)(2)(b) of this section does not apply, a misdemeanor of the first degree;

(b) If the writing or record is a will unrevoked at the time of the offense, a felony of the fifth degree.

(3) Except as provided in division (B)(4) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(3)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the value of the data or computer software involved in the offense or the loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fifth degree;

(c) If the value of the data or computer software involved in the offense or the loss to the victim is five thousand dollars or more and is less than one hundred thousand dollars, a felony of the fourth degree;

(d) If the value of the data or computer software involved in the offense or the loss to the victim is one hundred thousand dollars or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is five thousand dollars or more, a felony of the third degree.

(4) If the writing, data, computer software, or record is kept by or belongs to a local, state, or federal governmental entity, a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 49 (Eff 6-26-86); 141 v H 428 (Eff 12-23-86); 146 v S 2 (Eff 7-1-96); 147 v H 565, Eff 3-30-99.

[§ 2913.42.1] § 2913.421 Illegally transmitting multiple commercial electronic mail messages; unauthorized access of computer.

(A) As used in this section:

(1) "Computer," "computer network," and "computer system" have the same meanings as in section 2913.01 of the Revised Code.

(2) "Commercial electronic mail message" means any electronic mail message the primary purpose of which is

the commercial advertisement or promotion of a commercial product or service, including content on an internet web site operated for a commercial purpose, but does not include a transactional or relationship message. The inclusion of a reference to a commercial entity or a link to the web site of a commercial entity does not, by itself, cause that message to be treated as a commercial electronic mail message for the purpose of this section, if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the internet.

(4) "Electronic mail," "originating address," and "receiving address" have the same meanings as in section 2307.64 of the Revised Code.

(5) "Electronic mail message" means each electronic mail addressed to a discrete addressee.

(6) "Electronic mail service provider" means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail and that provides to the public electronic mail accounts or online user accounts from which electronic mail may be sent.

(7) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name, the originating address, and technical information that authenticates the sender of an electronic mail message for computer network security or computer network management purposes.

(8) "Initiate the transmission" or "initiated" means to originate or transmit a commercial electronic mail message or to procure the origination or transmission of that message, regardless of whether the message reaches its intended recipients, but does not include actions that constitute routine conveyance of such message.

(9) "Internet" has the same meaning as in section 341.42 of the Revised Code.

(10) "Internet protocol address" means the string of numbers by which locations on the internet are identified by routers or other computers connected to the internet.

(11) "Materially falsify" means to alter or conceal in a manner that would impair the ability of a recipient of an electronic mail message, an electronic mail service provider processing an electronic mail message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to the person that initiated the electronic mail message or to investigate an alleged violation of this section.

(12) "Multiple" means more than ten commercial electronic mail messages during a twenty-four-hour period, more than one hundred commercial electronic mail messages during a thirty-day period, or more than one thousand commercial electronic mail messages during a one-year period.

(13) "Recipient" means a person who receives a commercial electronic mail message at any one of the following receiving addresses:

(a) A receiving address furnished by an electronic mail service provider that bills for furnishing and maintaining that receiving address to a mailing address within this state;

(b) A receiving address ordinarily accessed from a computer located within this state or by a person domiciled within this state;

(c) Any other receiving address with respect to which this section can be imposed consistent with the United States Constitution.

(14) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automated technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(15) "Transactional or relationship message" means an electronic mail message the primary purpose of which is to do any of the following:

(a) Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(b) Provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(c) Provide notification concerning a change in the terms or features of, a change in the recipient's standing or status with respect to; or, at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(d) Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled;

(e) Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall do any of the following:

(1) Knowingly use a computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients or any electronic mail service provider, as to the origin of those messages;

(2) Knowingly and materially falsify header information in multiple commercial electronic mail messages and purposely initiate the transmission of those messages;

(3) Knowingly register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names and purposely initiate the transmission of multiple commercial electronic mail messages from one, or any combination, of those accounts or domain names;

(4) Knowingly falsely represent the right to use five or more internet protocol addresses, and purposely initiate the transmission of multiple commercial electronic mail messages from those addresses.

(C)(1) Whoever violates division (B) of this section is guilty of illegally transmitting multiple commercial electronic mail messages. Except as otherwise provided in division (C)(2) or (E) of this section, illegally transmitting multiple commercial electronic mail messages is a felony of the fifth degree.

(2) Illegally transmitting multiple commercial electronic mail messages is a felony of the fourth degree if any of the following apply:

(a) Regarding a violation of division (B)(3) of this section, the offender, using information that materially falsifies the identity of the actual registrant, knowingly registers for twenty or more electronic mail accounts or

online user accounts or ten or more domain names, and purposely initiates, or conspires to initiate, the transmission of multiple commercial electronic mail messages from the accounts or domain names.

(b) Regarding any violation of division (B) of this section, the volume of commercial electronic mail messages the offender transmitted in committing the violation exceeds two hundred and fifty during any twenty-four-hour period, two thousand five hundred during any thirty-day period, or twenty-five thousand during any one-year period.

(c) Regarding any violation of division (B) of this section, during any one-year period the aggregate loss to the victim or victims of the violation is five hundred dollars or more, or during any one-year period the aggregate value of the property or services obtained by any offender as a result of the violation is five hundred dollars or more.

(d) Regarding any violation of division (B) of this section, the offender committed the violation with three or more other persons with respect to whom the offender was the organizer or leader of the activity that resulted in the violation.

(e) Regarding any violation of division (B) of this section, the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses to which the commercial electronic mail message was transmitted, if that offender knew that the electronic mail addresses of the recipients were obtained using an automated means from an internet web site or proprietary online service operated by another person, and that web site or online service included, at the time the electronic mail addresses were obtained, a notice stating that the operator of that web site or online service will not transfer addresses maintained by that web site or online service to any other party for the purposes of initiating the transmission of, or enabling others to initiate the transmission of, electronic mail messages.

(f) Regarding any violation of division (B) of this section, the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses of the recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(D)(1) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall knowingly access a computer without authorization and purposely initiate the transmission of multiple commercial electronic mail messages from or through the computer.

(2) Except as otherwise provided in division (E) of this section, whoever violates division (D)(1) of this section is guilty of unauthorized access of a computer, a felony of the fourth degree.

(E) Illegally transmitting multiple commercial electronic mail messages and unauthorized access of a computer in violation of this section are felonies of the third degree if the offender previously has been convicted of a violation of this section, or a violation of a law of another state or the United States regarding the transmission of electronic mail messages or unauthorized access to a computer, or if the offender committed the violation of this section in the furtherance of a felony.

(F)(1) The attorney general or an electronic mail service provider that is injured by a violation of this section may bring a civil action in an appropriate court of common pleas of this state seeking relief from any person whose conduct violated this section. The civil action may

be commenced at any time within one year of the date after the act that is the basis of the civil action.

(2) In a civil action brought by the attorney general pursuant to division (F)(1) of this section for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief. The court also may impose a civil penalty against the offender, as the court considers just, in an amount that is the lesser of: (a) twenty-five thousand dollars for each day a violation occurs, or (b) not less than two dollars but not more than eight dollars for each commercial electronic mail message initiated in violation of this section.

(3) In a civil action brought by an electronic mail service provider pursuant to division (F)(1) of this section for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief, and also may award damages in an amount equal to the greater of the following:

(a) The sum of the actual damages incurred by the electronic mail service provider as a result of a violation of this section, plus any receipts of the offender that are attributable to a violation of this section and that were not taken into account in computing actual damages;

(b) Statutory damages, as the court considers just, in an amount that is the lesser of: (i) twenty-five thousand dollars for each day a violation occurs, or (ii) not less than two dollars but not more than eight dollars for each commercial electronic mail message initiated in violation of this section.

(4) In assessing damages awarded under division (F)(3) of this section, the court may consider whether the offender has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent the violation, or the violation occurred despite commercially reasonable efforts to maintain the practices and procedures established.

(G) Any equipment, software, or other technology of a person who violates this section that is used or intended to be used in the commission of a violation of this section, and any real or personal property that constitutes or is traceable to the gross proceeds obtained from the commission of a violation of this section, is contraband and is subject to seizure and forfeiture pursuant to sections 2933.42 and 2933.43 of the Revised Code.

(H) The attorney general may bring a civil action, pursuant to the "CAN-SPAM Act of 2003," Pub. L. No. 108-187, 117 Stat. 2699, 15 U.S.C. 7701 et seq., on behalf of the residents of the state in a district court of the United States that has jurisdiction for a violation of the CAN-SPAM Act of 2003, but the attorney general shall not bring a civil action under both this division and division (F) of this section. If a federal court dismisses a civil action brought under this division for reasons other than upon the merits, a civil action may be brought under division (F) of this section in the appropriate court of common pleas of this state.

(I) Nothing in this section shall be construed:

(1) To require an electronic mail service provider to block, transmit, route, relay, handle, or store certain types of electronic mail messages;

(2) To prevent or limit, in any way, an electronic mail service provider from adopting a policy regarding electronic mail, including a policy of declining to transmit certain types of electronic mail messages, or from enforcing such policy through technical means, through con-

tract, or pursuant to any remedy available under any other federal, state, or local criminal or civil law;

(3) To render lawful any policy adopted under division (I)(2) of this section that is unlawful under any other law.

HISTORY: 150 v H 383, § 1, eff. 5-6-05.

[§ 2913.42.1] § 2913.421 Illegally transmitting multiple commercial electronic mail messages; unauthorized access of computer.

(A) As used in this section:

(1) "Computer," "computer network," and "computer system" have the same meanings as in section 2913.01 of the Revised Code.

(2) "Commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, including content on an internet web site operated for a commercial purpose, but does not include a transactional or relationship message. The inclusion of a reference to a commercial entity or a link to the web site of a commercial entity does not, by itself, cause that message to be treated as a commercial electronic mail message for the purpose of this section, if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the internet.

(4) "Electronic mail," "originating address," and "receiving address" have the same meanings as in section 2307.64 of the Revised Code.

(5) "Electronic mail message" means each electronic mail addressed to a discrete addressee.

(6) "Electronic mail service provider" means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail and that provides to the public electronic mail accounts or online user accounts from which electronic mail may be sent.

(7) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name, the originating address, and technical information that authenticates the sender of an electronic mail message for computer network security or computer network management purposes.

(8) "Initiate the transmission" or "initiated" means to originate or transmit a commercial electronic mail message or to procure the origination or transmission of that message, regardless of whether the message reaches its intended recipients, but does not include actions that constitute routine conveyance of such message.

(9) "Internet" has the same meaning as in section 341.42 of the Revised Code.

(10) "Internet protocol address" means the string of numbers by which locations on the internet are identified by routers or other computers connected to the internet.

(11) "Materially falsify" means to alter or conceal in a manner that would impair the ability of a recipient of an electronic mail message, an electronic mail service provider processing an electronic mail message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond

to the person that initiated the electronic mail message or to investigate an alleged violation of this section.

(12) "Multiple" means more than ten commercial electronic mail messages during a twenty-four-hour period, more than one hundred commercial electronic mail messages during a thirty-day period, or more than one thousand commercial electronic mail messages during a one-year period.

(13) "Recipient" means a person who receives a commercial electronic mail message at any one of the following receiving addresses:

(a) A receiving address furnished by an electronic mail service provider that bills for furnishing and maintaining that receiving address to a mailing address within this state;

(b) A receiving address ordinarily accessed from a computer located within this state or by a person domiciled within this state;

(c) Any other receiving address with respect to which this section can be imposed consistent with the United States Constitution.

(14) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automated technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(15) "Transactional or relationship message" means an electronic mail message the primary purpose of which is to do any of the following:

(a) Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(b) Provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(c) Provide notification concerning a change in the terms or features of; a change in the recipient's standing or status with respect to; or, at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(d) Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled;

(e) Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall do any of the following:

(1) Knowingly use a computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients or any electronic mail service provider, as to the origin of those messages;

(2) Knowingly and materially falsify header information in multiple commercial electronic mail messages and purposely initiate the transmission of those messages;

(3) Knowingly register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names and purposely initiate the transmission of multiple commercial electronic mail mes-

sages from one, or any combination, of those accounts or domain names;

(4) Knowingly falsely represent the right to use five or more internet protocol addresses, and purposely initiate the transmission of multiple commercial electronic mail messages from those addresses.

(C)(1) Whoever violates division (B) of this section is guilty of illegally transmitting multiple commercial electronic mail messages. Except as otherwise provided in division (C)(2) or (E) of this section, illegally transmitting multiple commercial electronic mail messages is a felony of the fifth degree.

(2) Illegally transmitting multiple commercial electronic mail messages is a felony of the fourth degree if any of the following apply:

(a) Regarding a violation of division (B)(3) of this section, the offender, using information that materially falsifies the identity of the actual registrant, knowingly registers for twenty or more electronic mail accounts or online user accounts or ten or more domain names, and purposely initiates, or conspires to initiate, the transmission of multiple commercial electronic mail messages from the accounts or domain names.

(b) Regarding any violation of division (B) of this section, the volume of commercial electronic mail messages the offender transmitted in committing the violation exceeds two hundred and fifty during any twenty-four-hour period, two thousand five hundred during any thirty-day period, or twenty-five thousand during any one-year period.

(c) Regarding any violation of division (B) of this section, during any one-year period the aggregate loss to the victim or victims of the violation is five hundred dollars or more, or during any one-year period the aggregate value of the property or services obtained by any offender as a result of the violation is five hundred dollars or more.

(d) Regarding any violation of division (B) of this section, the offender committed the violation with three or more other persons with respect to whom the offender was the organizer or leader of the activity that resulted in the violation.

(e) Regarding any violation of division (B) of this section, the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses to which the commercial electronic mail message was transmitted, if that offender knew that the electronic mail addresses of the recipients were obtained using an automated means from an internet web site or proprietary online service operated by another person, and that web site or online service included, at the time the electronic mail addresses were obtained, a notice stating that the operator of that web site or online service will not transfer addresses maintained by that web site or online service to any other party for the purposes of initiating the transmission of, or enabling others to initiate the transmission of, electronic mail messages.

(f) Regarding any violation of division (B) of this section, the offender knowingly assisted in the violation through the provision or selection of electronic mail addresses of the recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(D)(1) No person, with regard to commercial electronic mail messages sent from or to a computer in this state, shall knowingly access a computer without autho-

rization and purposely initiate the transmission of multiple commercial electronic mail messages from or through the computer.

(2) Except as otherwise provided in division (E) of this section, whoever violates division (D)(1) of this section is guilty of unauthorized access of a computer, a felony of the fourth degree.

(E) Illegally transmitting multiple commercial electronic mail messages and unauthorized access of a computer in violation of this section are felonies of the third degree if the offender previously has been convicted of a violation of this section, or a violation of a law of another state or the United States regarding the transmission of electronic mail messages or unauthorized access to a computer, or if the offender committed the violation of this section in the furtherance of a felony.

(F)(1) The attorney general or an electronic mail service provider that is injured by a violation of this section may bring a civil action in an appropriate court of common pleas of this state seeking relief from any person whose conduct violated this section. The civil action may be commenced at any time within one year of the date after the act that is the basis of the civil action.

(2) In a civil action brought by the attorney general pursuant to division (F)(1) of this section for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief. The court also may impose a civil penalty against the offender, as the court considers just, in an amount that is the lesser of: (a) twenty-five thousand dollars for each day a violation occurs, or (b) not less than two dollars but not more than eight dollars for each commercial electronic mail message initiated in violation of this section.

(3) In a civil action brought by an electronic mail service provider pursuant to division (F)(1) of this section for a violation of this section, the court may award temporary, preliminary, or permanent injunctive relief, and also may award damages in an amount equal to the greater of the following:

(a) The sum of the actual damages incurred by the electronic mail service provider as a result of a violation of this section, plus any receipts of the offender that are attributable to a violation of this section and that were not taken into account in computing actual damages;

(b) Statutory damages, as the court considers just, in an amount that is the lesser of: (i) twenty-five thousand dollars for each day a violation occurs, or (ii) not less than two dollars but not more than eight dollars for each commercial electronic mail message initiated in violation of this section.

(4) In assessing damages awarded under division (F)(3) of this section, the court may consider whether the offender has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent the violation, or the violation occurred despite commercially reasonable efforts to maintain the practices and procedures established.

(G) Any equipment, software, or other technology of a person who violates this section that is used or intended to be used in the commission of a violation of this section, and any real or personal property that constitutes or is traceable to the gross proceeds obtained from the commission of a violation of this section, is contraband and is subject to seizure and forfeiture pursuant to Chapter 2981. of the Revised Code.

(H) The attorney general may bring a civil action, pursuant to the "CAN-SPAM Act of 2003," Pub. L. No.

108-187, 117 Stat. 2699, 15 U.S.C. 7701 et seq., on behalf of the residents of the state in a district court of the United States that has jurisdiction for a violation of the CAN-SPAM Act of 2003, but the attorney general shall not bring a civil action under both this division and division (F) of this section. If a federal court dismisses a civil action brought under this division for reasons other than upon the merits, a civil action may be brought under division (F) of this section in the appropriate court of common pleas of this state.

(I) Nothing in this section shall be construed:

(1) To require an electronic mail service provider to block, transmit, route, relay, handle, or store certain types of electronic mail messages;

(2) To prevent or limit, in any way, an electronic mail service provider from adopting a policy regarding electronic mail, including a policy of declining to transmit certain types of electronic mail messages, or from enforcing such policy through technical means, through contract, or pursuant to any remedy available under any other federal, state, or local criminal or civil law;

(3) To render lawful any policy adopted under division (I)(2) of this section that is unlawful under any other law.

HISTORY: 150 v H 383, § 1, eff. 5-6-05; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

§ 2913.43 Securing writings by deception.

(A) No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.

(B)(1) Whoever violates this section is guilty of securing writings by deception.

(2) Except as otherwise provided in this division or division (B)(3) of this section, securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is five hundred dollars or more and less than five thousand dollars, securing writings by deception is a felony of the fifth degree. If the value of the property or the obligation involved is five thousand dollars or more and is less than one hundred thousand dollars, securing writings by deception is a felony of the fourth degree. If the value of the property or the obligation involved is one hundred thousand dollars or more, securing writings by deception is a felony of the third degree.

(3) If the victim of the offense is an elderly person or disabled adult, division (B)(3) of this section applies. Except as otherwise provided in division (B)(3) of this section, securing writings by deception is a felony of the fifth degree. If the value of the property or obligation involved is five hundred dollars or more and is less than five thousand dollars, securing writings by deception is a felony of the fourth degree. If the value of the property or obligation involved is five thousand dollars or more and is less than twenty-five thousand dollars, securing writings by deception is a felony of the third degree. If the value of the property or obligation involved is twenty-five thousand dollars or more, securing writings by deception is a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 141 v H 49 (Eff 6-26-86); 146 v S 2 (Eff 7-1-96); 148 v H 2. Eff 11-10-99.

Analogous to former RC § 2911.01 (RS § 7076; 70 v 39; 73 v 20; 74 v 41; GC § 13104; 124 v 466; Bureau of Code

Revision, 10-1-53; 129 v 344), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2913.44 Personating an officer.

(A) No person, with purpose to defraud or knowing that he is facilitating a fraud, or with purpose to induce another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator, or agent of any governmental agency.

(B) Whoever violates this section is guilty of personating an officer, a misdemeanor of the first degree.

HISTORY: 134 v H 511. Eff 1-1-74.

[§ 2913.44.1] § 2913.441 Law enforcement emblem display.

(A) No person who is not entitled to do so shall knowingly display on a motor vehicle the emblem of a law enforcement agency or an organization of law enforcement officers.

(B) Whoever violates this section is guilty of the unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, a minor misdemeanor.

HISTORY: 136 v H 1363. Eff 1-11-77.

§ 2913.45 Defrauding creditors.

(A) No person, with purpose to defraud one or more of the person's creditors, shall do any of the following:

(1) Remove, conceal, destroy, encumber, convey, or otherwise deal with any of the person's property;

(2) Misrepresent or refuse to disclose to a fiduciary appointed to administer or manage the person's affairs or estate, the existence, amount, or location of any of the person's property, or any other information regarding such property that the person is legally required to furnish to the fiduciary.

(B) Whoever violates this section is guilty of defrauding creditors. Except as otherwise provided in this division, defrauding creditors is a misdemeanor of the first degree. If the value of the property involved is five hundred dollars or more and is less than five thousand dollars, defrauding creditors is a felony of the fifth degree. If the value of the property involved is five thousand dollars or more and is less than one hundred thousand dollars, defrauding creditors is a felony of the fourth degree. If the value of the property involved is one hundred thousand dollars or more, defrauding creditors is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2913.46 Illegal use of food stamps or WIC program benefits.

(A)(1) As used in this section:

(a) "Electronically transferred benefit" means the transfer of food stamp program benefits or WIC program benefits through the use of an access device.

(b) "WIC program benefits" includes money, coupons, delivery verification receipts, other documents, food, or other property received directly or indirectly pursuant to

section 17 [of] the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C.A. 1786, as amended.

(c) "Access device" means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to section 5101.33 of the Revised Code and the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C.A. 2011 et seq., or any supplemental food program administered by any department of this state or any county or local agency pursuant to section 17 of the Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C.A. 1786, as amended. An "access device" may include an electronic debit card or other means authorized by section 5101.33 of the Revised Code.

(d) "Aggregate value of the food stamp coupons, WIC program benefits, and electronically transferred benefits involved in the violation" means the total face value of any food stamps, plus the total face value of WIC program coupons or delivery verification receipts, plus the total value of other WIC program benefits, plus the total value of any electronically transferred benefit or other access device, involved in the violation.

(e) "Total value of any electronically transferred benefit or other access device" means the total value of the payments, allotments, benefits, money, goods, or other things of value that may be obtained, or the total value of funds that may be transferred, by use of any electronically transferred benefit or other access device at the time of violation.

(2) If food stamp coupons, WIC program benefits, or electronically transferred benefits or other access devices of various values are used, transferred, bought, acquired, altered, purchased, possessed, presented for redemption, or transported in violation of this section over a period of twelve months, the course of conduct may be charged as one offense and the values of food stamp coupons, WIC program benefits, or any electronically transferred benefits or other access devices may be aggregated in determining the degree of the offense.

(B) No individual shall knowingly possess, buy, sell, use, alter, accept, or transfer food stamp coupons, WIC program benefits, or any electronically transferred benefit in any manner not authorized by the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C.A. 2011, as amended, or section 17 of the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C.A. 1786, as amended.

(C) No organization, as defined in division (D) of section 2901.23 of the Revised Code, shall do either of the following:

(1) Knowingly allow an employee or agent to sell, transfer, or trade items or services, the purchase of which is prohibited by the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C.A. 2011, as amended, or section 17 of the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C.A. 1786, as amended, in exchange for food stamp coupons, WIC program benefits, or any electronically transferred benefit;

(2) Negligently allow an employee or agent to sell, transfer, or exchange food stamp coupons, WIC program benefits, or any electronically transferred benefit for anything of value.

(D) Whoever violates this section is guilty of illegal use of food stamps or WIC program benefits. Except as otherwise provided in this division, illegal use of food stamps or WIC program benefits is a felony of the fifth

degree. If the aggregate value of the food stamp coupons, WIC program benefits, and electronically transferred benefits involved in the violation is five hundred dollars or more and is less than five thousand dollars, illegal use of food stamps or WIC program benefits is a felony of the fourth degree. If the aggregate value of the food stamp coupons, WIC program benefits, and electronically transferred benefits involved in the violation is five thousand dollars or more and is less than one hundred thousand dollars, illegal use of food stamps or WIC program benefits is a felony of the third degree. If the aggregate value of the food stamp coupons, WIC program benefits, and electronically transferred benefits involved in the violation is one hundred thousand dollars or more, illegal use of food stamps or WIC program benefits is a felony of the second degree.

HISTORY: 140 v H 291 (Eff 7-1-83); 146 v S 162 (Eff 10-29-95); 146 v H 239 (Eff 11-24-95); 146 v S 107 (Eff 5-8-96); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 293, Eff 9-26-96.

§ 2913.47 Insurance fraud.

(A) As used in this section:

(1) "Data" has the same meaning as in section 2913.01 of the Revised Code and additionally includes any other representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner.

(2) "Deceptive" means that a statement, in whole or in part, would cause another to be deceived because it contains a misleading representation, withholds information, prevents the acquisition of information, or by any other conduct, act, or omission creates, confirms, and perpetuates a false impression, including, but not limited to, a false impression as to law, value, state of mind, or other objective or subjective fact.

(3) "Insurer" means any person that is authorized to engage in the business of insurance in this state under Title XXXIX [39] of the Revised Code, the Ohio fair plan underwriting association created under section 3929.43 of the Revised Code, any health insuring corporation, and any legal entity that is self-insured and provides benefits to its employees or members.

(4) "Policy" means a policy, certificate, contract, or plan that is issued by an insurer.

(5) "Statement" includes, but is not limited to, any notice, letter, or memorandum; proof of loss; bill of lading; receipt for payment; invoice, account, or other financial statement; estimate of property damage; bill for services; diagnosis or prognosis; prescription; hospital, medical, or dental chart or other record; x-ray, photograph, videotape, or movie film; test result; other evidence of loss, injury, or expense; computer-generated document; and data in any form.

(B) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

(1) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive;

(2) Assist, aid, abet, solicit, procure, or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for

payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.

(C) Whoever violates this section is guilty of insurance fraud. Except as otherwise provided in this division, insurance fraud is a misdemeanor of the first degree. If the amount of the claim that is false or deceptive is five hundred dollars or more and is less than five thousand dollars, insurance fraud is a felony of the fifth degree. If the amount of the claim that is false or deceptive is five thousand dollars or more and is less than one hundred thousand dollars, insurance fraud is a felony of the fourth degree. If the amount of the claim that is false or deceptive is one hundred thousand dollars or more, insurance fraud is a felony of the third degree.

(D) This section shall not be construed to abrogate, waive, or modify division (A) of section 2317.02 of the Revised Code.

HISTORY: 143 v H 347 (Eff 7-18-90); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 67. Eff 6-4-97.

Not analogous to former RC § 2913.47 (140 v H 97), repealed 140 v H 632, § 2, eff 3-28-85.

§ 2913.48 Workers' compensation fraud.

(A) No person, with purpose to defraud or knowing that the person is facilitating a fraud shall do any of the following:

(1) Receive workers' compensation benefits to which the person is not entitled;

(2) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under Chapter 4121., 4123., 4127., or 4131. of the Revised Code or to secure workers' compensation benefits;

(3) Alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from, the bureau of workers' compensation, or a self-insuring employer under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;

(4) Enter into an agreement or conspiracy to defraud the bureau or a self-insuring employer by making or presenting or causing to be made or presented a false claim for workers' compensation benefits;

(5) Make or present or cause to be made or presented a false statement concerning manual codes, classification of employees, payroll, paid compensation, or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the bureau by an employer;

(6) Alter, forge, or create a workers' compensation certificate to falsely show current or correct workers' compensation coverage;

(7) Fail to secure or maintain workers' compensation coverage as required by Chapter 4123. of the Revised Code with the intent to defraud the bureau of workers' compensation.

(B) Whoever violates this section is guilty of workers' compensation fraud. Except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property,

or money stolen is five hundred dollars or more and is less than five thousand dollars, a violation of this section is a felony of the fifth degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is five thousand dollars or more and is less than one hundred thousand dollars, a violation of this section is a felony of the fourth degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is one hundred thousand dollars or more, a violation of this section is a felony of the third degree.

(C) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this section, the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided in the Revised Code or any other section of law.

(D) The remedies and penalties provided in this section are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this section.

(E) As used in this section:

(1) "False" means wholly or partially untrue or deceptive.

(2) "Goods" includes, but is not limited to, medical supplies, appliances, rehabilitative equipment, and any other apparatus or furnishing provided or used in the care, treatment, or rehabilitation of a claimant for workers' compensation benefits.

(3) "Services" includes, but is not limited to, any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the bureau as part of workers' compensation insurance coverage.

(4) "Claim" means any attempt to cause the bureau, an independent third party with whom the administrator or an employer contracts under section 4121.44 of the Revised Code, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

(5) "Employment" means participating in any trade, occupation, business, service, or profession for substantial gainful remuneration.

(6) "Employer," "employee," and "self-insuring employer" have the same meanings as in section 4123.01 of the Revised Code.

(7) "Remuneration" includes, but is not limited to, wages, commissions, rebates, and any other reward or consideration.

(8) "Statement" includes, but is not limited to, any oral, written, electronic, electronic impulse, or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement, or bill for services; a diagnosis, prognosis, prescription, hospital, medical, or dental chart or other record; and a computer generated document.

(9) "Records" means any medical, professional, financial, or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

(10) "Workers' compensation benefits" means any compensation or benefits payable under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

HISTORY: 145 v H 107 (Eff 10-20-93); 146 v S 2 (Eff 7-1-96); 147 v S 45 †; 151 v S 7, § 1, eff. 6-30-06.

† The amendments made by SB 45 (147 v.—) were rejected by the 11-4-97 referendum vote on Issue 2.

The provisions of § 3 of 151 v S 7 read as follows:

SECTION 3. This act applies to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on and after the effective date of this act, except that division (H) of section 4123.512 as amended by this act also applies to claims that are pending on the effective date of this act.

Not analogous to former RC § 2913.48 (140 v H 97), repealed 140 v H 632, § 2, eff 3-28-85.

§ 2913.49 Identity fraud.

(A) As used in this section, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, birth certificate, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.

(B) No person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following:

(1) Hold the person out to be the other person;

(2) Represent the other person's personal identifying information as the person's own personal identifying information.

(C) No person shall create, obtain, possess, or use the personal identifying information of any person with the intent to aid or abet another person in violating division (B) of this section.

(D) No person, with intent to defraud, shall permit another person to use the person's own personal identifying information.

(E) No person who is permitted to use another person's personal identifying information as described in division (D) of this section shall use, obtain, or possess the other person's personal identifying information with intent to defraud any person by doing any act identified in division (B)(1) or (2) of this section.

(F)(1) It is an affirmative defense to a charge under division (B) of this section that the person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary.

(2) It is an affirmative defense to a charge under division (B), (C), (D), or (E) of this section that either of the following applies:

(a) The person or entity using, obtaining, possessing, or creating the personal identifying information, or permitting it to be used is a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel and is using, obtaining, possessing, or creating the personal identifying information or permitting it to be used, with prior consent given as specified in this division, in a bona fide investigation, an information security evaluation, a pretext calling evaluation, or a

similar matter. The prior consent required under this division shall be given by the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used or, if the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used is deceased, by that deceased person's executor, or a member of that deceased person's family, or that deceased person's attorney. The prior consent required under this division may be given orally or in writing by the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used or that person's executor, or family member, or attorney.

(b) The personal identifying information was obtained, possessed, used, created, or permitted to be used for a lawful purpose, provided that division (F)(2)(b) of this section does not apply if the person or entity using, obtaining, possessing, or creating the personal identifying information or permitting it to be used is a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel that is using, obtaining, possessing, or creating the personnel identifying information or permitting it to be used in an investigation, an information security evaluation, a pretext calling evaluation, or similar matter.

(G) It is not a defense to a charge under this section that the person whose personal identifying information was obtained, possessed, used, created, or permitted to be used was deceased at the time of the offense.

(H)(1) If an offender commits a violation of division (B), (D), or (E) of this section and the violation occurs as part of a course of conduct involving other violations of division (B), (D), or (E) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (C) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I) of this section, may aggregate all credit, property, or services obtained or sought to be obtained by the offender and all debts or other legal obligations avoided or sought to be avoided by the offender in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(2) If an offender commits a violation of division (C) of this section and the violation occurs as part of a course of conduct involving other violations of division (C) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (B), (D), or (E) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I) of this section, may aggregate all credit, property, or services obtained or sought to be obtained by the person aided or abetted and all debts or other legal obligations avoided or sought to be avoided by the person aided or abetted in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(I)(1) Whoever violates this section is guilty of identity fraud.

(2) Except as otherwise provided in this division or division (I)(3) of this section, identity fraud is a felony of the fifth degree. If the value of the credit, property,

services, debt, or other legal obligation involved in the violation or course of conduct is five hundred dollars or more and is less than five thousand dollars, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the fourth degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five thousand dollars or more and is less than one hundred thousand dollars, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the third degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one hundred thousand dollars or more, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the second degree.

(3) If the victim of the offense is an elderly person or disabled adult, a violation of this section is identity fraud against an elderly person or disabled adult. Except as otherwise provided in this division, identity fraud against an elderly person or disabled adult is a felony of the fifth degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five hundred dollars or more and is less than five thousand dollars, identity fraud against an elderly person or disabled adult is a felony of the third degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five thousand dollars or more and is less than one hundred thousand dollars, identity fraud against an elderly person or disabled adult is a felony of the second degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one hundred thousand dollars or more, identity fraud against an elderly person or disabled adult is a felony of the first degree.

HISTORY: 148 v S 7 (Eff 8-25-99); 149 v H 309, Eff 9-27-2002; 151 v H 48, § 1, eff. 9-16-05.

[RECEIVING]

§ 2913.51 Receiving stolen property.

(A) No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(B) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(C) Whoever violates this section is guilty of receiving stolen property. Except as otherwise provided in this division, receiving stolen property is a misdemeanor of the first degree. If the value of the property involved is five hundred dollars or more and is less than five thousand dollars, if the property involved is any of the property listed in section 2913.71 of the Revised Code, receiving stolen property is a felony of the fifth degree. If the property involved is a motor vehicle, as defined in section 4501.01 of the Revised Code, if the property involved is a dangerous drug, as defined in section 4729.01 of the Revised Code, if the value of the property involved is five thousand dollars or more and is less than

one hundred thousand dollars, or if the property involved is a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code, receiving stolen property is a felony of the fourth degree. If the value of the property involved is one hundred thousand dollars or more, receiving stolen property is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 138 v S 191 (Eff 6-20-80); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 141 v H 49 (Eff 6-26-86); 146 v H 4 (Eff 11-9-95); 146 v S 2 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v S 64, Eff 10-29-99.

[VALUE]

§ 2913.61 Value of stolen property.

(A) When a person is charged with a theft offense, or with a violation of division (A)(1) of section 1716.14 of the Revised Code involving a victim who is an elderly person or disabled adult that involves property or services valued at five hundred dollars or more, property or services valued at five hundred dollars or more and less than five thousand dollars, property or services valued at five thousand dollars or more and less than twenty-five thousand dollars, property or services valued at twenty-five thousand dollars or more and less than one hundred thousand dollars, or property or services valued at one hundred thousand dollars or more, the jury or court trying the accused shall determine the value of the property or services as of the time of the offense and, if a guilty verdict is returned, shall return the finding of value as part of the verdict. In any case in which the jury or court determines that the value of the property or services at the time of the offense was five hundred dollars or more, it is unnecessary to find and return the exact value, and it is sufficient if the finding and return is to the effect that the value of the property or services involved was five hundred dollars or more and less than five thousand dollars, was five thousand dollars or more and less than twenty-five thousand dollars, was twenty-five thousand dollars or more and less than one hundred thousand dollars, or was one hundred thousand dollars or more.

(B) If more than one item of property or services is involved in a theft offense or in a violation of division (A)(1) of section 1716.14 of the Revised Code involving a victim who is an elderly person or disabled adult, the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property or services involved in the offense.

(C)(1) When a series of offenses under section 2913.02 of the Revised Code, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of section 1716.14, section 2913.02, 2913.03, or 2913.04, division (B)(1) or (2) of section 2913.21, or section 2913.31 or 2913.43 of the Revised Code involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under section 2913.02 of the Revised Code that involves a common course of conduct to defraud multiple victims,

all of the offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of section 1716.14, section 2913.02, 2913.03, or 2913.04, division (B)(1) or (2) of section 2913.21, or section 2913.31 or 2913.43 of the Revised Code, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) When a series of two or more offenses under section 2921.41 of the Revised Code is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses.

(4) In prosecuting a single offense under division (C)(1), (2), (3) of this section, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of section 2921.41 of the Revised Code in the offender's same employment, capacity, or relationship to another as described in division (C)(1) or (3) of this section, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in division (C)(2) of this section.

(D) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, is the amount that would compensate the owner for its loss.

(2) The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under division (D)(1) of this section and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality.

(3) The value of any real or personal property that is not covered under division (D)(1) or (2) of this section, and the value of services, is the fair market value of the property or services. As used in this section, "fair market value" is the money consideration that a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(E) Without limitation on the evidence that may be used to establish the value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima-facie evidence of its value.

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest market quotation prior to the offense is prima-facie evidence of the value of the security or commodity.

(3) When the property involved is livestock, poultry, or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima-facie evidence of the value of the livestock, poultry, or products.

(4) When the property involved is a negotiable instrument, the face value is prima-facie evidence of the value of the instrument.

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check, or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property is prima-facie evidence of the value of the instrument.

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token, or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services that may be received by the instrument is prima-facie evidence of the value of the instrument.

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping, or other services for which the rate is established by law, the duly established rate is prima-facie evidence of the value of the services.

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing, orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima-facie evidence of the value of the services.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 139 v H 269 (Eff 1-5-83); 146 v S 2 (Eff 7-1-96); 147 v H 565 (Eff 3-30-99); 148 v H 2 (Eff 11-10-99); 148 v S 2, § 3 (Eff 11-22-99); 148 v H 364. Eff 9-14-2000.

[AGGRAVATING CIRCUMSTANCES]

§ 2913.71 Degree of offense when certain property involved.

Regardless of the value of the property involved and regardless of whether the offender previously has been convicted of a theft offense, a violation of section 2913.02 or 2913.51 of the Revised Code is a felony of the fifth degree if the property involved is any of the following:

(A) A credit card;

(B) A printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

(C) A motor vehicle identification license plate as prescribed by section 4503.22 of the Revised Code, a temporary license placard or windshield sticker as prescribed by section 4503.182 [4503.18.2] of the Revised

Code, or any comparable license plate, placard, or sticker as prescribed by the applicable law of another state or the United States;†

(D) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by section 4505.07 of the Revised Code;

(E) A blank form for any license listed in section 4507.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 1 (Eff 8-26-77); 138 v S 191 (Eff 6-20-80); 140 v H 632 (Eff 3-28-85); 146 v H 4 (Eff 11-9-95); 146 v S 2, Eff 7-1-96.

† The provision in former RC § 2913.71(C) concerning a firearm or dangerous ordnance was moved to RC § 2913.02(B) in HB 4 (146 v —).

The effective date is set by section 6 of SB 2.

Comment, Legislative Service Commission

Section 2913.71 of the Revised Code is amended by this act [Sub. H.B. 4] and also by Am. Sub. S.B. 2 of the 121st General Assembly (effective July 1, 1996). Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2913.72 Evidence of intent to commit theft of rental property.

(A) Each of the following shall be considered evidence of an intent to commit theft of rented property:

(1) At the time of entering into the rental contract, the rentee presented the renter with identification that was materially false, fictitious, or not current with respect to name, address, place of employment, or other relevant information.

(2) After receiving a notice demanding the return of rented property as provided in division (B) of this section, the rentee neither returned the rented property nor made arrangements acceptable with the renter to return the rented property.

(B) To establish that a rentee has an intent to commit theft of rented property under division (A)(2) of this section, a renter may issue a notice to a rentee demanding the return of rented property. The renter shall mail the notice by certified mail, return receipt requested, to the rentee at the address the rentee gave when the rental contract was executed, or to the rentee at the last address the rentee or the rentee's agent furnished in writing to the renter.

(C) A demand for the return of rented property is not a prerequisite for the prosecution of a rentee for theft of rented property. The evidence specified in division (A) of this section does not constitute the only evidence that may be considered as evidence of intent to commit theft of rented property.

(D) As used in this section:

(1) "Renter" means a person who owns rented property.

(2) "Rentee" means a person who pays consideration to a renter for the use of rented property.

HISTORY: 146 v S 2, Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2913.73 Evidence of victim's lack of capacity to give consent.

In a prosecution for any alleged violation of a provision of this chapter, if the lack of consent of the victim is an element of the provision that allegedly was violated,

evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.

As used in this section, "lacks the capacity to consent" means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources.

HISTORY: 148 v H 2, Eff 11-10-99.

[MISCELLANEOUS OFFENSES]

§ 2913.82 Motor vehicle theft offender to pay towing or storage costs.

If a person is convicted of a theft offense that involves a motor vehicle, as defined in section 4501.01 of the Revised Code, or any major part of a motor vehicle, and if a local authority, as defined in section 4511.01 of the Revised Code, the owner of the vehicle or major part, or a person, acting on behalf of the owner, was required to pay any towing or storage fees prior to recovering possession of the motor vehicle or major part, the court that sentences the offender, as a part of its sentence, shall require the offender to repay the fees to the local authority, the owner, or the person who paid the fees on behalf of the owner.

As used in this section, "major part" has the same meaning as in the "Motor Vehicle Theft Law Enforcement Act of 1984," 98 Stat. 2754, 15 U.S.C. 2021(7), as amended.

HISTORY: 141 v H 546, Eff 3-25-87.

CHAPTER 2915: GAMBLING

Section

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- 2915.12 Bingo for amusement only.
- 2915.13 Veteran's, fraternal, or sporting organization conducting instant bingo.

§ 2915.01 Definitions.

As used in this chapter:

(A) "Bookmaking" means the business of receiving or paying off bets.

(B) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.

(D) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

(E) "Game of chance conducted for profit" means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(F) "Gambling device" means any of the following:

(1) A book, totalizer, or other equipment for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

(G) "Gambling offense" means any of the following:

(1) A violation of section 2915.02, 2915.03, 2915.04, 2915.05, 2915.07, 2915.08, 2915.081 [2915.08.1], 2915.082 [2915.08.2], 2915.09, 2915.091 [2915.09.1], 2915.092 [2915.09.2], 2915.10, or 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in division (G)(1) of this section or a violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (G)(1), (2), or (3) of this section.

(H) Except as otherwise provided in this chapter, "charitable organization" means any tax exempt religious, educational, veteran's, fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, historic railroad educational, youth athletic, amateur athletic, or youth athletic park organization. An organization is tax exempt if the organization is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, or if the organization is a sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(7) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firefighter's organization, shall have been in continuous

existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of section 2915.02 of the Revised Code. A charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization does not have to have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of section 2915.02 of the Revised Code.

(I) "Religious organization" means any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

(J) "Educational organization" means any organization within this state that is not organized for profit, the primary purpose of which is to educate and develop the capabilities of individuals through instruction by means of operating or contributing to the support of a school, academy, college, or university.

(K) "Veteran's organization" means any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit has been in continuous existence in this state for at least two years and incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this division, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least five thousand persons.

(L) "Volunteer firefighter's organization" means any organization of volunteer firefighters, as defined in section 146.01 of the Revised Code, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

(M) "Fraternal organization" means any society, order, state headquarters, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in this state for a period of five years.

(N) "Volunteer rescue service organization" means any organization of volunteers organized to function as an emergency medical service organization, as defined in section 4765.01 of the Revised Code.

(O) "Service organization" means either of the following:

(1) Any organization, not organized for profit, that is organized and operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect or those organized and operated exclusively to protect, or to contribute to the support of organizations or institutions organized and operated exclusively to protect, animals from inhumane treatment or provide immediate shelter to victims of domestic violence;

(2) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is an organization, not organized for profit, that is organized and operated primarily to provide, or to contribute to the support of organizations or institutions organized and operated primarily to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect.

(P) "Nonprofit medical organization" means either of the following:

(1) Any organization that has been incorporated as a nonprofit corporation for at least five years and that has continuously operated and will be operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, hospital, medical, research, or therapeutic services for the public;

(2) Any organization that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code, that has been incorporated as a nonprofit corporation for at least five years, and that has continuously operated and will be operated primarily to provide, or to contribute to the support of organizations or institutions organized and operated primarily to provide, hospital, medical, research, or therapeutic services for the public.

(Q) "Senior citizen's organization" means any private organization, not organized for profit, that is organized and operated exclusively to provide recreational or social services for persons who are fifty-five years of age or older and that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code.

(R) "Charitable bingo game" means any bingo game described in division (S)(1) or (2) of this section that is conducted by a charitable organization that has obtained a license pursuant to section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(S) "Bingo" means either of the following:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

(b) The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards or sheets.

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (S)(1)(c) of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards, and raffles.

(T) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance.

(U) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

(V) "Participant" means any person who plays bingo.

(W) "Bingo session" means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (S)(1) of this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in division (W)(1) of this section.

(X) "Gross receipts" means all money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. "Gross receipts" does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

(Y) "Security personnel" includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has

successfully completed a peace officer's training course pursuant to sections 109.71 to 109.79 of the Revised Code and who is hired to provide security for the premises on which bingo is conducted.

(Z) "Charitable purpose" means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least seventy-five per cent of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in division (B)(12) of section 5739.02 of the Revised Code, is used for awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of section 5739.02 of the Revised Code, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this state for fifteen years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in division (L) of this section.

(AA) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended.

(BB) "Youth athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are twenty-one years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(CC) "Youth athletic park organization" means any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

(a) The playing fields are used at least one hundred days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are eighteen years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(b) The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in division (CC)(1) of this section.

(DD) "Amateur athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are training for amateur athletic competition that is sanctioned by a national governing body as defined in the "Amateur Sports Act of 1978," 90 Stat. 3045, 36 U.S.C.A. 373.

(EE) "Bingo supplies" means bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

(FF) "Instant bingo" means a form of bingo that uses folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners. "Instant bingo" includes seal cards. "Instant bingo" does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

(GG) "Seal card" means a form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols.

(HH) "Raffle" means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle.

(II) "Punch board" means a board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

(JJ) "Gross profit" means gross receipts minus the amount actually expended for the payment of prize awards.

(KK) "Net profit" means gross profit minus expenses.

(LL) "Expenses" means the reasonable amount of gross profit actually expended for all of the following:

(1) The purchase or lease of bingo supplies;

(2) The annual license fee required under section 2915.08 of the Revised Code;

(3) Bank fees and service charges for a bingo session or game account described in section 2915.10 of the Revised Code;

(4) Audits and accounting services;

(5) Safes;

(6) Cash registers;

(7) Hiring security personnel;

(8) Advertising bingo;

(9) Renting premises in which to conduct a bingo session;

(10) Tables and chairs;

(11) Expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the attorney general under division (B)(1) of section 2915.08 of the Revised Code.

(MM) "Person" has the same meaning as in section 1.59 of the Revised Code and includes any firm or any other legal entity, however organized.

(NN) "Revoke" means to void permanently all rights and privileges of the holder of a license issued under section 2915.08, 2915.081 [2915.08.1], or 2915.082 [2915.08.2] of the Revised Code or a charitable gaming license issued by another jurisdiction.

(OO) "Suspend" means to interrupt temporarily all rights and privileges of the holder of a license issued under section 2915.08, 2915.081 [2915.08.1], or 2915.082 [2915.08.2] of the Revised Code or a charitable gaming license issued by another jurisdiction.

(PP) "Distributor" means any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state;

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this state.

(QQ) "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

(RR) "Gross annual revenues" means the annual gross receipts derived from the conduct of bingo described in division (S)(1) of this section plus the annual net profit derived from the conduct of bingo described in division (S)(2) of this section.

(SS) "Instant bingo ticket dispenser" means a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

(1) It is activated upon the insertion of United States currency.

(2) It performs no gaming functions.

(3) It does not contain a video display monitor or generate noise.

(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.

(5) It does not simulate or display rolling or spinning reels.

(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or nonwinning ticket or

card and requires a winning ticket or card to be paid by a bingo game operator.

(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.

(8) It is not part of an electronic network and is not interactive.

(TT)(1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

(a) It provides a means for a participant to input numbers and letters announced by a bingo caller.

(b) It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.

(c) It identifies a winning bingo pattern.

(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

(UU) "Deal of instant bingo tickets" means a single game of instant bingo tickets all with the same serial number.

(VV)(1) "Slot" machine means either of the following:

(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain, the outcome of which is determined largely or wholly by chance;

(b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance.

(2) "Slot machine" does not include a skill-based amusement machine.

(WW) "Net profit from the proceeds of the sale of instant bingo" means gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies.

(XX) "Charitable instant bingo organization" means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and is a charitable organization as defined in this section. A "charitable instant bingo organization" does not include a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran's organization, a fraternal organization, or a sporting organization pursuant to section 2915.13 of the Revised Code.

(YY) "Game flare" means the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game:

(1) The name of the game;

(2) The manufacturer's name or distinctive logo;

(3) The form number;

(4) The ticket count;

(5) The prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets;

(6) The cost per play;

(7) The serial number of the game.

(ZZ) "Historic railroad educational organization" means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that owns in fee simple the tracks and the right of way of a historic railroad that the organization restores or maintains and on which the organization provides excursions as part of a program to promote tourism and educate visitors regarding the role of railroad transportation in Ohio history, and that received as donations from a charitable organization that holds a license to conduct bingo under this chapter an amount equal to at least fifty per cent of that licensed charitable organization's net proceeds from the conduct of bingo during each of the five years preceding June 30, 2003. "Historic railroad" means all or a portion of the tracks and right-of-way of a railroad that was owned and operated by a for profit common carrier in this state at any time prior to January 1, 1950.

(AAA)(1) "Skill-based amusement machine" means a skill-based amusement device, such as a mechanical, electronic, video, or digital device, or machine, whether or not the skill-based amusement machine requires payment for use through a coin or bill validator or other payment of consideration or value to participate in the machine's offering or to activate the machine, provided that all of the following apply:

(a) The machine involves a task, game, play, contest, competition, or tournament in which the player actively participates in the task, game, play, contest, competition, or tournament.

(b) The outcome of an individual's play and participation is not determined largely or wholly by chance.

(c) The outcome of play during a game is not controlled by a person not actively participating in the game.

(2) All of the following apply to any machine that is operated as described in division (AAA)(1) of this section:

(a) As used in this section, "task," "game," and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single task, game, play, contest, competition, or tournament may be awarded prizes based on the results of play.

(b) Advance play for a single task, game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play.

(c) To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of prizes that are stated prior to the start of the contest, competition, or tournament.

(BBB) "Pool not conducted for profit" means a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

(CCC) "Sporting organization" means a hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to, the Ohio

League of sportsmen, and that has been in continuous existence in this state for a period of three years.

(DDD) "Community action agency" has the same meaning as in section 122.66 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 1 (Eff 6-13-75); 136 v S 398 (Eff 5-26-76); 136 v H 1547 (Eff 12-6-76); 137 v H 72 (Eff 12-15-77); 139 v S 91 (Eff 10-20-81); 143 v H 573 (Eff 4-10-91); 144 v S 98 (Eff 11-12-92); 146 v S 2, § 1 (Eff 7-1-96); 146 v H 143, § 1 (Eff 5-15-96); 146 v H 143, § 3 (Eff 7-1-96); 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v S 37, § 1, eff. 10-21-03; 150 v S 146, § 1, eff. 9-23-04; 150 v H 325, § 1, eff. 9-30-04.

The provisions of § 4, H.B. 325 (150 v —), read as follows:

SECTION 4. Section 2915.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. S.B. 37 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3, S.B. 146 (150 v —), read as follows:

SECTION 3. The versions of sections 2915.01 and 2915.092 of the Revised Code presented in this act prevail over the versions of those sections presented in Sub. H.B. 325 of the 125th General Assembly.

Not analogous to former RC § 2915.01 (RS § 6932; S&C 662; 54 v 196; GC § 13054; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2915.16 (GC § 13066-1; 124 v 838; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Comment, Legislative Service Commission

Sections 165.09, 902.11, 2915.01, 4505.06, 4981.20, 5739.01, and 5739.02 of the Revised Code are amended by [Am. Sub. H.B. 95 of the 125th General Assembly] and also by Am. Sub. S.B. 37, both of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2915.02 Gambling.

(A) No person shall do any of the following:

(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;

(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;

(3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;

(4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;

(5) With purpose to violate division (A)(1), (2), (3), or (4) of this section, acquire, possess, control, or operate any gambling device.

(B) For purposes of division (A)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (A)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of

chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limitation, playing any such game or scheme.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) This section does not apply to any of the following:

(1) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money or roulette for money.

(b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(c) The games of chance are conducted at festivals of the charitable organization that are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in division (D)(1)(c) of this section if the veteran's or fraternal organization already has leased the premises four times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in division (D)(1)(c) of this section, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under division (B)(1) of section 2915.09 of the Revised Code when it leases premises from another charitable organization to conduct bingo games.

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(e) The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to section 2915.12 of the Revised Code.

No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament operated under a permit issued under section 1533.92 of the Revised Code, as "tag fishing tournament" is defined in section 1531.01 of the Revised Code;

(3) Bingo conducted by a charitable organization that holds a license issued under section 2915.08 of the Revised Code.

(E) Division (D) of this section shall not be construed to authorize the sale, lease, or other temporary or permanent transfer of the right to conduct games of chance, as granted by that division, by any charitable organization that is granted that right.

(F) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 398 (Eff 5-26-76); 136 v H 1547 (Eff 12-6-76); 137 v H 72 (Eff 12-15-77); 142 v H 514 (Eff 2-11-88); 143 v H 550 (Eff 5-3-90); 143 v H 573 (Eff 4-10-91); 145 v H 104 (Eff 10-7-93); 145 v H 336 (Eff 10-29-93); 146 v S 2 (Eff 7-1-96); 147 v S 37 (Eff 7-26-97); 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

Not analogous to former RC § 2915.02 (GC § 13054-1; Bureau of Code Revision, 10-1-53; 125 v 544), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2915.03 Operating a gambling house.

(A) No person, being the owner or lessee, or having custody, control, or supervision of premises, shall:

(1) Use or occupy such premises for gambling in violation of section 2915.02 of the Revised Code;

(2) Recklessly permit such premises to be used or occupied for gambling in violation of section 2915.02 of the Revised Code.

(B) Whoever violates this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, operating a gambling house is a felony of the fifth degree.

(C) Premises used or occupied in violation of this section constitute a nuisance subject to abatement pursuant to sections 3767.01 to 3767.99 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2915.03 (GC § 13054-2; 124 v 544; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2915.04 Public gaming.

(A) No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall make a bet or play any game of chance or scheme of chance.

(B) No person, being the owner or lessee, or having custody, control, or supervision, of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit those premises to be used or occupied in violation of division (A) of this section.

(C) Divisions (A) and (B) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(D) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this division, public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(E) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement under Chapter 3767. of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 149 v H 512. Eff 4-3-2003.

Not analogous to former RC § 2915.04 (RS § 6933; S&C 666; 29 v 442; GC § 13056; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2915.05 Cheating, corrupting sports.

(A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

- (1) The subject of a bet;
 - (2) A contest of knowledge, skill, or endurance that is not an athletic or sporting event;
 - (3) A scheme or game of chance;
 - (4) Bingo.
- (B) No person shall knowingly do any of the following:
- (1) Offer, give, solicit, or accept anything of value to corrupt the outcome of an athletic or sporting event;
 - (2) Engage in conduct designed to corrupt the outcome of an athletic or sporting event.

(C)(1) Whoever violates division (A) of this section is guilty of cheating. Except as otherwise provided in this division, cheating is a misdemeanor of the first degree. If the potential gain from the cheating is five hundred dollars or more or if the offender previously has been convicted of any gambling offense or of any theft offense, as defined in section 2913.01 of the Revised Code, cheating is a felony of the fifth degree.

(2) Whoever violates division (B) of this section is guilty of corrupting sports. Corrupting sports is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-1-83); 146 v S 2 (Eff 7-1-96); 149 v H 512. Eff 4-3-2003.

Not analogous to former RC § 2915.05 (RS § 6935; S&C 666; 29 v 442; GC § 13057; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[BINGO]

§ 2915.07 Conducting illegal bingo.

(A) No person, except a charitable organization that has obtained a license pursuant to section 2915.08 of the Revised Code, shall conduct or advertise bingo. This division does not apply to a raffle that a charitable organization conducts or advertises.

(B) Whoever violates this section is guilty of conducting illegal bingo, a felony of the fourth degree.

HISTORY: 136 v S 398 (Eff 5-26-76); 146 v S 2 (Eff 7-1-96); 149 v H 512. Eff 4-3-2003.

Not analogous to former RC § 2915.07 (RS § 6936; S&C 665; 29 v 442; GC § 13058; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2915.08 Application for license.

(A)(1) Annually before the first day of January, a charitable organization that desires to conduct bingo, instant bingo at a bingo session, or instant bingo other

than at a bingo session shall make out, upon a form to be furnished by the attorney general for that purpose, an application for a license to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session and deliver that application to the attorney general together with a license fee as follows:

(a) Except as otherwise provided in this division, for a license for the conduct of bingo, two hundred dollars;

(b) For a license for the conduct of instant bingo at a bingo session or instant bingo other than at a bingo session for a charitable organization that previously has not been licensed under this chapter to conduct instant bingo at a bingo session or instant bingo other than at a bingo session, a license fee of five hundred dollars, and for any other charitable organization, a license fee that is based upon the gross profits received by the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session, during the one-year period ending on the thirty-first day of October of the year immediately preceding the year for which the license is sought, and that is one of the following:

(i) Five hundred dollars, if the total is fifty thousand dollars or less;

(ii) One thousand two hundred fifty dollars plus one-fourth per cent of the gross profit, if the total is more than fifty thousand dollars but less than two hundred fifty thousand one dollars;

(iii) Two thousand two hundred fifty dollars plus one-half per cent of the gross profit, if the total is more than two hundred fifty thousand dollars but less than five hundred thousand one dollars;

(iv) Three thousand five hundred dollars plus one per cent of the gross profit, if the total is more than five hundred thousand dollars but less than one million one dollars;

(v) Five thousand dollars plus one per cent of the gross profit, if the total is one million one dollars or more;

(c) A reduced license fee established by the attorney general pursuant to division (G) of this section.

(d) For a license to conduct bingo for a charitable organization that prior to the effective date of this amendment has not been licensed under this chapter to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session, a license fee established by rule by the attorney general in accordance with division (H) of this section.

(2) The application shall be in the form prescribed by the attorney general, shall be signed and sworn to by the applicant, and shall contain all of the following:

(a) The name and post-office address of the applicant;

(b) A statement that the applicant is a charitable organization and that it has been in continuous existence as a charitable organization in this state for two years immediately preceding the making of the application or for five years in the case of a fraternal organization or a nonprofit medical organization;

(c) The location at which the organization will conduct bingo, which location shall be within the county in which the principal place of business of the applicant is located, the days of the week and the times on each of those days when bingo will be conducted, whether the organization owns, leases, or subleases the premises, and a copy of the rental agreement if it leases or subleases the premises;

(d) A statement of the applicant's previous history, record, and association that is sufficient to establish that the applicant is a charitable organization, and a copy of a

determination letter that is issued by the Internal Revenue Service and states that the organization is tax exempt under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code;

(e) A statement as to whether the applicant has ever had any previous application refused, whether it previously has had a license revoked or suspended, and the reason stated by the attorney general for the refusal, revocation, or suspension;

(f) A statement of the charitable purposes for which the net profit derived from bingo, other than instant bingo, will be used, and a statement of how the net profit derived from instant bingo will be distributed in accordance with section 2915.101 [2915.10.1] of the Revised Code;

(g) Other necessary and reasonable information that the attorney general may require by rule adopted pursuant to section 111.15 of the Revised Code;

(h) If the applicant is a charitable trust as defined in section 109.23 of the Revised Code, a statement as to whether it has registered with the attorney general pursuant to section 109.26 of the Revised Code or filed annual reports pursuant to section 109.31 of the Revised Code, and, if it is not required to do either, the exemption in section 109.26 or 109.31 of the Revised Code that applies to it;

(i) If the applicant is a charitable organization as defined in section 1716.01 of the Revised Code, a statement as to whether it has filed with the attorney general a registration statement pursuant to section 1716.02 of the Revised Code and a financial report pursuant to section 1716.04 of the Revised Code, and, if it is not required to do both, the exemption in section 1716.03 of the Revised Code that applies to it;

(j) In the case of an applicant seeking to qualify as a youth athletic park organization, a statement issued by a board or body vested with authority under Chapter 755. of the Revised Code for the supervision and maintenance of recreation facilities in the territory in which the organization is located, certifying that the playing fields owned by the organization were used for at least one hundred days during the year in which the statement is issued, and were open for use to all residents of that territory, regardless of race, color, creed, religion, sex, or national origin, for athletic activities by youth athletic organizations that do not discriminate on the basis of race, color, creed, religion, sex, or national origin, and that the fields were not used for any profit-making activity at any time during the year. That type of board or body is authorized to issue the statement upon request and shall issue the statement if it finds that the applicant's playing fields were so used.

(3) The attorney general, within thirty days after receiving a timely filed application from a charitable organization that has been issued a license under this section that has not expired and has not been revoked or suspended, shall send a temporary permit to the applicant specifying the date on which the application was filed with the attorney general and stating that, pursuant to section 119.06 of the Revised Code, the applicant may continue to conduct bingo until a new license is granted or, if the application is rejected, until fifteen days after notice of the rejection is mailed to the applicant. The temporary permit does not affect the validity of the applicant's application and does not grant any rights to the applicant except those rights specifically granted in sec-

tion 119.06 of the Revised Code. The issuance of a temporary permit by the attorney general pursuant to this division does not prohibit the attorney general from rejecting the applicant's application because of acts that the applicant committed, or actions that the applicant failed to take, before or after the issuance of the temporary permit.

(4) Within thirty days after receiving an initial license application from a charitable organization to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session, the attorney general shall conduct a preliminary review of the application and notify the applicant regarding any deficiencies. Once an application is deemed complete, or beginning on the thirtieth day after the application is filed, if the attorney general failed to notify the applicant of any deficiencies, the attorney general shall have an additional sixty days to conduct an investigation and either grant or deny the application based on findings established and communicated in accordance with divisions (B) and (E) of this section. As an option to granting or denying an initial license application, the attorney general may grant a temporary license and request additional time to conduct the investigation if the attorney general has cause to believe that additional time is necessary to complete the investigation and has notified the applicant in writing about the specific concerns raised during the investigation.

(B)(1) The attorney general shall adopt rules to enforce sections 2915.01, 2915.02, and 2915.07 to 2915.13 of the Revised Code to ensure that bingo or instant bingo is conducted in accordance with those sections and to maintain proper control over the conduct of bingo or instant bingo. The rules, except rules adopted pursuant to divisions (A)(2)(g) and (G) of this section, shall be adopted pursuant to Chapter 119. of the Revised Code. The attorney general shall license charitable organizations to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session in conformance with this chapter and with the licensing provisions of Chapter 119. of the Revised Code.

(2) The attorney general may refuse to grant a license to any organization, or revoke or suspend the license of any organization, that does any of the following or to which any of the following applies:

(a) Fails or has failed at any time to meet any requirement of section 109.26, 109.31, or 1716.02, or sections 2915.07 to 2915.11 of the Revised Code, or violates or has violated any provision of sections 2915.02 or 2915.07 to 2915.13 of the Revised Code or any rule adopted by the attorney general pursuant to this section;

(b) Makes or has made an incorrect or false statement that is material to the granting of the license in an application filed pursuant to division (A) of this section;

(c) Submits or has submitted any incorrect or false information relating to an application if the information is material to the granting of the license;

(d) Maintains or has maintained any incorrect or false information that is material to the granting of the license in the records required to be kept pursuant to divisions (A) and (C) of section 2915.10 of the Revised Code, if applicable;

(e) The attorney general has good cause to believe that the organization will not conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session in accordance with sections 2915.07 to 2915.13 of

the Revised Code or with any rule adopted by the attorney general pursuant to this section.

(3) For the purposes of division (B) of this section, any action of an officer, trustee, agent, representative, or bingo game operator of an organization is an action of the organization.

(C) The attorney general may grant licenses to charitable organizations that are branches, lodges, or chapters of national charitable organizations.

(D) The attorney general shall send notice in writing to the prosecuting attorney and sheriff of the county in which the organization will conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session, as stated in its application for a license or amended license, and to any other law enforcement agency in that county that so requests, of all of the following:

- (1) The issuance of the license;
- (2) The issuance of the amended license;
- (3) The rejection of an application for and refusal to grant a license;
- (4) The revocation of any license previously issued;
- (5) The suspension of any license previously issued.

(E) A license issued by the attorney general shall set forth the information contained on the application of the charitable organization that the attorney general determines is relevant, including, but not limited to, the location at which the organization will conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session and the days of the week and the times on each of those days when bingo will be conducted. If the attorney general refuses to grant or revokes or suspends a license, the attorney general shall notify the applicant in writing and specifically identify the reason for the refusal, revocation, or suspension in narrative form and, if applicable, by identifying the section of the Revised Code violated. The failure of the attorney general to give the written notice of the reasons for the refusal, revocation, or suspension or a mistake in the written notice does not affect the validity of the attorney general's refusal to grant, or the revocation or suspension of, a license. If the attorney general fails to give the written notice or if there is a mistake in the written notice, the applicant may bring an action to compel the attorney general to comply with this division or to correct the mistake, but the attorney general's order refusing to grant, or revoking or suspending, a license shall not be enjoined during the pendency of the action.

(F) A charitable organization that has been issued a license pursuant to division (B) of this section but that cannot conduct bingo or instant bingo at the location, or on the day of the week or at the time, specified on the license due to circumstances that make it impractical to do so may apply in writing, together with an application fee of two hundred fifty dollars, to the attorney general, at least thirty days prior to a change in location, day of the week, or time, and request an amended license. The application shall describe the causes making it impractical for the organization to conduct bingo or instant bingo in conformity with its license and shall indicate the location, days of the week, and times on each of those days when it desires to conduct bingo or instant bingo. Except as otherwise provided in this division, the attorney general shall issue the amended license in accordance with division (E) of this section, and the organization shall surrender its original license to the attorney general. The

attorney general may refuse to grant an amended license according to the terms of division (B) of this section.

(G) The attorney general, by rule adopted pursuant to section 111.15 of the Revised Code, shall establish a schedule of reduced license fees for charitable organizations that desire to conduct bingo or instant bingo during fewer than twenty-six weeks in any calendar year.

(H) The attorney general, by rule adopted pursuant to section 111.15 of the Revised Code, shall establish license fees for the conduct of bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session for charitable organizations that prior to the effective date of this amendment have not been licensed to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session under this chapter.

(I) The attorney general may enter into a written contract with any other state agency to delegate to that state agency the powers prescribed to the attorney general under Chapter 2915. of the Revised Code.

(J) The attorney general, by rule adopted pursuant to section 111.15 of the Revised Code, may adopt rules to determine the requirements for a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code to be in good standing in the state.

HISTORY: 136 v S 398 (Eff 5-26-76); 136 v H 1547 (Eff 12-6-76); 137 v H 72 (Eff 12-15-77); 139 v S 91 (Eff 10-20-81); 139 v S 550 (Eff 11-26-82); 140 v H 291 (Eff 7-1-83); 145 v H 104 (Eff 10-7-93); 148 v S 333 (Eff 4-10-2001); 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03.

The provisions of § 134.05, H.B. 95 (150 v —), read as follows: SECTION 134.05. Division (A)(4) of section 2915.08 of the Revised Code shall not be applied until January 31, 2004.

The effective date is set by section 182 of H.B. 95 (150 v —). **Not analogous to former RC § 2915.08 (RS § 6939; S&C 446; 75 v 57; GC §§ 13060, 13061; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.**

The provisions of §§ 3, 7 of H.B. 512 (149 v —), as amended by § 134.05 of H.B. 95 (150 v —), read as follows:

SECTION 3. The annual license fees prescribed by division (A)(1) of section 2915.08 of the Revised Code, as amended by this act, shall not be applied until one year after the effective date of this act. During that one-year period after the effective date of this act, the attorney general may, by rule adopted pursuant to section 111.15 of the Revised Code establish the license fees for the conduct of bingo, instant bingo at a bingo session, and instant bingo other than at a bingo session.

SECTION 7. Division (A)(4) of section 2915.08 of the Revised Code shall not be applied until January 31, 2004.

[§ 2915.08.1] § 2915.081 Distributor license for bingo supplies.

(A) No distributor shall sell, offer to sell, or otherwise provide or offer to provide bingo supplies to another person, or modify, convert, add to, or remove parts from bingo supplies to further their promotion or sale, for use in this state without having obtained a license from the attorney general under this section.

(B) The attorney general may issue a distributor license to any person that meets the requirements of this section. The application for the license shall be on a form prescribed by the attorney general and be accompanied by the annual fee prescribed by this section. The license is valid for a period of one year, and the annual fee for the license is five thousand dollars.

(C) The attorney general may refuse to issue a distributor license to any person to which any of the following applies, or to any person that has an officer, partner, or other person who has an ownership interest of ten per cent or more and to whom any of the following applies:

(1) The person, officer, or partner has been convicted of a felony under the laws of this state, another state, or the United States.

(2) The person, officer, or partner has been convicted of any gambling offense.

(3) The person, officer, or partner has made an incorrect or false statement that is material to the granting of a license in an application submitted to the attorney general under this section or in a similar application submitted to a gambling licensing authority in another jurisdiction if the statement resulted in license revocation through administrative action in the other jurisdiction.

(4) The person, officer, or partner has submitted any incorrect or false information relating to the application to the attorney general under this section, if the information is material to the granting of the license.

(5) The person, officer, or partner has failed to correct any incorrect or false information that is material to the granting of the license in the records required to be maintained under division (E) of section 2915.10 of the Revised Code.

(6) The person, officer, or partner has had a license related to gambling revoked or suspended under the laws of this state, another state, or the United States.

(D) The attorney general shall not issue a distributor license to any person that is involved in the conduct of bingo on behalf of a charitable organization or that is a lessor of premises used for the conduct of bingo. This division does not prohibit a distributor from advising charitable organizations on the use and benefit of specific bingo supplies or prohibit a distributor from advising a customer on operational methods to improve bingo profitability.

(E)(1) No distributor shall sell, offer to sell, or otherwise provide or offer to provide bingo supplies to any person, or modify, convert, add to, or remove parts from bingo supplies to further their promotion or sale, for use in this state except to or for the use of a charitable organization that has been issued a license under section 2915.08 of the Revised Code or to another distributor that has been issued a license under this section. No distributor shall accept payment for the sale or other provision of bingo supplies other than by check.

(2) No distributor may donate, give, loan, lease, or otherwise provide any bingo supplies or equipment, or modify, convert, add to, or remove parts from bingo supplies to further their promotion or sale, to or for the use of a charitable organization for use in a bingo session conditioned on or in consideration for an exclusive right to provide bingo supplies to the charitable organization. A distributor may provide a licensed charitable organization with free samples of the distributor's products to be used as prizes or to be used for the purpose of sampling.

(3) No distributor shall purchase bingo supplies for use in this state from any person except from a manufacturer issued a license under section 2915.082 [2915.08.2] of the Revised Code or from another distributor issued a license under this section. Subject to division (D) of section 2915.082 [2915.08.2] of the Revised Code, no distributor shall pay for purchased bingo supplies other than by check.

(4) No distributor shall participate in the conduct of bingo on behalf of a charitable organization or have any direct or indirect ownership interest in a premises used for the conduct of bingo.

(5) No distributor shall knowingly solicit, offer, pay, or receive any kickback, bribe, or undocumented rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for providing bingo supplies to any person in this state.

(F) The attorney general may suspend or revoke a distributor license for any of the reasons for which the attorney general may refuse to issue a distributor license specified in division (C) of this section or if the distributor holding the license violates any provision of this chapter or any rule adopted by the attorney general under this chapter.

(G) Whoever violates division (A) or (E) of this section is guilty of illegally operating as a distributor. Except as otherwise provided in this division, illegally operating as a distributor is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) or (E) of this section, illegally operating as a distributor is a felony of the fifth degree.

HISTORY: 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v H 325, § 1, eff. 9-30-04.

[§ 2915.08.2] § 2915.082 Manufacturer license.

(A) No manufacturer shall sell, offer to sell, or otherwise provide or offer to provide bingo supplies for use in this state without having obtained a license from the attorney general under this section.

(B) The attorney general may issue a manufacturer license to any person that meets the requirements of this section. The application for the license shall be on a form prescribed by the attorney general and be accompanied by the annual fee prescribed by this section. The license is valid for a period of one year, and the annual fee for the license is five thousand dollars.

(C) The attorney general may refuse to issue a manufacturer license to any person to which any of the following applies, or to any person that has an officer, partner, or other person who has an ownership interest of ten per cent or more and to whom any of the following applies:

(1) The person, officer, or partner has been convicted of a felony under the laws of this state, another state, or the United States.

(2) The person, officer, or partner has been convicted of any gambling offense.

(3) The person, officer, or partner has made an incorrect or false statement that is material to the granting of a license in an application submitted to the attorney general under this section or in a similar application submitted to a gambling licensing authority in another jurisdiction if the statement resulted in license revocation through administrative action in the other jurisdiction.

(4) The person, officer, or partner has submitted any incorrect or false information relating to the application to the attorney general under this section, if the information is material to the granting of the license.

(5) The person, officer, or partner has failed to correct any incorrect or false information that is material to the granting of the license in the records required to be maintained under division (F) of section 2915.10 of the Revised Code.

(6) The person, officer, or partner has had a license related to gambling revoked or suspended under the laws of this state, another state, or the United States.

(D)(1) No manufacturer shall sell, offer to sell, or otherwise provide or offer to provide bingo supplies to any person for use in this state except to a distributor that has been issued a license under section 2915.081 [2915.08.1] of the Revised Code. No manufacturer shall accept payment for the sale of bingo supplies other than by check.

(2) No manufacturer shall knowingly solicit, offer, pay, or receive any kickback, bribe, or undocumented rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for providing bingo supplies to any person in this state.

(E)(1) The attorney general may suspend or revoke a manufacturer license for any of the reasons for which the attorney general may refuse to issue a manufacturer license specified in division (C) of this section or if the manufacturer holding the license violates any provision of this chapter or any rule adopted by the attorney general under this chapter.

(2) The attorney general may perform an onsite inspection of a manufacturer of bingo supplies that is selling, offering to sell, or otherwise providing or offering to provide bingo supplies or that is applying for a license to sell, offer to sell, or otherwise provide or offer to provide bingo supplies in this state.

(F) Whoever violates division (A) or (D) of this section is guilty of illegally operating as a manufacturer. Except as otherwise provided in this division, illegally operating as a manufacturer is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) or (D) of this section, illegally operating as a manufacturer is a felony of the fifth degree.

HISTORY: 149 v H 512. Eff 4-2-2003; 150 v H 95, § 1, eff. 7-1-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

§ 2915.09 Rules for conducting bingo.

(A) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Except as otherwise provided in division (A)(3) of this section, use all of the gross receipts from bingo for paying prizes, for reimbursement of expenses for or for renting premises in which to conduct a bingo session, for reimbursement of expenses for or for purchasing or leasing bingo supplies used in conducting bingo, for reimbursement of expenses for or for hiring security personnel, for reimbursement of expenses for or for advertising bingo, or for reimbursement of other expenses or for other expenses listed in division (LL) of section 2915.01 of the Revised Code, provided that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, hiring, advertising, or expense. If the building in which bingo is conducted is owned by the charitable organization conducting bingo and the bingo conducted includes a form of bingo described in division (S)(1) of section 2915.01 of the Revised Code, the charitable organization may deduct from the total amount of the gross receipts

from each session a sum equal to the lesser of six hundred dollars or forty-five per cent of the gross receipts from the bingo described in that division as consideration for the use of the premises.

(3) Use, or give, donate, or otherwise transfer, all of the net profit derived from bingo, other than instant bingo, for a charitable purpose listed in its license application and described in division (Z) of section 2915.01 of the Revised Code, or distribute all of the net profit from the proceeds of the sale of instant bingo as stated in its license application and in accordance with section 2915.101 [2915.10.1] of the Revised Code.

(B) No charitable organization that conducts a bingo game described in division (S)(1) of section 2915.01 of the Revised Code shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of six hundred dollars per bingo session or forty-five per cent of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size, and quality but not in excess of four hundred fifty dollars per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of four hundred fifty dollars per bingo session. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor of the premises shall provide only the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies, or any other type of service or equipment. A charitable organization shall not lease or sublease premises that it owns or leases to more than one other charitable organization per calendar week for the purpose of conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases, or otherwise is empowered to lease to more than one charitable organization per calendar week for conducting bingo sessions on the premises. In no case shall more than two bingo sessions be conducted on any premises in any calendar week.

(2) Display its license conspicuously at the premises where the bingo session is conducted;

(3) Conduct the bingo session in accordance with the definition of bingo set forth in division (S)(1) of section 2915.01 of the Revised Code.

(C) No charitable organization that conducts a bingo game described in division (S)(1) of section 2915.01 of the Revised Code shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell, or serve food or

beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in division (C)(4) of this section, conduct more than two bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than two bingo sessions in a seven-day period after notifying the attorney general when it will conduct the sessions.

(5) Pay out more than three thousand five hundred dollars in prizes for bingo games described in division (S)(1) of section 2915.01 of the Revised Code during any bingo session that is conducted by the charitable organization. "Prizes" does not include awards from the conduct of instant bingo.

(6) Conduct a bingo session at any time during the ten-hour period between midnight and ten a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to section 2915.12 of the Revised Code, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. Division (A)(6) of this section does not prohibit the sale of instant bingo tickets beginning at nine a.m. for a bingo session that begins at ten a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time, specified on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the attorney general for an amended license pursuant to division (F) of section 2915.08 of the Revised Code. A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license.

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of eighteen to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo supplies, or any other type of service or equipment;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under section 2915.081 [2915.08.1] of the Revised Code;

(11)(a) Use or permit the use of electronic bingo aids except under the following circumstances:

(i) For any single participant, not more than ninety bingo faces can be played using an electronic bingo aid or aids.

(ii) The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets.

(iii) The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid.

(iv) An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted.

(v) An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used.

(vi) An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

(b) The attorney general may adopt rules in accordance with Chapter 119. of the Revised Code that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid be capable of being audited by the attorney general to verify the number of bingo cards or sheets played during each bingo session.

(12) Permit any person the charitable organization knows, or should have known, to be under eighteen years of age to play bingo described in division (S)(1) of section 2915.01 of the Revised Code.

(D)(1) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(2) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session.

(3) Nothing in division (D) of this section prohibits an employee of a fraternal organization, veteran's organization, or sporting organization from selling instant bingo tickets or cards to the organization's members or invited guests, as long as no portion of the employee's compensation is paid from any receipts of bingo.

(E) Notwithstanding division (B)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable organizations for the conducting of more than two bingo sessions

per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the attorney general in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the attorney general prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the attorney general prior to December 6, 1977.

(F) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(G) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a felony of the fourth degree. Except as otherwise provided in this division, whoever violates division (A)(1) or (3), (B)(1), (2), or (3), (C)(1) to (12), or (D) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of division (A)(1) or (3), (B)(1), (2), or (3), (C)(1) to (11), or (D) of this section, a violation of division (A)(1) or (3), (B)(1), (2), or (3), (C), or (D) of this section is a misdemeanor of the first degree. Whoever violates division (C)(12) of this section is guilty of a misdemeanor of the first degree, if the offender previously has been convicted of a violation of division (C)(12) of this section, a felony of the fourth degree.

HISTORY: 136 v S 398 (Eff 5-26-76); 136 v H 1547 (Eff 12-6-76); 137 v H 72 (Eff 12-15-77); 139 v S 91 (Eff 10-20-81); 143 v H 573 (Eff 4-10-91); 145 v H 104 (Eff 10-7-93); 146 v S 70 (Eff 3-5-96); 146 v S 2 (Eff 7-1-96); 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v H 325, § 1, eff. 9-30-04.

The effective date is set by section 182 of H.B. 95 (150 v —).

Not analogous to former RC § 2915.09 (RS § 6939a; 78 v 11; GC § 13062; Bureau of Code Revision, 10-1-53; 129 v 1513), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 9 of HB 512 (149 v —) read as follows:

SECTION 9. Section 2915.09 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 70 and Am. Sub. S.B. 2 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

[§ 2915.09.1] § 2915.091 Rules for conducting instant bingo.

(A) No charitable organization that conducts instant bingo shall do any of the following:

(1) Fail to comply with the requirements of divisions (A)(1), (2), and (3) of section 2915.09 of the Revised Code;

(2) Conduct instant bingo unless either of the following apply:

(a) That organization is, and has received from the internal revenue service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(3) of the Internal Revenue Code, is a charitable organization as defined in section 2915.01 of the Revised Code, is in good standing in the state pursuant to section 2915.08 of the Revised Code,

and is in compliance with Chapter 1716. of the Revised Code;

(b) That organization is, and has received from the internal revenue service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) or is a veteran's organization described in subsection 501(c)(4) of the Internal Revenue Code, and conducts instant bingo under section 2915.13 of the Revised Code.

(3) Conduct instant bingo on any day, at any time, or at any premises not specified on the organization's license issued pursuant to section 2915.08 of the Revised Code;

(4) Permit any person whom the organization knows or should have known has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of instant bingo;

(5) Purchase or lease supplies used to conduct instant bingo or punch board games from any person except a distributor licensed under section 2915.081 of the Revised Code;

(6) Sell or provide any instant bingo ticket or card for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare;

(7) Sell an instant bingo ticket or card to a person under eighteen years of age;

(8) Fail to keep unsold instant bingo tickets or cards for less than three years;

(9) Pay any compensation to a bingo game operator for conducting instant bingo that is conducted by the organization or for preparing, selling, or serving food or beverages at the site of the instant bingo game, permit any auxiliary unit or society of the organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at an instant bingo game conducted by the organization, or permit any auxiliary unit or society of the organization to prepare, sell, or serve food or beverages at an instant bingo game conducted by the organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(10) Pay fees to any person for any services performed in relation to an instant bingo game;

(11) Pay fees to any person who provides refreshments to the participants in an instant bingo game;

(12)(a) Allow instant bingo tickets or cards to be sold to bingo game operators at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold;

(b) Division (A)(12)(a) of this section does not prohibit a licensed charitable organization or a bingo game operator from giving any person an instant bingo tickets as a prize.

(13) Fail to display its bingo license, and the serial numbers of the deal of instant bingo tickets or cards to be sold, conspicuously at each premises at which it sells instant bingo tickets or cards;

(14) Possess a deal of instant bingo tickets or cards that was not purchased from a distributor licensed under section 2915.081 of the Revised Code as reflected on an invoice issued by the distributor that contains all of the information required by division (E) of section 2915.10 of the Revised Code;

(15) Fail, once it opens a deal of instant bingo tickets or cards, to continue to sell the tickets or cards in that deal until the tickets or cards with the top two highest tiers of prizes in that deal are sold;

(16) Purchase, lease, or use instant bingo ticket dispensers to sell instant bingo tickets or cards;

(17) Possess bingo supplies that were not obtained in accordance with sections 2915.01 to 2915.13 of the Revised Code.

(B) A charitable organization may conduct instant bingo other than at a bingo session at not more than five separate locations. A charitable organization that is exempt from federal taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization or a fraternal organization is not limited in the number of separate locations the charitable organization may conduct instant bingo other than at a bingo session.

(C) The attorney general may adopt rules in accordance with Chapter 119. of the Revised Code that govern the conduct of instant bingo by charitable organizations. Before those rules are adopted, the attorney general shall reference the recommended standards for opacity, randomization, minimum information, winner protection, color, and cutting for instant bingo tickets or cards, seal cards, and punch boards established by the North American gaming regulators association.

(D) Whoever violates division (A) of this section or a rule adopted under division (C) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) of this section or of such a rule, illegal instant bingo conduct is a felony of the fifth degree.

HISTORY: 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

[§ 2915.09.2] § 2915.092 Raffles.

(A)(1) Subject to division (A)(2) of this section, a charitable organization, a public school, a chartered nonpublic school, a community school, or a veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

(2) If a charitable organization that is described in division (A)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty per cent of the net profit from the raffle to a charitable purpose described in division (Z) of section 2915.01 of the Revised Code or to a department or agency of the federal government, the state, or any political subdivision.

(B) Except as provided in division (A) or (B) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(C) Whoever violates division (B) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this division, illegal conduct of a raffle is a

misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (B) of this section, illegal conduct of a raffle is a felony of the fifth degree.

HISTORY: 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v S 146, § 1, eff. 9-23-04; 150 v H 325, § 1, eff. 9-30-04.

The provisions of § 3, S.B. 146 (150 v —), read as follows:

SECTION 3. The versions of sections 2915.01 and 2915.092 of the Revised Code presented in this act prevail over the versions of those sections presented in Sub. H.B. 325 of the 125th General Assembly.

The effective date is set by section 182 of H.B. 95 (150 v —).

[§ 2915.09.3] § 2915.093 Conduct- ing instant bingo other than at bingo session.

(A) As used in this section, "retail income from all commercial activity" means the income that a person receives from the provision of goods, services, or activities that are provided at the location where instant bingo other than at a bingo session is conducted, including the sale of instant bingo tickets. A religious organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, at not more than one location at which it conducts its charitable programs, may include donations from its members and guests as retail income.

(B) A charitable instant bingo organization may conduct instant bingo other than at a bingo session at not more than five separate locations.

(C)(1) If a charitable instant bingo organization conducts instant bingo other than at a bingo session, the charitable instant bingo organization shall enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of instant bingo other than at a bingo session, identify each location where the instant bingo other than at a bingo session is being conducted, and identify the owner or lessor of each location.

(2) A charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

(D) Except as provided in division (C) of this section, no charitable instant bingo organization shall conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets.

(E) The owner or lessor of a location that enters into a contract pursuant to division (C) of this section shall pay the full gross profit to the charitable instant bingo organization, in return for the deal of instant bingo tickets. The owner or lessor may retain the money that the owner or lessor receives for selling the instant bingo tickets, provided, however, that after the deal has been sold, the owner or lessor shall pay to the charitable instant bingo organization the value of any unredeemed instant bingo prizes remaining in the deal of instant bingo tickets.

As used in this division, "full gross profit" means the amount by which the total receipts of all instant bingo tickets, if the deal had been sold in full, exceeds the amount that would be paid out if all prizes were redeemed.

(F) A charitable instant bingo organization shall provide the attorney general with all of the following information:

(1) That the charitable instant bingo organization has terminated a contract entered into pursuant to division (C) of this section with an owner or lessor of a location;

(2) That the charitable instant bingo organization has entered into a written contract pursuant to division (C) of this section with a new owner or lessor of a location;

(3) That the charitable instant bingo organization is aware of conduct by the owner or lessor of a location at which instant bingo is conducted that is in violation of this chapter.

(G) Division (D) of this section does not apply to a volunteer firefighter's organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant bingo continuously for at least five years prior to July 1, 2003, and that, during each of those five years, had gross receipts of at least one million five hundred thousand dollars.

HISTORY: 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v H 325, § 1, eff. 9-30-04.

The effective date is set by section 182 of H.B. 95 (150 v —).

[§ 2915.09.4] § 2915.094 Owner or lessor of location for conducting instant bingo other than at bingo session.

(A) No owner or lessor of a location shall assist a charitable instant bingo organization in the conduct of instant bingo other than at a bingo session at that location unless the owner or lessor has entered into a written contract, as described in division (C) of section 2915.093 [2915.09.3] of the Revised Code, with the charitable instant bingo organization to assist in the conduct of instant bingo other than at a bingo session.

(B) The location of the lessor or owner shall be designated as a location where the charitable instant bingo organization conducts instant bingo other than at a bingo session.

(C) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate any provision of Chapter 2915. of the Revised Code, or permit, aid, or abet any other person in violating any provision of Chapter 2915. of the Revised Code.

(D) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate the terms of the contract.

(E)(1) Whoever violates division (C) or (D) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C) or (D) of this section, illegal instant bingo conduct is a felony of the fifth degree.

(2) If an owner or lessor of a location knowingly, intentionally, or recklessly violates division (C) or (D) of this section, any license that the owner or lessor holds for the retail sale of any goods on the owner's or lessor's premises that is issued by the state or a political subdivision is subject to suspension, revocation, or payment of a monetary penalty at the request of the attorney general.

HISTORY: 149 v H 512. Eff 4-3-2003.

[§ 2915.09.5] § 2915.095 Standard contract.

The attorney general, by rule adopted pursuant to section 111.15 of the Revised Code, shall establish a standard contract to be used by a charitable instant bingo organization, a veteran's organization, a fraternal organization, or a sporting organization for the conduct of instant bingo other than at a bingo session. The terms of the contract shall be limited to the provisions in Chapter 2915. of the Revised Code.

HISTORY: 149 v H 512. Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03.

The effective date is set by section 182 of H.B. 95 (150 v —).

§ 2915.10 Records to be kept for three years.

(A) No charitable organization that conducts bingo or a game of chance pursuant to division (D) of section 2915.02 of the Revised Code shall fail to maintain the following records for at least three years from the date on which the bingo or game of chance is conducted:

(1) An itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance, and an itemized list of the gross profits of each game of instant bingo by serial number;

(2) An itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses;

(3) A list of all prizes awarded during each bingo session, each raffle, each punch board game, and each game of chance conducted by the charitable organization, the total prizes awarded from each game of instant bingo by serial number, and the name, address, and social security number of all persons who are winners of prizes of six hundred dollars or more in value;

(4) An itemized list of the recipients of the net profit of the bingo or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the net profit of bingo, or the money or assets received from a game of chance, for any charitable or other purpose set forth in division (Z) of section 2915.01, division (D) of section 2915.02, or section 2915.101 of the Revised Code, a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or game of chance that is conducted by the charitable organization;

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from gross receipts under division (X) of section 2915.01 of the Revised Code;

(7) An itemized list of all expenses incurred at each bingo session, each raffle, each punch board game, or each game of instant bingo conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(B) A charitable organization shall keep the records that it is required to maintain pursuant to division (A) of this section at its principal place of business in this state or at its headquarters in this state and shall notify the attorney general of the location at which those records are kept.

(C) The gross profit from each bingo session or game described in division (S)(1) or (2) of section 2915.01 of the Revised Code shall be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game shall be made only by checks drawn on the bingo session or game account.

(D) Each charitable organization shall conduct and record an inventory of all of its bingo supplies as of the first day of November of each year.

(E) The attorney general may adopt rules in accordance with Chapter 119. of the Revised Code that establish standards of accounting, record keeping, and reporting to ensure that gross receipts from bingo or games of chance are properly accounted for.

(F) A distributor shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing to another person bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase;

(2) The name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided;

(3) A description that clearly identifies the bingo supplies;

(4) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each charitable organization.

(G) A manufacturer shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name and address of the distributor to whom the bingo supplies were sold or otherwise provided;

(2) A description that clearly identifies the bingo supplies, including serial numbers;

(3) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each distributor.

(H) The attorney general or any law enforcement agency may do all of the following:

(1) Investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization;

(2) Examine the accounts and records of the organization;

(3) Conduct inspections, audits, and observations of bingo or games of chance;

(4) Conduct inspections of the premises where bingo or games of chance are conducted;

(5) Take any other necessary and reasonable action to determine if a violation of any provision of sections 2915.01 to 2915.13 of the Revised Code has occurred and to determine whether section 2915.11 of the Revised Code has been complied with.

If any law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member, or employee of the organization has violated any provision of this chapter, the law enforcement agency may proceed by action in the proper court to enforce this chapter, provided that the law enforcement agency shall give written notice to the attorney general when commencing an action as described in this division.

(I) No person shall destroy, alter, conceal, withhold, or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede, or interfere with any inspection, audit, or observation of bingo or a game of chance or premises where bingo or a game of chance is conducted, or refuse to comply with any reasonable request of, or obstruct, impede, or interfere with any other reasonable action undertaken by, the attorney general or a law enforcement agency pursuant to division (H) of this section.

(J) Whoever violates division (A) or (I) of this section is guilty of a misdemeanor of the first degree.

HISTORY: 136 v S 398 (Eff 5-26-76); 136 v H 1547 (Eff 12-6-76); 137 v H 72 (Eff 12-15-77); 139 v S 91 (Eff 10-20-81); 146 v S 2 (Eff 7-1-96); 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03.

The effective date is set by section 182 of H.B. 95 (150 v —).
Not analogous to former RC § 2915.10 (RS § 6930; S&S 287; 59 v 10; GC § 13063; 120 v 663; Bureau of Code Revision, 10-1-53; 129 v 1513), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2915.10.1] § 2915.101 Distribution of net profit from instant bingo.

Except as otherwise provided by law, a charitable organization that conducts instant bingo shall distribute the net profit from the proceeds of the sale of instant bingo as follows:

(A)(1) If a veteran's organization, a fraternal organization, or a sporting organization conducted the instant bingo, the organization shall distribute the net profit from the proceeds of the sale of instant bingo, as follows:

(a) For the first seventy-five thousand dollars, or a greater amount prescribed by the attorney general to adjust for changes in prices as measured by the consumer price index as defined in section 325.18 of the Revised Code, or less of net profit from the proceeds of the sale of instant bingo generated in a calendar year:

(i) At least twenty-five per cent shall be distributed to an organization described in division (Z)(1) of section 2915.01 of the Revised Code or to a department or agency of the federal government, the state, or any political subdivision.

(ii) Not more than seventy-five per cent may be deducted and retained by the organization for reimbursement of or for the organization's expenses, as defined in division (LL) of section 2915.01 of the Revised Code, in conducting the instant bingo game.

(b) For any net profit from the proceeds of the sale of instant bingo of more than seventy-five thousand dollars or an adjusted amount generated in a calendar year:

(i) A minimum of fifty per cent shall be distributed to an organization described in division (Z)(1) of section 2915.01 of the Revised Code or to a department or agency of the federal government, the state, or any political subdivision.

(ii) Five per cent may be distributed for the organization's own charitable purposes or to a community action agency.

(iii) Forty-five per cent may be deducted and retained by the organization for reimbursement of or for the organization's expenses, as defined in division (LL) of section 2915.01 of the Revised Code, in conducting the instant bingo game.

(2) If a veteran's organization, a fraternal organization, or a sporting organization does not distribute the full percentages specified in divisions (A)(1)(a) and (b) of this section for the purposes specified in those divisions, the organization shall distribute the balance of the net profit from the proceeds of the sale of instant bingo not distributed or retained for those purposes to an organization described in division (Z)(1) of section 2915.01 of the Revised Code.

(B) If a charitable organization other than a veteran's organization, a fraternal organization, or a sporting organization conducted the instant bingo, the organization shall distribute one hundred per cent of the net profit from the proceeds of the sale of instant bingo to an organization described in division (Z)(1) of section 2915.01 of the Revised Code or to a department or agency of the federal government, the state, or any political subdivision.

(C) Nothing in this section prohibits a veteran's organization, a fraternal organization, or a sporting organization from distributing any net profit from the proceeds of the sale of instant bingo to an organization that is described in subsection 501(c)(3) of the Internal Revenue Code when the organization that is described in subsection 501(c)(3) of the Internal Revenue Code is one that makes donations to other organizations and permits donors to advise or direct such donations so long as the donations comply with requirements established in or pursuant to subsection 501(c)(3) of the Internal Revenue Code.

HISTORY: 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v H 325, § 1, eff. 9-30-04.

The effective date is set by section 182 of H.B. 95 (150 v —).

§ 2915.11 Persons prohibited from being bingo game operators.

(A) No person shall be a bingo game operator unless he is eighteen years of age or older.

(B) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.

(D) Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.

HISTORY: 136 v S 398 (Eff 5-26-76); 137 v H 72, Eff 12-15-77.

Not analogous to former RC § 2915.11 (GC § 13063-1; 120 v 663; Bureau of Code Revision, 10-1-53; 129 v 1409), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2915.12 Bingo for amusement only.

(A) Sections 2915.07 to 2915.11 of the Revised Code do not apply to bingo games that are conducted for the

purpose of amusement only. A bingo game is conducted for the purpose of amusement only if it complies with all of the requirements specified in either division (A)(1) or (2) of this section:

(1)(a) The participants do not pay any money or any other thing of value including an admission fee, or any fee for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game.

(b) All prizes awarded during the course of the game are nonmonetary, and in the form of merchandise, goods, or entitlements to goods or services only, and the total value of all prizes awarded during the game is less than one hundred dollars.

(c) No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(d) The bingo game is not conducted either during or within ten hours of any of the following:

(i) A bingo session during which a charitable bingo game is conducted pursuant to sections 2915.07 to 2915.11 of the Revised Code;

(ii) A scheme or game of chance, or bingo described in division (S)(2) of section 2915.01 of the Revised Code.

(e) The number of players participating in the bingo game does not exceed fifty.

(2)(a) The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than twenty-five cents to purchase a bingo card or sheet, objects to cover the spaces, or other devices used in playing bingo.

(b) The total amount of money paid by all of the participants for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo does not exceed one hundred dollars.

(c) All of the money paid for bingo cards or sheets, objects to cover spaces, or other devices used in playing bingo is used only to pay winners monetary and nonmonetary prizes and to provide refreshments.

(d) The total value of all prizes awarded during the game does not exceed one hundred dollars.

(e) No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(f) The bingo game is not conducted during or within ten hours of either of the following:

(i) A bingo session during which a charitable bingo game is conducted pursuant to sections 2915.07 to 2915.11 of the Revised Code;

(ii) A scheme of chance or game of chance, or bingo described in division (S)(2) of section 2915.01 of the Revised Code.

(g) All of the participants reside at the premises where the bingo game is conducted.

(h) The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(B) The attorney general or any local law enforcement agency may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with the requirements

of either division (A)(1) or (2) of this section. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the attorney general when commencing the action.

HISTORY: 136 v S 398 (Eff 5-26-76); 137 v H 72 (Eff 12-15-77); 143 v H 573 (Eff 4-10-91); 146 v S 2 (Eff 7-1-96); 149 v H 512, Eff 4-3-2003.

Not analogous to former RC § 2915.12 (RS § 6931; S&S 287; 59 v 10; 70 v 123; GC § 13064; 120 v 663; Bureau of Code Revision, 10-1-53; 129 v 1409), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2915.13 Veteran's, fraternal, or sporting organization conducting instant bingo.

(A) A veteran's organization, a fraternal organization, or a sporting organization authorized to conduct a bingo session pursuant to sections 2915.01 to 2915.12 of the Revised Code may conduct instant bingo other than at a bingo session if all of the following apply:

(1) The veteran's organization, fraternal organization, or sporting organization limits the sale of instant bingo to twelve hours during any day, provided that the sale does not begin earlier than ten a.m. and ends not later than two a.m.

(2) The veteran's organization, fraternal organization, or sporting organization limits the sale of instant bingo to its own premises and to its own members and invited guests.

(3) The veteran's organization, fraternal organization, or sporting organization is raising money for an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this state and executes a written contract with that organization as required in division (B) of this section.

(B) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to division (A) of this section is raising money for another organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this state, the veteran's organization, fraternal organization, or sporting organization shall execute a written contract with the organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this state in order to conduct instant bingo. That contract shall include a statement of the percentage of the net proceeds that the veteran's, fraternal, or sporting organization will be distributing to the organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this state, that

is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this state.

(C)(1) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to division (A) of this section has been issued a liquor permit under Chapter 4303. of the Revised Code, that permit may be subject to suspension, revocation, or cancellation if the veteran's organization, fraternal organization, or sporting organization violates a provision of this chapter.

(2) No veteran's organization, fraternal organization, or sporting organization that enters into a written contract pursuant to division (B) of this section shall violate any provision of this chapter or permit, aid, or abet any other person in violating any provision of this chapter.

(D) A veteran's organization, fraternal organization, or sporting organization shall give all required proceeds earned from the conduct of instant bingo to the organization with which the veteran's organization, fraternal organization, or sporting organization has entered into a written contract.

(E) Whoever violates this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal instant bingo conduct is a felony of the fifth degree.

HISTORY: 149 v H 512, Eff 4-3-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v H 325, § 1, eff. 9-30-04.

The effective date is set by section 182 of H.B. 95 (150 v —).

Not analogous to former RC § 2915.13 (GC § 13064-1; 120 v 663(664), § 1; Bureau of Code Revision, 10-1-53; 129 v 1409), repealed 134 v H 511, § 2, eff 1-1-74.

CHAPTER 2917: OFFENSES AGAINST THE PUBLIC PEACE

Section

[INCITING, RIOT, AND RELATED OFFENSES]

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[INCITING, RIOT, AND RELATED OFFENSES]

§ 2917.01 Inciting to violence.

(A) No person shall knowingly engage in conduct designed to urge or incite another to commit any offense of violence, when either of the following apply:

(1) The conduct takes place under circumstances that create a clear and present danger that any offense of violence will be committed;

(2) The conduct proximately results in the commission of any offense of violence.

(B) Whoever violates this section is guilty of inciting to violence. If the offense of violence that the other person is being urged or incited to commit is a misdemeanor, inciting to violence is a misdemeanor of the first degree. If the offense of violence that the other person is being urged or incited to commit is a felony, inciting to violence is a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2917.01 (RS § 6900; S&C 432, 457, 457a; 29 v 144; 57 v 47; 70 v 155; GC §§ 12823, 12824; 102 v 129; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2917.02 Aggravated riot.

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of section 2917.11 of the Revised Code:

(1) With purpose to commit or facilitate the commission of a felony;

(2) With purpose to commit or facilitate the commission of any offense of violence;

(3) When the offender or any participant to the knowledge of the offender has on or about the offender's or participant's person or under the offender's or participant's control, uses, or intends to use a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B)(1) No person, being an inmate in a detention facility, shall violate division (A)(1) or (3) of this section.

(2) No person, being an inmate in a detention facility, shall violate division (A)(2) of this section or section 2917.03 of the Revised Code.

(C) Whoever violates this section is guilty of aggravated riot. A violation of division (A)(1) or (3) of this section is a felony of the fifth degree. A violation of division (A)(2) or (B)(1) of this section is a felony of the fourth degree. A violation of division (B)(2) of this section is a felony of the third degree.

(D) As used in this section, "detention facility" has the same meaning as in section 2921.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2917.02 (GC § 12823-1; 122 v 130; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2917.03 Riot.

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of section 2917.11 of the Revised Code:

(1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct;

(2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede, or obstruct a function of government;

(3) With purpose to hinder, impede, or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution.

(B) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(C) Whoever violates this section is guilty of riot, a misdemeanor of the first degree.

HISTORY: 134 v H 511, Eff 1-1-74.

Not analogous to former RC § 2917.03 (RS § 6899; S&C 431, 432; 29 v 144; 95 v 300; GC § 12825; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2917.03.1] § 2917.031 Proof of express agreement with four or more others not required.

For the purposes of prosecuting violations of sections 2917.02 and 2917.03 of the Revised Code, the state is not required to allege or prove that the offender expressly agreed with four or more others to commit any act that constitutes a violation of either section prior to or while committing those acts.

HISTORY: 150 v S 57, § 1, eff. 3-22-04.

The effective date is set by section 4 of S.B. 57

§ 2917.04 Failure to disperse.

(A) Where five or more persons are participating in a course of disorderly conduct in violation of section 2917.11 of the Revised Code, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance, or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

(B) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(C)(1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in division (C)(3) of this section, failure to disperse is a minor misdemeanor.

(3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in division (A) of this section creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind.

HISTORY: 134 v H 511, Eff 1-1-74; 150 v S 57, § 1, eff. 3-22-04.

The effective date is set by section 4 of S.B. 57 (150 v —).

Not analogous to former RC § 2917.04 (GC § 12824-1; 101 v 100; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.51 (132 v H 996), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.05 Justifiable use of force to suppress riot.

A law enforcement officer or fireman, engaged in suppressing riot or in protecting persons or property during riot:

(A) Is justified in using force, other than deadly force, when and to the extent he has probable cause to believe such force is necessary to disperse or apprehend rioters;

(B) Is justified in using force, including deadly force, when and to the extent he has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2917.05 (RS § 6899a; 95 v 300; GC § 12826; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.55 (132 v H 996), repealed 134 v H 511, § 2, eff 1-1-74.

[DISORDERLY CONDUCT]

§ 2917.11 Disorderly conduct.

(A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;

(3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;

(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

(B) No person, while voluntarily intoxicated, shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others;

(2) Engage in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence

of alcohol or any drug of abuse, is not a violation of division (B) of this section.

(D) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of division (B) of this section.

(E)(1) Whoever violates this section is guilty of disorderly conduct.

(2) Except as otherwise provided in division (E)(3) of this section, disorderly conduct is a minor misdemeanor.

(3) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:

(a) The offender persists in disorderly conduct after reasonable warning or request to desist.

(b) The offense is committed in the vicinity of a school or in a school safety zone.

(c) The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

(d) The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

(F) As used in this section:

(1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(3) "Emergency facility" has the same meaning as in section 2909.04 of the Revised Code.

(4) "Committed in the vicinity of a school" has the same meaning as in section 2925.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 143 v H 51 (Eff 11-8-90); 146 v S 2 (Eff 7-1-96); 148 v S 1 (Eff 8-6-99); 148 v H 137 (Eff 3-10-2000); 149 v S 40. Eff 1-25-2002.

Not analogous to former RC § 2917.11 (RS § 6904; S&C 415, 431, 911; 29 v 144; 68 v 9; GC § 12833; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.12 Disturbing a lawful meeting.

(A) No person, with purpose to prevent or disrupt a lawful meeting, procession, or gathering, shall do either of the following:

(1) Do any act which obstructs or interferes with the due conduct of such meeting, procession, or gathering;

(2) Make any utterance, gesture, or display which outrages the sensibilities of the group.

(B) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2917.12 (RS § 6904; S&C 415, 431, 911; 29 v 144; 68 v 9; GC § 12833; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.13 Misconduct at emergency.

(A) No person shall knowingly do any of the following:

(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized per-

son, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Hamper the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility;

(3) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind. *§*

(B) Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

(C) Whoever violates this section is guilty of misconduct at an emergency. Except as otherwise provided in this division, misconduct at an emergency is a misdemeanor of the fourth degree. If a violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree.

(D) As used in this section:

(1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(3) "Emergency facility" has the same meaning as in section 2909.04 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 148 v H 137 (Eff 3-10-2000); 149 v S 40. Eff 1-25-2002; 150 v S 57, § 1, eff. 3-22-04.

The effective date is set by section 4 of S.B. 57 (150 v —).

Not analogous to former RC § 2917.13 (RS § 6905; S&C 432; 29 v 144; GC § 12834; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.43 (132 v H 332), repealed 134 v H 511, § 2, eff 1-1-74.

[HARASSMENT]

§ 2917.21 Telecommunications harassment.

(A) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

(1) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;

(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;

(3) During the telecommunication, violates section 2903.21 of the Revised Code;

(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.

(B) No person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.

(C)(1) Whoever violates this section is guilty of telecommunications harassment.

(2) A violation of division (A)(1), (2), (3), or (5) or (B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. If a violation of division (A)(4) of this section results in economic harm of five hundred dollars or more but less than five thousand dollars, telecommunications harassment is a felony of the fifth degree. If a violation of division (A)(4) of this section results in economic harm of five thousand dollars or more but less than one hundred thousand dollars, telecommunications harassment is a felony of the fourth degree. If a violation of division (A)(4) of this section results in economic harm of one hundred thousand dollars or more, telecommunications harassment is a felony of the third degree.

(D) No cause of action may be asserted in any court of this state against any provider of a telecommunications service or information service, or against any officer, employee, or agent of a telecommunication service or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section or section 4931.31 of the Revised Code. A provider of a telecommunications service or information service, or an officer, employee, or agent of a telecommunications service or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section or section 4931.31 of the Revised Code.

(E) As used in this section:

(1) "Economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a

result of criminal conduct. "Economic harm" includes, but is not limited to, all of the following:

(a) All wages, salaries, or other compensation lost as a result of the criminal conduct;

(b) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(c) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

(d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(2) "Caller" means the person described in division (A) of this section who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

(3) "Telecommunication" and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(4) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(F) Nothing in this section prohibits a person from making a telecommunication to a debtor that is in compliance with the "Fair Debt Collection Practices Act," 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or the "Telephone Consumer Protection Act," 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended.

HISTORY: 134 v H 511 (Eff 1-1-74); 138 v H 164 (Eff 4-9-81); 146 v S 2 (Eff 7-1-96); 147 v H 182 (Eff 10-1-97); 147 v S 215 (Eff 3-30-99); 147 v H 565, Eff 3-30-99.

Not analogous to former RC § 2917.21 (RS § 6827a; 90 v 33; 95 v 69; 97 v 307; GC § 12839; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Comment, Legislative Service Commission

Section 2917.21 of the Revised Code is amended by this act [Am. Sub. H.B. 565] and also by Sub. S.B. 215 of the 122nd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[FALSE ALARMS]

§ 2917.31 Inducing panic.

(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false;

(2) Threatening to commit any offense of violence;

(3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

(B) Division (A)(1) of this section does not apply to any person conducting an authorized fire or emergency drill.

(C)(1) Whoever violates this section is guilty of inducing panic.

(2) Except as otherwise provided in division (C)(3), (4), (5), (6), (7), (8), or (9) of this section, inducing panic is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (C)(4), (5), (6), (7), (8), or (9) of this section, if a violation of this section results in physical harm to any person, inducing panic is a felony of the fourth degree.

(4) Except as otherwise provided in division (C)(5), (6), (7), (8), or (9) of this section, if a violation of this section results in economic harm, the penalty shall be determined as follows:

(a) If the violation results in economic harm of five hundred dollars or more but less than five thousand dollars and if division (C)(3) of this section does not apply, inducing panic is a felony of the fifth degree.

(b) If the violation results in economic harm of five thousand dollars or more but less than one hundred thousand dollars, inducing panic is a felony of the fourth degree.

(c) If the violation results in economic harm of one hundred thousand dollars or more, inducing panic is a felony of the third degree.

(5) Except as otherwise provided in division (C)(6), (7), (8), or (9) of this section, if the public place involved in a violation of division (A)(1) of this section is a school, the penalty shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b) or (c) of this section, inducing panic is a felony of the fourth degree.

(b) If the violation results in physical harm to any person and if division (C)(5)(c)(iii) of this section does not apply, inducing panic is a felony of the third degree.

(c) If the violation results in economic harm, the penalty shall be determined as follows:

(i) If the violation results in economic harm of five hundred dollars or more but less than five thousand dollars and if division (C)(5)(b) of this section does not apply, inducing panic is a felony of the fourth degree.

(ii) If the violation results in economic harm of five thousand dollars or more but less than one hundred thousand dollars, inducing panic is a felony of the third degree.

(iii) If the violation results in economic harm of one hundred thousand dollars or more, inducing panic is a felony of the second degree.

(6) If the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, and except as otherwise provided in division (C)(7), (8), or (9) of this section, inducing panic is a felony of the fourth degree.

(7) If the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, and except as otherwise provided in division (C)(9)(a) or (c) of this section, if a violation of this section results in physical harm to any person, inducing panic is a felony of the third degree.

(8) If the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, and except as otherwise provided in division (C)(9)(a) or (c) of this section, if a violation of this section results in economic harm of one hundred thousand dollars or more, inducing panic is a felony of the third degree.

(9)(a) If the public place involved in a violation of division (A)(1) of this section is a school, if the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, and if the violation results in physical harm to any person, inducing panic is a felony of the second degree.

(b) If the public place involved in a violation of division (A)(1) of this section is a school, if the violation pertains to a purported, threatened, or actual use of a

weapon of mass destruction, and if the violation results in economic harm of five thousand dollars or more but less than one hundred thousand dollars, and if division (C)(9)(a) of this section does not apply, inducing panic is a felony of the third degree.

(c) If the public place involved in a violation of division (A)(1) of this section is a school, if the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, and if the violation results in economic harm of one hundred thousand dollars or more, inducing panic is a felony of the second degree.

(D)(1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Revised Code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section:

(1) "Economic harm" means any of the following:

(a) All direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" as described in this division includes, but is not limited to, all of the following:

(i) All wages, salaries, or other compensation lost as a result of the criminal conduct;

(ii) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(iii) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

(iv) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(b) All costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or section 2917.32 of the Revised Code, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision.

(2) "School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a violation of this section is committed.

(3) "Weapon of mass destruction" means any of the following:

(a) Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(b) Any weapon involving a disease organism or biological agent;

(c) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life;

(d) Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to 18 U.S.C. 921(a)(4) and regulations issued under that section:

(i) Any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;

(ii) Any combination of parts either designed or intended for use in converting any item or device into any item or device described in division (E)(3)(d)(i) of this section and from which an item or device described in that division may be readily assembled.

(4) "Biological agent" has the same meaning as in section 2917.33 of the Revised Code.

(5) "Emergency medical services personnel" has the same meaning as in section 2133.21 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 147 v H 182 (Eff 10-1-97); 147 v H 382 (Eff 7-22-98); 149 v H 411. Eff 9-27-2002.

Not analogous to former RC § 2917.31 (RS § 6917; S&C 434, 1398, 1401; 29 v 144; 29 v 112; GC § 12851; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.32 Making false alarms.

(A) No person shall do any of the following:

(1) Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;

(2) Knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property;

(3) Report to any law enforcement agency an alleged offense or other incident within its concern, knowing that such offense did not occur.

(B) This section does not apply to any person conducting an authorized fire or emergency drill.

(C)(1) Whoever violates this section is guilty of making false alarms.

(2) Except as otherwise provided in division (C)(3), (4), (5), or (6) of this section, making false alarms is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (C)(4) of this section, if a violation of this section results in economic harm of five hundred dollars or more but less than five thousand dollars, making false alarms is a felony of the fifth degree.

(4) If a violation of this section pertains to a purported, threatened, or actual use of a weapon of mass destruction, making false alarms is a felony of the third degree.

(5) If a violation of this section results in economic harm of five thousand dollars or more but less than one hundred thousand dollars and if division (C)(4) of this section does not apply, making false alarms is a felony of the fourth degree.

(6) If a violation of this section results in economic harm of one hundred thousand dollars or more, making false alarms is a felony of the third degree.

(D)(1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Revised Code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section, “economic harm” and “weapon of mass destruction” have the same meanings as in section 2917.31 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 147 v H 182 (Eff 10-1-97); 149 v H 411, Eff 9-27-2002.

Not analogous to former RC § 2917.32 (RS § 6918; S&C 430; 29 v 144; GC § 12857; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.33 Unlawful possession or use of a hoax weapon of mass destruction.

(A) No person, without privilege to do so, shall manufacture, possess, sell, deliver, display, use, threaten to use, attempt to use, conspire to use, or make readily accessible to others a hoax weapon of mass destruction with the intent to deceive or otherwise mislead one or more persons into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage.

(B) This section does not apply to any member or employee of the armed forces of the United States, a governmental agency of this state, another state, or the United States, or a private entity, to whom all of the following apply:

(1) The member or employee otherwise is engaged in lawful activity within the scope of the member's or employee's duties or employment.

(2) The member or employee otherwise is duly authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity as described in division (A) of this section.

(3) The member or employee is in compliance with applicable federal and state law.

(C) Whoever violates this section is guilty of unlawful possession or use of a hoax weapon of mass destruction, a felony of the fourth degree.

(D) Any act that is a violation of this section and any other section of the Revised Code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section:

(1) “Hoax weapon of mass destruction” means any device or object that by its design, construction, content, or characteristics appears to be, appears to constitute, or appears to contain, or is represented as being, constituting, or containing, a weapon of mass destruction and to which either of the following applies:

(a) It is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction that does not meet the definition of a weapon of mass destruction.

(b) It does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system.

(2) “Biological agent” means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, capable of causing any of the following:

(a) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) Deterioration of food, water, equipment, supplies, or material of any kind;

(c) Deleterious alteration of the environment.

(3) “Toxin” means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances

or a recombinant molecule, whatever its origin or method of reproduction, including, but not limited to, any of the following:

(a) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism;

(b) Any poisonous isomer or biological product, homolog, or derivative of any substance or product described in division (D)(3)(a) of this section.

(4) “Delivery system” means any of the following:

(a) Any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector;

(b) Any vector.

(5) “Vector” means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host.

(6) “Weapon of mass destruction” has the same meaning as in section 2917.31 of the Revised Code.

HISTORY: 149 v H 411, Eff 9-27-2002.

Not analogous to former RC § 2917.33 (RS § 6908; S&C 427, 428; 29 v 144, §§ 7, 9; GC § 12858; Bureau of Code Revision, 10-1-53; 127 v 1039), repealed 134 v H 511, § 2, eff 1-1-74.

[CROWD SAFETY]

§ 2917.40 Required crowd safety measures at live entertainment performances.

(A) As used in this section:

(1) “Live entertainment performance” means any live speech; any live musical performance, including a concert; any live dramatic performance; any live variety show; and any other live performance with respect to which the primary intent of the audience can be construed to be viewing the performers. A “live entertainment performance” does not include any form of entertainment with respect to which the person purchasing a ticket routinely participates in amusements as well as views performers.

(2) “Restricted entertainment area” means any wholly or partially enclosed area, whether indoors or outdoors, that has limited access through established entrances, or established turnstyles† or similar devices.

(3) “Concert” means a musical performance of which the primary component is a presentation by persons singing or playing musical instruments, that is intended by its sponsors mainly, but not necessarily exclusively, for the listening enjoyment of the audience, and that is held in a facility. A “concert” does not include any performance in which music is a part of the presentation and the primary component of which is acting, dancing, a motion picture, a demonstration of skills or talent other than singing or playing an instrument, an athletic event, an exhibition, or a speech.

(4) “Facility” means any structure that has a roof or partial roof and that has walls that wholly surround the area on all sides, including, but not limited to, a stadium, hall, arena, armory, auditorium, ballroom, exhibition hall, convention center, or music hall.

(5) “Person” includes, in addition to an individual or entity specified in division (C) of section 1.59 of the Revised Code, any governmental entity.

(B)(1) No person shall sell, offer to sell, or offer in return for a donation any ticket that is not numbered and

that does not correspond to a specific seat for admission to either of the following:

(a) A live entertainment performance that is not exempted under division (D) of this section, that is held in a restricted entertainment area, and for which more than eight thousand tickets are offered to the public;

(b) A concert that is not exempted under division (D) of this section and for which more than three thousand tickets are offered to the public.

(2) No person shall advertise any live entertainment performance as described in division (B)(1)(a) of this section or any concert as described in division (B)(1)(b) of this section, unless the advertisement contains the words "Reserved Seats Only."

(C) Unless exempted by division (D)(1) of this section, no person who owns or operates any restricted entertainment area shall fail to open, maintain, and properly staff at least the number of entrances designated under division (E) of this section for a minimum of ninety minutes prior to the scheduled start of any live entertainment performance that is held in the restricted entertainment area and for which more than three thousand tickets are sold, offered for sale, or offered in return for a donation.

(D)(1) A live entertainment performance, other than a concert, is exempted from the provisions of divisions (B) and (C) of this section if both of the following apply:

(a) The restricted entertainment area in which the performance is held has at least eight entrances or, if both entrances and separate admission turnstyles† or similar devices are used, has at least eight turnstyles† or similar devices;

(b) The eight entrances or, if applicable, the eight turnstyles† or similar devices are opened, maintained, and properly staffed at least one hour prior to the scheduled start of the performance.

(2)(a) The chief of the police department of a township police district in the case of a facility located within the district, the officer responsible for public safety within a municipal corporation in the case of a facility located within the municipal corporation, or the county sheriff in the case of a facility located outside the boundaries of a township police district or municipal corporation may, upon application of the sponsor of a concert covered by division (B) of this section, exempt the concert from the provisions of that division if the official finds that the health, safety, and welfare of the participants and spectators would not be substantially affected by failure to comply with the provisions of that division.

In determining whether to grant an exemption, the official shall consider the following factors:

(i) The size and design of the facility in which the concert is scheduled;

(ii) The size, age, and anticipated conduct of the crowd expected to attend the concert;

(iii) The ability of the sponsor to manage and control the expected crowd.

If the sponsor of any concert desires to obtain an exemption under this division, the sponsor shall apply to the appropriate official on a form prescribed by that official. The official shall issue an order that grants or denies the exemption within five days after receipt of the application. The sponsor may appeal any order that denies an exemption to the court of common pleas of the county in which the facility is located.

(b) If an official grants an exemption under division (D)(2)(a) of this section, the official shall designate an on-duty law enforcement officer to be present at the

concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety, and welfare of the participants and spectators.

(3) Notwithstanding division (D)(2) of this section, in the case of a concert held in a facility located on the campus of an educational institution covered by section 3345.04 of the Revised Code, a state university law enforcement officer appointed pursuant to sections 3345.04 and 3345.21 of the Revised Code shall do both of the following:

(a) Exercise the authority to grant exemptions provided by division (D)(2)(a) of this section in lieu of an official designated in that division;

(b) If the officer grants an exemption under division (D)(3)(a) of this section, designate an on-duty state university law enforcement officer to be present at the concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety, and welfare of the participants and spectators.

(E)(1) Unless a live entertainment performance is exempted by division (D)(1) of this section, the chief of the police department of a township police district in the case of a restricted entertainment area located within the district, the officer responsible for public safety within a municipal corporation in the case of a restricted entertainment area located within the municipal corporation, or the county sheriff in the case of a restricted entertainment area located outside the boundaries of a township police district or municipal corporation shall designate, for purposes of division (C) of this section, the minimum number of entrances required to be opened, maintained, and staffed at each live entertainment performance so as to permit crowd control and reduce congestion at the entrances. The designation shall be based on such factors as the size and nature of the crowd expected to attend the live entertainment performance, the length of time prior to the live entertainment performance that crowds are expected to congregate at the entrances, and the amount of security provided at the restricted entertainment area.

(2) Notwithstanding division (E)(1) of this section, a state university law enforcement officer appointed pursuant to sections 3345.04 and 3345.21 of the Revised Code shall designate the number of entrances required to be opened, maintained, and staffed in the case of a live entertainment performance that is held at a restricted entertainment area located on the campus of an educational institution covered by section 3345.04 of the Revised Code.

(F) No person shall enter into any contract for a live entertainment performance, that does not permit or require compliance with this section.

(G)(1) This section does not apply to a live entertainment performance held in a restricted entertainment area if one admission ticket entitles the holder to view or participate in three or more different games, rides, activities, or live entertainment performances occurring simultaneously at different sites within the restricted entertainment area and if the initial admittance entrance to the restricted entertainment area, for which the ticket is required, is separate from the entrance to any specific live entertainment performance and an additional ticket is not required for admission to the particular live entertainment performance.

(2) This section does not apply to a symphony orchestra performance, a ballet performance, horse races, dances, or fairs.

(H) This section does not prohibit the legislative authority of any municipal corporation from imposing additional requirements, not in conflict with this section, for the promotion or holding of live entertainment performances.

(I) Whoever violates division (B), (C), or (F) of this section is guilty of a misdemeanor of the first degree. If any individual suffers physical harm to his person as a result of a violation of this section, the sentencing court shall consider this factor in favor of imposing a term of imprisonment upon the offender.

HISTORY: 138 v S 320. Eff 3-23-81.

† In division (A)(2) and (D)(1)(a) and (b), so in enrolled bill. Apparently, "turnstiles" was intended.

Not analogous to former RC § 2917.40 (RS § 7014; 75 v 517; 79 v 30; 91 v 361; GC § 12865; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.41 Misconduct involving public transportation system.

(A) No person shall evade the payment of the known fares of a public transportation system.

(B) No person shall alter any transfer, pass, ticket, or token of a public transportation system with the purpose of evading the payment of fares or of defrauding the system.

(C) No person shall do any of the following while in any facility or on any vehicle of a public transportation system:

(1) Play sound equipment without the proper use of a private earphone;

(2) Smoke, eat, or drink in any area where the activity is clearly marked as being prohibited;

(3) Expectorate upon a person, facility, or vehicle.

(D) No person shall write, deface, draw, or otherwise mark on any facility or vehicle of a public transportation system.

(E) No person shall fail to comply with a lawful order of a public transportation system police officer, and no person shall resist, obstruct, or abuse a public transportation police officer in the performance of the officer's duties.

(F) Whoever violates this section is guilty of misconduct involving a public transportation system.

(1) Violation of division (A), (B), or (E) of this section is a misdemeanor of the fourth degree.

(2) Violation of division (C) of this section is a minor misdemeanor on a first offense. If a person previously has been convicted of or pleaded guilty to a violation of any division of this section or of a municipal ordinance that is substantially similar to any division of this section, violation of division (C) of this section is a misdemeanor of the fourth degree.

(3) Violation of division (D) of this section is a misdemeanor of the third degree.

(G) Notwithstanding any other provision of law, seventy-five per cent of each fine paid to satisfy a sentence imposed for a violation of this section shall be deposited into the treasury of the county in which the violation occurred and twenty-five per cent shall be deposited with the county transit board, regional transit authority, or regional transit commission that operates the public transportation system involved in the violation, unless the board of county commissioners operates the public transportation system, in which case one hundred per cent of

each fine shall be deposited into the treasury of the county.

(H) As used in this section, "public transportation system" means a county transit system operated in accordance with sections 306.01 to 306.13 of the Revised Code, a regional transit authority operated in accordance with sections 306.30 to 306.71 of the Revised Code, or a regional transit commission operated in accordance with sections 306.80 to 306.90 of the Revised Code.

HISTORY: 140 v S 86 (Eff 9-20-84); 141 v H 813 (Eff 9-17-86); 146 v H 61 (Eff 10-25-95); 146 v S 2. Eff 7-1-96; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

The provisions of § 223 of H.B. 95 (150 v —) read as follows:

SECTION 223. Section 2917.41 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 61 and Am. Sub. S.B. 2 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 152 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Not analogous to former RC § 2917.41 (RS § 7034a; GC § 12869; 81 v 92; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2917.46 Unauthorized use of block parent or mcgruff house symbol.

(A) No person shall, with intent to identify a building as a block parent home or building, display the block parent symbol adopted by the state board of education pursuant to former section 3301.076 [3301.07.6] of the Revised Code prior to its repeal on the effective date of this amendment.

(B) No person shall, with intent to identify a building as a block parent home or building, display a symbol that falsely gives the appearance of being the block parent symbol adopted by the state board of education pursuant to former section 3301.076 [3301.07.6] of the Revised Code prior to its repeal on the effective date of this amendment.

(C) No person, with intent to identify a home or building as a mcgruff house program home or building, shall display the mcgruff house symbol adopted by the division of criminal justice services in the state department of public safety pursuant to section 5502.62 of the Revised Code unless authorized in accordance with that section, any rule adopted pursuant to that section, or section 3313.206 [3313.20.6] of the Revised Code.

(D) No person, with intent to identify a home or building as a mcgruff house program home or building, shall display a symbol that falsely gives the appearance of being the mcgruff house symbol adopted by the division of criminal justice services in the state department of public safety pursuant to section 5502.62 of the Revised Code or any rule adopted pursuant to that section.

(E)(1) Whoever violates division (A) or (B) of this section is guilty of unauthorized use of a block parent symbol, a minor misdemeanor.

(2) Whoever violates division (C) or (D) of this section is guilty of unauthorized use of a mcgruff house symbol, a minor misdemeanor.

HISTORY: 141 v H 112 (Eff 10-17-85); 142 v H 708. Eff 4-19-88; 151 v H 374, § 1, eff. 7-1-07.

The effective date is set by § 3(A) of 151 v H 374.

(B)(1)(a) No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated unless at least one of the following applies:

(i) Subject to division (B)(2) of this section, the person has given at least twenty-four hours actual notice, in person or by telephone, to one of the woman's parents, her guardian, or her custodian as to the intention to perform or induce the abortion, provided that if the woman has requested, in accordance with division (B)(1)(b) of this section, that notice be given to a specified brother or sister of the woman who is twenty-one years of age or older or to a specified stepparent or grandparent of the woman instead of to one of her parents, her guardian, or her custodian, and if the person is notified by a juvenile court that affidavits of the type described in that division have been filed with that court, the twenty-four hours actual notice described in this division as to the intention to perform or induce the abortion shall be given, in person or by telephone, to the specified brother, sister, stepparent, or grandparent instead of to the parent, guardian, or custodian;

(ii) One of the woman's parents, her guardian, or her custodian has consented in writing to the performance or inducement of the abortion;

(iii) A juvenile court pursuant to section 2151.85 of the Revised Code issues an order authorizing the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian;

(iv) A juvenile court or a court of appeals, by its inaction, constructively has authorized the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian under division (B)(1) of section 2151.85 or division (A) of section 2505.073 [2505.07.3] of the Revised Code.

(b) If a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated desires notification as to a person's intention to perform or induce an abortion on the woman to be given to a specified brother or sister of the woman who is twenty-one years of age or older or to a specified stepparent or grandparent of the woman instead of to one of her parents, her guardian, or her custodian, the person who intends to perform or induce the abortion shall notify the specified brother, sister, stepparent, or grandparent instead of the parent, guardian, or custodian for purposes of division (B)(1)(a)(i) of this section if all of the following apply:

(i) The woman has requested the person to provide the notification to the specified brother, sister, stepparent, or grandparent, clearly has identified the specified brother, sister, stepparent, or grandparent and her relation to that person, and, if the specified relative is a brother or sister, has indicated the age of the brother or sister;

(ii) The woman has executed an affidavit stating that she is in fear of physical, sexual, or severe emotional abuse from the parent, guardian, or custodian who otherwise would be notified under division (B)(1)(a)(i) of this section, and that the fear is based on a pattern of physical, sexual, or severe emotional abuse of her exhibited by that parent, guardian, or custodian, has filed the affidavit with the juvenile court of the county in which the woman has a residence or legal settlement, the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, or the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be per-

formed or induced is located, and has given the court written notice of the name and address of the person who intends to perform or induce the abortion;

(iii) The specified brother, sister, stepparent, or grandparent has executed an affidavit stating that the woman has reason to fear physical, sexual, or severe emotional abuse from the parent, guardian, or custodian who otherwise would be notified under division (B)(1)(a)(i) of this section, based on a pattern of physical, sexual, or severe emotional abuse of her by that parent, guardian, or custodian, and the woman or the specified brother, sister, stepparent, or grandparent has filed the affidavit with the juvenile court in which the affidavit described in division (B)(1)(b)(ii) of this section was filed;

(iv) The juvenile court in which the affidavits described in divisions (B)(1)(b)(ii) and (iii) of this section were filed has notified the person that both of those affidavits have been filed with the court.

(c) If an affidavit of the type described in division (B)(1)(b)(ii) of this section and an affidavit of the type described in division (B)(1)(b)(iii) of this section are filed with a juvenile court and the court has been provided with written notice of the name and address of the person who intends to perform or induce an abortion upon the woman to whom the affidavits pertain, the court promptly shall notify the person who intends to perform or induce the abortion that the affidavits have been filed. If possible, the notice to the person shall be given in person or by telephone.

(2) If division (B)(1)(a)(ii), (iii), or (iv) of this section does not apply, and if no parent, guardian, or custodian can be reached for purposes of division (B)(1)(a)(i) of this section after a reasonable effort, or if notification is to be given to a specified brother, sister, stepparent, or grandparent under that division and the specified brother, sister, stepparent, or grandparent cannot be reached for purposes of that division after a reasonable effort, no person shall perform or induce such an abortion without giving at least forty-eight hours constructive notice to one of the woman's parents, her guardian, or her custodian, by both certified and ordinary mail sent to the last known address of the parent, guardian, or custodian, or if notification for purposes of division (B)(1)(a)(i) of this section is to be given to a specified brother, sister, stepparent, or grandparent, without giving at least forty-eight hours constructive notice to that specified brother, sister, stepparent, or grandparent by both certified and ordinary mail sent to the last known address of that specified brother, sister, stepparent, or grandparent. The forty-eight-hour period under this division begins when the certified mail notice is mailed. If a parent, guardian, or custodian of the woman, or if notification under division (B)(1)(a)(i) of this section is to be given to a specified brother, sister, stepparent, or grandparent, the specified brother, sister, stepparent, or grandparent, is not reached within the forty-eight-hour period, the abortion may proceed even if the certified mail notice is not received.

(3) If a parent, guardian, custodian, or specified brother, sister, stepparent, or grandparent who has been notified in accordance with division (B)(1) or (2) of this section clearly and unequivocally expresses that he or she does not wish to consult with a pregnant woman prior to her abortion, then the abortion may proceed without any further waiting period.

(4) For purposes of prosecutions for a violation of division (B)(1) or (2) of this section, it shall be a

rebuttable presumption that a woman who is unmarried and under eighteen years of age is unemancipated.

(C)(1) It is an affirmative defense to a charge under division (B)(1) or (2) of this section that the pregnant woman provided the person who performed or induced the abortion with false, misleading, or incorrect information about her age, marital status, or emancipation, about the age of a brother or sister to whom she requested notice be given as a specified relative instead of to one of her parents, her guardian, or her custodian, or about the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given and the person who performed or induced the abortion did not otherwise have reasonable cause to believe the pregnant woman was under eighteen years of age, unmarried, or unemancipated, to believe that the age of a brother or sister to whom she requested notice be given as a specified relative instead of to one of her parents, her guardian, or her custodian was not twenty-one years of age, or to believe that the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given was incorrect.

(2) It is an affirmative defense to a charge under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant woman from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(D) Whoever violates this section is guilty of unlawful abortion. A violation of division (A) of this section is a misdemeanor of the first degree on the first offense and a felony of the fourth degree on each subsequent offense. A violation of division (B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(E) Whoever violates this section is liable to the pregnant woman and her parents, guardian, or custodian for civil compensatory and exemplary damages.

(F) As used in this section "unemancipated" means that a woman who is unmarried and under eighteen years of age has not entered the armed services of the United States, has not become employed and self-subsisting, or has not otherwise become independent from the care and control of her parent, guardian, or custodian.

HISTORY: 135 v H 989 (Eff 9-16-74); 141 v H 319 (Eff 3-24-86); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2919.12 (134 v H 511 entitled "Promoting abortion."), repealed by 135 v H 989; and not analogous to former RC § 2919.12 (RS § 6910; S&C 429; 29 v 144; GC § 12915; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2919.12.1] § 2919.121 Performing or inducing unlawful abortion upon minor.

(A) For the purpose of this section, a minor shall be considered "emancipated" if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian.

(B) No person shall knowingly perform or induce an abortion upon a pregnant minor unless one of the following is the case:

(1) The attending physician has secured the informed written consent of the minor and one parent, guardian, or custodian;

(2) The minor is emancipated and the attending physician has received her written informed consent;

(3) The minor has been authorized to consent to the abortion by a court order issued pursuant to division (C) of this section, and the attending physician has received her informed written consent;

(4) The court has given its consent in accordance with division (C) of this section and the minor is having the abortion willingly.

(C) The right of a minor to consent to an abortion under division (B)(3) of this section or judicial consent to obtain an abortion under division (B)(4) of this section may be granted by a court order pursuant to the following procedures:

(1) The minor or next friend shall make an application to the juvenile court of the county in which the minor has a residence or legal settlement, the juvenile court of any county that borders the county in which she has a residence or legal settlement, or the juvenile court of the county in which the facility in which the abortion would be performed or induced is located. The juvenile court shall assist the minor or next friend in preparing the petition and notices required by this section. The minor or next friend shall thereafter file a petition setting forth all of the following: the initials of the minor; her age; the names and addresses of each parent, guardian, custodian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis of the minor; that the minor has been fully informed of the risks and consequences of the abortion; that the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion; that the minor has not previously filed a petition under this section concerning the same pregnancy that was denied on the merits; that, if the court does not authorize the minor to consent to the abortion, the court should find that the abortion is in the best interests of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem; and if the minor does not have private counsel, that the court should appoint counsel. The petition shall be signed by the minor or the next friend.

(2) A hearing on the merits shall be held on the record as soon as possible within five days of filing the petition. If the minor has not retained counsel, the court shall appoint counsel at least twenty-four hours prior to the hearing. The court shall appoint a guardian ad litem to protect the interests of the minor at the hearing. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's counsel. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted the right to consent to the abortion or whether the abortion is in the best interests of the minor. If the minor or her counsel fail to appear for a scheduled hearing, jurisdiction shall remain with the judge who would have presided at the hearing.

(3) If the court finds that the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall grant the petition and permit the minor to consent to the abortion.

If the court finds that the abortion is in the best interests of the minor, the court shall give judicial consent to the abortion, setting forth the grounds for its finding.

If the court does not make either of the findings specified in division (C)(3) of this section, the court shall deny the petition, setting forth the grounds on which the petition is denied.

The court shall issue its order not later than twenty-four hours after the end of the hearing.

(4) No juvenile court shall have jurisdiction to rehear a petition concerning the same pregnancy once a juvenile court has granted or denied the petition.

(5) If the petition is granted, the informed consent of the minor, pursuant to a court order authorizing the minor to consent to the abortion, or judicial consent to the abortion, shall bar an action by the parents, guardian, or custodian of the minor for battery of the minor against any person performing or inducing the abortion. The immunity granted shall only extend to the performance or inducement of the abortion in accordance with this section and to any accompanying services that are performed in a competent manner.

(6) An appeal from an order issued under this section may be taken to the court of appeals by the minor. The record on appeal shall be completed and the appeal perfected within four days from the filing of the notice of appeal. Because the abortion may need to be performed in a timely manner, the supreme court shall, by rule, provide for expedited appellate review of cases appealed under this section.

(7) All proceedings under this section shall be conducted in a confidential manner and shall be given such precedence over other pending matters as will ensure that the court will reach a decision promptly and without delay.

The petition and all other papers and records that pertain to an action commenced under this section shall be kept confidential and are not public records under section 149.43 of the Revised Code.

(8) No filing fee shall be required of or court costs assessed against a person filing a petition under this section or appealing an order issued under this section.

(D) It is an affirmative defense to any civil, criminal, or professional disciplinary claim brought under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the minor from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(E) Whoever violates division (B) of this section is guilty of unlawful abortion, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section, unlawful abortion is a felony of the fourth degree.

(F) Whoever violates division (B) of this section is liable to the pregnant minor and her parents, guardian, or custodian for civil, compensatory, and exemplary damages.

HISTORY: 147 v H 421. Eff 5-6-98.

The provisions of § 3 of HB 421 (147 v —) read as follows:

SECTION 3. It is the intention of the General Assembly that section 2919.121 of the Revised Code be interpreted and applied

in accordance with the decisions in *Planned Parenthood v. Ashcroft*, 655 F.2d 848 (8th Cir., 1981), and *Planned Parenthood v. Ashcroft*, 103 S. Ct. 2517 (1983), which interpreted and upheld the Missouri statute upon which section 2919.121 of the Revised Code is based.

[§ 2919.12.2] § 2919.122 Application of unlawful abortion law; defenses.

Section 2919.121 [2919.12.1] of the Revised Code applies in lieu of division (B) of section 2919.12 of the Revised Code whenever its operation is not enjoined. If section 2919.121 [2919.12.1] of the Revised Code is enjoined, division (B) of section 2919.12 of the Revised Code applies.

If a person complies with the requirements of division (B) of section 2919.12 of the Revised Code under the good faith belief that the application or enforcement of section 2919.121 [2919.12.1] of the Revised Code is subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal, or professional disciplinary action brought under section 2919.121 [2919.12.1] of the Revised Code.

If a person complies with the requirements of section 2919.121 [2919.12.1] of the Revised Code under the good faith belief that it is not subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any criminal, civil, or professional disciplinary action for failure to comply with the requirements of division (B) of section 2919.12 of the Revised Code.

HISTORY: 147 v H 421. Eff 5-6-98.

[§ 2919.12.3] § 2919.123 Unlawful distribution of abortion-inducing drug.

(A) No person shall knowingly give, sell, dispense, administer, otherwise provide, or prescribe RU-486 (mifepristone) to another for the purpose of inducing an abortion in any person or enabling the other person to induce an abortion in any person, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the RU-486 (mifepristone) is a physician, the physician satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486 (mifepristone) for inducing abortions, and the physician provides the RU-486 (mifepristone) to the other person for the purpose of inducing an abortion in accordance with all provisions of federal law that govern the use of RU-486 (mifepristone) for inducing abortions. A person who gives, sells, dispenses, administers, otherwise provides, or prescribes RU-486 (mifepristone) to another as described in division (A) of this section shall not be prosecuted based on a violation of the criteria contained in this division unless the person knows that the person is not a physician, that the person did not satisfy all the specified criteria established by federal law, or that the person did not provide the RU-486 (mifepristone) in accordance with the specified provisions of federal law, whichever is applicable.

(B) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for persons to whom or for whom RU-486

(mifepristone) is provided for the purpose of inducing an abortion.

(C)(1) If a physician provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section and if the physician knows that the person who uses the RU-486 (mifepristone) for the purpose of inducing an abortion experiences during or after the use an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or is hospitalized, receives a transfusion, or experiences any other serious event, the physician promptly must provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the state medical board. The board shall compile and retain all reports it receives under this division. Except as otherwise provided in this division, all reports the board receives under this division are public records open to inspection under section 149.43 of the Revised Code. In no case shall the board release to any person the name or any other personal identifying information regarding a person who uses RU-486 (mifepristone) for the purpose of inducing an abortion and who is the subject of a report the board receives under this division.

(2) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to file a report required under division (C)(1) of this section.

(D) Division (A) of this section does not apply to any of the following:

(1) A pregnant woman who obtains or possesses RU-486 (mifepristone) for the purpose of inducing an abortion to terminate her own pregnancy;

(2) The legal transport of RU-486 (mifepristone) by any person or entity and the legal delivery of the RU-486 (mifepristone) by any person to the recipient, provided that this division does not apply regarding any conduct related to the RU-486 (mifepristone) other than its transport and delivery to the recipient;

(3) The distribution, provision, or sale of RU-486 (mifepristone) by any legal manufacturer or distributor of RU-486 (mifepristone), provided the manufacturer or distributor made a good faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.

(E) Whoever violates this section is guilty of unlawful distribution of an abortion-inducing drug, a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or of section 2919.12, 2919.121 [2919.12.1], 2919.13, 2919.14, 2919.151 [2919.15.1], 2919.17, or 2919.18 of the Revised Code, unlawful distribution of an abortion-inducing drug is a felony of the third degree.

If the offender is a professionally licensed person, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license, including the sanctioning provided in section 4731.22 of the Revised Code for offenders who have a certificate to practice or certificate of registration issued under that chapter.

(F) As used in this section:

(1) "Federal law" means any law, rule, or regulation of the United States or any drug approval letter of the food and drug administration of the United States that governs

or regulates the use of RU-486 (mifepristone) for the purpose of inducing abortions.

(2) "Personal identifying information" has the same meaning as in section 2913.49 of the Revised Code.

(3) "Physician" has the same meaning as in section 2305.113 [2305.11.3] of the Revised Code.

(4) "Professionally licensed person" has the same meaning as in section 2925.01 of the Revised Code.

HISTORY: 150 v H 126, § 1, eff. 9-23-04.

§ 2919.13 Abortion manslaughter.

(A) No person shall purposely take the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman.

(B) No person who performs an abortion shall fail to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the life of a child who is alive when removed from the uterus of the pregnant woman.

(C) Whoever violates this section is guilty of abortion manslaughter, a felony of the first degree.

HISTORY: 135 v H 989. Eff 9-16-74.

Not analogous to former RC § 2919.13 (RS § 6909; S&C 428; 29 v 144; 70 v 61; GC §§ 12916, 12917; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2919.14 Abortion trafficking.

(A) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to sections 313.13 and 2108.50 of the Revised Code.

(B) Whoever violates this section is guilty of abortion trafficking, a misdemeanor of the first degree.

HISTORY: 135 v H 989. Eff 9-16-74.

Not analogous to former RC § 2919.14 (RS § 6970; S&S 640; 66 v 57; 70 v 105; GC § 12918; 101 v 131; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2919.15.1] § 2919.151 Partial birth feticide.

(A) As used in this section:

(1) "Dilation and evacuation procedure of abortion" does not include the dilation and extraction procedure of abortion.

(2) "From the body of the mother" means that the portion of the fetus' body in question is beyond the mother's vaginal introitus in a vaginal delivery.

(3) "Partial birth procedure" means the medical procedure that includes all of the following elements in sequence:

(a) Intentional dilation of the cervix of a pregnant woman, usually over a sequence of days;

(b) In a breech presentation, intentional extraction of at least the lower torso to the navel, but not the entire body, of an intact fetus from the body of the mother, or in a cephalic presentation, intentional extraction of at least the complete head, but not the entire body, of an intact fetus from the body of the mother;

(c) Intentional partial evacuation of the intracranial contents of the fetus, which procedure the person performing the procedure knows will cause the death of the fetus, intentional compression of the head of the fetus,

which procedure the person performing the procedure knows will cause the death of the fetus, or performance of another intentional act that the person performing the procedure knows will cause the death of the fetus;

(d) Completion of the vaginal delivery of the fetus.

(4) "Partially born" means that the portion of the body of an intact fetus described in division (A)(3)(b) of this section has been intentionally extracted from the body of the mother.

(5) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.

(6) "Viable" has the same meaning as in section 2901.01 of the Revised Code.

(B) When the fetus that is the subject of the procedure is viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a major bodily function.

(C) When the fetus that is the subject of the procedure is not viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a major bodily function.

(D) Whoever violates division (B) or (C) of this section is guilty of partial birth feticide, a felony of the second degree.

(E) A pregnant woman upon whom a partial birth procedure is performed in violation of division (B) or (C) of this section is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of those divisions.

(F) This section does not prohibit the suction curettage procedure of abortion, the suction aspiration procedure of abortion, or the dilation and evacuation procedure of abortion.

(G) This section does not apply to any person who performs or attempts to perform a legal abortion if the act that causes the death of the fetus is performed prior to the fetus being partially born even though the death of the fetus occurs after it is partially born.

HISTORY: 148 v. H 351. Eff. 8-18-2000.

The provisions of § 3 of HB 351 (148 v.—) read as follows:
SECTION 3. The General Assembly declares all of the following:

(A) In enacting sections 2307.53 and 2919.151 of the Revised Code, its intent is to prevent the unnecessary death of fetuses when they are substantially outside the body of the mother.

(B) This intent is based in part on a state interest in maintaining a strong public policy against infanticide, regardless of the life expectancy or state of development of the child.

(C) The right to abortion established in *Roe v. Wade* (1973), 410 U.S. 113, was never intended to legitimize infanticide or to deprive the state of all ability to protect fetuses who are substantially outside the body of the mother.

(D) The act also furthers the state interest in preventing unnecessary cruelty. This interest is not necessarily based solely on the ability of the fetus or child to experience pain. The indignity of being partly delivered before being deliberately killed

is also a form of cruelty that should not be unnecessarily inflicted upon any being of human origin. Therefore, there are legitimate reasons for deterring the unnecessary use of the partial birth procedure, even though other abortion procedures that may cause pain remain available.

[POST-VIABILITY ABORTION]

§ 2919.16 Definitions.

As used in sections 2919.16 to 2919.18 of the Revised Code:

(A) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(B) "Gestational age" means the age of an unborn human as calculated from the first day of the last menstrual period of a pregnant woman.

(C) "Health care facility" means a hospital, clinic, ambulatory surgical treatment center, other center, medical school, office of a physician, infirmary, dispensary, medical training institution, or other institution or location in or at which medical care, treatment, or diagnosis is provided to a person.

(D) "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.

(E) "Live birth" has the same meaning as in division (A) of section 3705.01 of the Revised Code.

(F) "Medical emergency" means a condition that a pregnant woman's physician determines, in good faith and in the exercise of reasonable medical judgment, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.

(G) "Physician" has the same meaning as in section 2305.113 [2305.11.3] of the Revised Code.

(H) "Pregnant" means the human female reproductive condition, that commences with fertilization, of having a developing fetus.

(I) "Premature infant" means a human whose live birth occurs prior to thirty-eight weeks of gestational age.

(J) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function, including, but not limited to, the following conditions:

- (1) Pre-eclampsia;
- (2) Inevitable abortion;
- (3) Prematurely ruptured membrane;
- (4) Diabetes;
- (5) Multiple sclerosis.

(K) "Unborn human" means an individual organism of the species *homo sapiens* from fertilization until live birth.

(L) "Viable" means the stage of development of a human fetus at which in the determination of a physician, based on the particular facts of a woman's pregnancy that are known to the physician and in light of medical technology and information reasonably available to the physician, there is a realistic possibility of the maintaining

and nourishing of a life outside of the womb with or without temporary artificial life-sustaining support.

HISTORY: 146 v H 135 (Eff 11-15-95); 149 v S 291, Eff 4-11-2003.

Not analogous to former RC § 2919.16 (RS § 2739a; 83 v 80; GC § 12924; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 6 of SB 281 (149 v —) read as follows:

SECTION 6. (A) Sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 3929.71, and 5111.018 of the Revised Code, as amended by this act, and sections 2303.23, 2305.113, 2323.41, 2323.42, 2323.43, and 2323.55 of the Revised Code, as enacted by this act, apply to civil actions upon a medical claim, dental claim, optometric claim, or chiropractic claim in which the act or omission that constitutes the alleged basis of the claim occurs on or after the effective date of this act.

(B) As used in this section, "medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

§ 2919.17 Terminating or attempting to terminate human pregnancy after viability.

(A) No person shall purposely perform or induce or attempt to perform or induce an abortion upon a pregnant woman if the unborn human is viable, unless either of the following applies:

(1) The abortion is performed or induced or attempted to be performed or induced by a physician, and that physician determines, in good faith and in the exercise of reasonable medical judgment, that the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(2) The abortion is performed or induced or attempted to be performed or induced by a physician and that physician determines, in good faith and in the exercise of reasonable medical judgment, after making a determination relative to the viability of the unborn human in conformity with division (A) of section 2919.18 of the Revised Code, that the unborn human is not viable.

(B)(1) Except as provided in division (B)(2) of this section, no physician shall purposely perform or induce or attempt to perform or induce an abortion upon a pregnant woman when the unborn human is viable and when the physician has determined, in good faith and in the exercise of reasonable medical judgment, that the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, unless each of the following conditions is satisfied:

(a) The physician who performs or induces or attempts to perform or induce the abortion certifies in writing that that physician has determined, in good faith and in the exercise of reasonable medical judgment, that the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) The determination of the physician who performs or induces or attempts to perform or induce the abortion that is described in division (B)(1)(a) of this section is concurred in by at least one other physician who certifies in writing that the concurring physician has determined,

in good faith, in the exercise of reasonable medical judgment, and following a review of the available medical records of and any available tests results pertaining to the pregnant woman, that the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(c) The abortion is performed or induced or attempted to be performed or induced in a health care facility that has or has access to appropriate neonatal services for premature infants.

(d) The physician who performs or induces or attempts to perform or induce the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn human to survive, unless that physician determines, in good faith and in the exercise of reasonable medical judgment, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion.

(e) The physician who performs or induces or attempts to perform or induce the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced or attempted to be performed or induced of at least one other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn human immediately upon the unborn human's complete expulsion or extraction from the pregnant woman.

(2) Division (B)(1) of this section does not prohibit the performance or inducement or an attempted performance or inducement of an abortion without prior satisfaction of each of the conditions described in divisions (B)(1)(a) to (e) of this section if the physician who performs or induces or attempts to perform or induce the abortion determines, in good faith and in the exercise of reasonable medical judgment, that a medical emergency exists that prevents compliance with one or more of those conditions.

(C) For purposes of this section, it shall be rebuttably presumed that an unborn child of at least twenty-four weeks of gestational age is viable.

(D) Whoever violates this section is guilty of terminating or attempting to terminate a human pregnancy after viability, a felony of the fourth degree.

(E) A pregnant woman upon whom an abortion is performed or induced or attempted to be performed or induced in violation of division (A) or (B) of this section is not guilty of an attempt to commit, complicity in the commission of, or conspiracy in the commission of a violation of either of those divisions.

HISTORY: 146 v H 135, Eff 11-15-95.

Not analogous to former RC § 2919.17 (RS § 6913; S & C 429; 29 v 144, § 13; GC § 12925; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

See provisions, § 4 of HB 135 (146 v —) following RC § 2919.16.

§ 2919.18 Failure to perform viability testing.

(A)(1) Except as provided in division (A)(3) of this section, no physician shall perform or induce or attempt to perform or induce an abortion upon a pregnant woman

after the beginning of her twenty-second week of pregnancy unless, prior to the performance or inducement of the abortion or the attempt to perform or induce the abortion, the physician determines, in good faith and in the exercise of reasonable medical judgment, that the unborn human is not viable, and the physician makes that determination after performing a medical examination of the pregnant woman and after performing or causing the performing of gestational age, weight, lung maturity, or other tests of the unborn human that a reasonable physician making a determination as to whether an unborn human is or is not viable would perform or cause to be performed.

(2) Except as provided in division (A)(3) of this section, no physician shall perform or induce or attempt to perform or induce an abortion upon a pregnant woman after the beginning of her twenty-second week of pregnancy without first entering the determination described in division (A)(1) of this section and the associated findings of the medical examination and tests described in that division in the medical record of the pregnant woman.

(3) Divisions (A)(1) and (2) of this section do not prohibit a physician from performing or inducing or attempting to perform or induce an abortion upon a pregnant woman after the beginning of her twenty-second week of pregnancy without making the determination described in division (A)(1) of this section or without making the entry described in division (A)(2) of this section if a medical emergency exists.

(B) Whoever violates this section is guilty of failure to perform viability testing, a misdemeanor of the fourth degree.

HISTORY: 146 v H 135. Eff 11-15-95.

Not analogous to former RC § 2919.18 (RS § 633-14; 92 v 212, § 4; GC § 12933; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74).

[NONSUPPORT AND RELATED OFFENSES]

§ 2919.21 Nonsupport or contributing to nonsupport of dependents.

(A) No person shall abandon, or fail to provide adequate support to:

- (1) The person's spouse, as required by law;
- (2) The person's child who is under age eighteen, or mentally or physically handicapped child who is under age twenty-one;

(3) The person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support.

(B) No person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support.

(C) No person shall aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming a dependent child, as defined in section 2151.04 of the Revised Code, or a neglected child, as defined in section 2151.03 of the Revised Code.

(D) It is an affirmative defense to a charge of failure to provide adequate support under division (A) of this section or a charge of failure to provide support established by a court order under division (B) of this section

that the accused was unable to provide adequate support or the established support but did provide the support that was within the accused's ability and means.

(E) It is an affirmative defense to a charge under division (A)(3) of this section that the parent abandoned the accused or failed to support the accused as required by law, while the accused was under age eighteen, or was mentally or physically handicapped and under age twenty-one.

(F) It is not a defense to a charge under division (B) of this section that the person whom a court has ordered the accused to support is being adequately supported by someone other than the accused.

(G)(1) Except as otherwise provided in this division, whoever violates division (A) or (B) of this section is guilty of nonsupport of dependents, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) or (B) of this section or if the offender has failed to provide support under division (A)(2) or (B) of this section for a total accumulated period of twenty-six weeks out of one hundred four consecutive weeks, whether or not the twenty-six weeks were consecutive, then a violation of division (A)(2) or (B) of this section is a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a felony violation of this section, a violation of division (A)(2) or (B) of this section is a felony of the fourth degree. If the offender is guilty of nonsupport of dependents by reason of failing to provide support to the offender's child as required by a child support order issued on or after April 15, 1985, pursuant to section 2151.23, 2151.231 [2151.23.1], 2151.232 [2151.23.2], 2151.33, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31, or 3115.31 of the Revised Code, the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge.

(2) Whoever violates division (C) of this section is guilty of contributing to the nonsupport of dependents, a misdemeanor of the first degree. Each day of violation of division (C) of this section is a separate offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v H 614 (Eff 4-10-85); 141 v H 349 (Eff 3-6-86); 141 v S 136 (Eff 9-24-86); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 274, §§ 1, 4 (Eff 8-8-96); 147 v H 352. Eff 1-1-98.

Not analogous to former RC § 2919.21 (RS § 3107-45; 85 v 149; 92 v 50; 94 v 157; GC § 12894; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 352.

§ 2919.22 Endangering children.

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

- (1) Abuse the child;
- (2) Torture or cruelly abuse the child;
- (3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 [4511.19.1] to 4511.197 [4511.19.7] of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

(a) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(b) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(D)(1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

(a) "Material," "performance," "obscene," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(b) "Nudity-oriented matter" means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) "Sexually oriented matter" means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E)(1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree. If the offender violates division (B)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(a) If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 [2925.04.1] of the Revised Code, the court shall impose

as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(b) If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 [2925.04.1] of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(4) If the offender violates division (B)(5) of this section, endangering children is a felony of the second degree.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as otherwise provided in division (E)(5)(b) or (c) of this section, endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(5)(c) of this section, endangering children in violation of division (C) of this section is a felony of the fifth degree.

(c) If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of division (C) of this section, section 2903.06 or 2903.08 of the Revised Code, section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony of the fourth degree.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(5)(a), (b), or (c) of this section or pursuant to any other provision of law and in addition to any suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(e) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to division (E)(5)(a), (b), (c), or (d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as part of the same trial or proceeding the offender also is convicted of

or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with section 4511.19 of the Revised Code for that violation of division (A) of section 4511.19 of the Revised Code.

(F)(1)(a) A court may require an offender to perform not more than two hundred hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender's community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the court requires the offender to perform supervised community service work as part of the offender's community control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

(i) The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of division (C) of this section, if applicable.

(ii) The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of section 2951.02 of the Revised Code.

(iii) The community service work shall be supervised in the manner described in division (B)(4) of section 2951.02 of the Revised Code by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.

(iv) The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 [2967.19.1] of the Revised Code, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

(b) If a court, pursuant to division (F)(1)(a) of this section, orders an offender to perform community service work as part of the offender's community control sanction or sentence and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period

of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 [2967.19.1] of the Revised Code. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under that sentence or term and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 [2967.19.1] of the Revised Code.

(2) Division (F)(1) of this section does not limit or affect the authority of the court to suspend the sentence imposed upon a misdemeanor offender and place the offender under a community control sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of section 2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G)(1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under division (E)(5)(d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the violation of division (C) of this section that is the basis of the suspension under division (E)(5)(d) of this section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under division (E)(5)(d) of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 [4511.18.1] of the Revised Code.

(H)(1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2)(a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a

separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A) of section 4511.19 of the Revised Code;

(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(I) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code;

(2) "Limited driving privileges" has the same meaning as in section 4501.01 of the Revised Code.

(3) "Methamphetamine" has the same meaning as in section 2925.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v S 243 (Eff 11-17-77); 140 v H 44 (Eff 9-27-84); 140 v S 321 (Eff 4-9-85); 141 v H 349 (Eff 3-6-86); 142 v H 51 (Eff 3-17-89); 145 v H 236 (Eff 9-29-94); 146 v S 2 (Eff 7-1-96); 146 v S 269, § 1 (Eff 7-1-96); 146 v H 353, § 1 (Eff 9-17-96); 146 v H 167 (Eff 5-15-97); 146 v S 269, § 8 (Eff 5-15-97); 146 v H 353, § 4 (Eff 5-15-97); 147 v S 60 (Eff 10-21-97); 148 v H 162 (Eff 8-25-99); 148 v S 107 (Eff 3-23-2000); 148 v S 180, Eff 3-22-2001; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 58, § 1, eff. 8-11-04; 151 v S 53, § 1, eff. 5-17-06; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 4 of H.B. 490.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

Not analogous to former RC § 2919.22 (RS § 1296-14; 98 v 90; GC § 12935; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2919.22.2] § 2919.222 Parental education neglect.

No person required to attend a parental education or training program pursuant to a policy adopted under division (A) or (B) of section 3313.663 [3313.66.3] of the

Revised Code shall fail to attend the program. Whoever violates this section is guilty of parental education neglect, a misdemeanor of the fourth degree.

HISTORY: 146 v H 601, Eff 10-29-96.

[CHILD CARE PROVIDERS AND FACILITIES]

[§ 2919.22.3] § 2919.223 Definitions.

As used in sections 2919.223 [2919.22.3] to 2919.227 [2919.22.7] of the Revised Code:

(A) "Child care," "child day-care center," "in-home aide," "type A family day-care home," and "type B family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(B) "Child care center licensee" means the owner of a child day-care center licensed pursuant to Chapter 5104. of the Revised Code who is responsible for ensuring the center's compliance with Chapter 5104. of the Revised Code and rules adopted pursuant to that chapter.

(C) "Child care facility" means a child day-care center, a type A family day-care home, or a type B family day-care home.

(D) "Child care provider" means any of the following:

(1) An owner, provider, administrator, or employee of, or volunteer at, a child care facility;

(2) An in-home aide;

(3) A person who represents that the person provides child care.

(E) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

HISTORY: 150 v H 11, § 1, eff. 5-18-05.

[§ 2919.22.4] § 2919.224 Misrepresentation by child care provider.

(A) No child care provider shall knowingly misrepresent any factor or condition that relates to the provision of child care and that substantially affects the health or safety of any child or children in that provider's facility or receiving child care from that provider to any of the following:

(1) A parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child care from the provider;

(2) A parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child care provider for the child;

(3) A public official responsible for issuing the provider a license or certificate to provide child care;

(4) A public official investigating or inquiring about the provision of child care by the provider;

(5) A peace officer.

(B) For the purposes of this section, "any factor or condition that relates to the provision of child care" includes, but is not limited to, the following:

(1) The person or persons who will provide child care to the child of the parent, guardian, custodian, or other person responsible for the care of the child, or to the children in general;

(2) The qualifications to provide child care of the child care provider, of a person employed by the provider, or of a person who provides child care as a volunteer;

(3) The number of children to whom child care is provided at one time or the number of children receiving child care in the child care facility at one time;

(4) The conditions or safety features of the child care facility;

(5) The area of the child care facility in which child day-care is provided.

(C) Whoever violates division (A) of this section is guilty of misrepresentation by a child care provider, a misdemeanor of the first degree.

HISTORY: 150 v H 11, § 1, eff. 5-18-05.

[§ 2919.22.5] § 2919.225 Failure of a type A or type B family day-care home to disclose death or serious injury of a child.

(A) Subject to division (C) of this section, no owner, provider, or administrator of a type A family day-care home or type B family day-care home, knowing that the event described in division (A)(1) or (2) of this section has occurred, shall accept a child into that home without first disclosing to the parent, guardian, custodian, or other person responsible for the care of that child any of the following that has occurred:

(1) A child died while under the care of the home or while receiving child care from the owner, provider, or administrator or died as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator.

(2) Within the preceding ten years, a child suffered injuries while under the care of the home or while receiving child care from the owner, provider, or administrator, and those injuries led to the child being hospitalized for more than twenty-four hours.

(B)(1) Subject to division (C) of this section, no owner, provider, or administrator of a type A family day-care home or type B family day-care home shall fail to provide notice in accordance with division (B)(3) of this section to the persons and entities specified in division (B)(2) of this section, of any of the following that occurs:

(a) A child who is under the care of the home or is receiving child care from the owner, provider, or administrator dies while under the care of the home or while receiving child care from the owner, provider, or administrator or dies as a result of injuries suffered while under the care of the home or while receiving child day-care from the owner, provider, or administrator.

(b) A child who is under the care of the home or is receiving child care from the owner, provider, or administrator is hospitalized for more than twenty-four hours as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator.

(2) An owner, provider, or administrator of a home shall provide the notices required under division (B)(1) of this section to each of the following:

(a) For each child who, at the time of the injury or death for which the notice is required, is receiving or is enrolled to receive child care at the home or from the owner, provider, or administrator, to the parent, guardian, custodian, or other person responsible for the care of the child;

(b) If the notice is required as the result of the death of a child as described in division (B)(1)(a) of this section, to the public children services agency of the county in which the home is located or the child care was given, a

municipal or county peace officer in the county in which the child resides or in which the home is located or the child care was given, and the child fatality review board appointed under section 307.621 [307.62.1] of the Revised Code that serves the county in which the home is located or the child care was given.

(3) An owner, provider, or administrator of a home shall provide the notices required by divisions (B)(1) and (2) of this section not later than forty-eight hours after the child dies or, regarding a child who is hospitalized for more than twenty-four hours as a result of injuries suffered while under the care of the home, not later than forty-eight hours after the child suffers the injuries. If a child is hospitalized for more than twenty-four hours as a result of injuries suffered while under the care of the home, and the child subsequently dies as a result of those injuries, the owner, provider, or administrator shall provide separate notices under divisions (B)(1) and (2) of this section regarding both the injuries and the death. All notices provided under divisions (B)(1) and (2) of this section shall state that the death or injury occurred.

(C) Division (A) of this section does not require more than one person to make disclosures to the same parent, guardian, custodian, or other person responsible for the care of a child regarding any single injury or death for which disclosure is required under that division. Division (B) of this section does not require more than one person to give notices to the same parent, guardian, custodian, other person responsible for the care of the child, public children services agency, peace officer, or child fatality review board regarding any single injury or death for which disclosure is required under division (B)(1) of this section.

(D) An owner, provider, or administrator of a type A family day-care home or type B family day-care home is not subject to civil liability solely for making a disclosure required by this section.

(E) Whoever violates division (A) or (B) of this section is guilty of failure of a type A or type B family day-care home to disclose the death or serious injury of a child, a misdemeanor of the fourth degree.

HISTORY: 150 v H 11, § 1, eff. 5-18-05.

[§ 2919.22.6] § 2919.226 Child care disclosure form.

(A) If a child care provider accurately answers the questions on a child care disclosure form that is in substantially the form set forth in division (B) of this section, presents the form to a person identified in division (A)(1) or (2) of section 2919.224 [2919.22.4] of the Revised Code, and obtains the person's signature on the acknowledgement in the form, to the extent that the information set forth on the form is accurate, the provider who presents the form is not subject to prosecution under division (A) of section 2919.224 [2919.22.4] of the Revised Code regarding presentation of that information to that person.

An owner, provider, or administrator of a type A family day-care home or a type B family day-care home may comply with division (A) of section 2919.225 [2919.22.5] of the Revised Code by accurately answering the questions on a child care disclosure form that is in substantially the form set forth in division (B) of this section, providing a copy of the form to the parent, guardian, custodian, or other person responsible for the care of a

child and to whom disclosure is to be made under division (A) of section 2919.225 [2919.22.5] of the Revised Code, and obtaining the person's signature on the acknowledgement in the form.

The use of the form set forth in division (B) of this section is discretionary and is not required to comply with any disclosure requirement contained in section 2919.225 [2919.22.5] of the Revised Code or for any purpose related to section 2919.224 [2919.22.4] of the Revised Code.

(B) To be sufficient for the purposes described in division (A) of this section, a child care disclosure form shall be in substantially the following form:

"CHILD CARE DISCLOSURE FORM

Please Note: This form contains information that is accurate only at the time the form is given to you. The information provided in this form is likely to change over time. It is the duty of the person responsible for the care of the child to monitor the status of child care services to ensure that those services remain satisfactory. If a question on this form is left unanswered, the child care provider makes no assertion regarding the question. Choosing appropriate child care for a child is a serious responsibility, and the person responsible for the care of the child is encouraged to make all appropriate inquiries. Also, in acknowledging receipt of this form, the person responsible for the care of the child acknowledges that in selecting the child care provider the person is not relying on any representations other than those provided in this form unless the child care provider has acknowledged the other representations in writing.

1. What are the names and qualifications to provide child care of: (a) the child care provider, (b) the employee who will provide child care to the applicant child, (c) the volunteer who will provide child care to the applicant child, and (d) any other employees or volunteers of the child care provider? (attach additional sheets if necessary):

.....

2. What is the maximum number of children to whom you provide child care at one time? (If children are divided into groups or classes, please describe the maximum number of children in each group or class and indicate the group or class in which the applicant child will be placed.):

.....

3. Where in the home will you provide child care to the applicant child?:

.....

4. Has a child died while in the care of, or receiving child care from, the child care provider? (Yes/No)

Description/explanation (attach additional sheets if necessary)

.....

5. Has a child died as a result of injuries suffered while under the care of, or receiving child care from, the child day-care provider? (Yes/No)

Description/explanation (attach additional sheets if necessary)

6. Within the preceding ten years, has a child suffered injuries while under the care of, or receiving child care from, the child care provider that led to the child being hospitalized for more than 24 hours? (Yes/No)

Description/explanation (attach additional sheets if necessary)

Signature of person completing form Date

Name of person completing form (Typed or printed)

Title of person completing form (Typed or printed)

Acknowledgement:
I hereby acknowledge that I have been given a copy of the preceding document and have read and understood its contents. I further acknowledge that I am not relying on any other representations in selecting the child care provider unless the child care provider has acknowledged the other representations in writing.

Person receiving the form Date

(C) If a child care provider accurately answers the questions on a disclosure form that is substantially similar to the form described in division (B) of this section, presents the form to a person identified in division (A)(1) or (2) of section 2919.224 [2919.22.4] of the Revised Code, and obtains the person's signature on the acknowledgement in the form, to the extent that the information set forth on the form is accurate, the form is sufficient for the purposes described in division (A) of this section.

An owner, provider, or administrator of a type A family day-care home or a type B family day-care home who accurately answers the questions on a disclosure form that is substantially similar to the form described in division (B) of this section, provides a copy of the completed form to the parent, guardian, custodian, or other person who is responsible for the care of a child and to whom disclosure is to be made under division (A) of section 2919.225 [2919.22.5] of the Revised Code, and obtains the person's signature on the acknowledgement in the form complies with the requirements of that division. If the owner, provider, or administrator uses the disclosure form, leaving a portion of the disclosure form blank does not constitute a misrepresentation for the purposes of section 2919.224 [2919.22.4] of the Revised Code but may constitute a violation of section 2919.225 [2919.22.5] of the Revised Code. The owner, provider, or administrator of a type A family day-care home or type B family day-care home who completes the disclosure form and provides a copy of the form to any person described in section 2919.224 [2919.22.4] or 2919.225 [2919.22.5] of the Revised Code may retain a copy of the completed form.

HISTORY: 150 v H 11, § 1, eff. 5-18-05.

[§ 2919.22.7] § 2919.227 Failure of child care center to disclose death or serious injury of a child.

(A)(1) No child care center licensee shall accept a child into that center without first providing to the parent, guardian, custodian, or other person responsible for the care of that child the following information, if the parent, guardian, custodian, or other person responsible for the care of the child requests the information:

(a) The types of injuries to children, as reported in accordance with rules adopted under section 5104.011 [5104.01.1] of the Revised Code, that occurred at the center on or after April 1, 2003, or the date that is two years before the date the information is requested, whichever date is more recent;

(b) The number of each type of injury to children that occurred at the center during that period.

(2) If a death described in division (A)(2)(a) or (A)(2)(b) of this section occurred during the fifteen-year period immediately preceding the date that the parent, guardian, custodian, or other person responsible for the care of a child seeks to enroll that child, no child care center licensee shall accept that child into that center without first providing to the parent, guardian, custodian, or other person responsible for the care of that child a notice that states that the death occurred.

(a) A child died while under the care of the center or while receiving child care from the owner, provider, or administrator of the center;

(b) A child died as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator of the center.

(3) Each child care center licensee shall keep on file at the center a copy of the information provided under this division for at least three years after providing the information.

(B)(1) No child care center licensee shall fail to provide notice in accordance with division (B)(3) of this section to the persons and entities specified in division (B)(2) of this section if a child who is under the care of the center or is receiving child care from the owner, provider, or administrator of the center dies while under the care of the center or while receiving child care from the owner, provider, or administrator or dies as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator.

(2) A child care center licensee shall provide the notice required under division (B)(1) of this section to all of the following:

(a) The parent, guardian, custodian, or other person responsible for the care of each child who, at the time of the death for which notice is required, is receiving or is enrolled to receive child care from the center;

(b) The public children services agency of the county in which the center is located or the child care was given;

(c) A municipal or county peace officer in the county in which the child resides or in which the center is located or the child care was given;

(d) The child fatality review board appointed under section 307.621 [307.62.1] of the Revised Code that serves the county in which the center is located or the child care was given.

(3) A child care center licensee shall provide the notice required by division (B)(1) of this section not later than forty-eight hours after the child dies. The notice shall state that the death occurred.

(C) Whoever violates division (A) or (B) of this section is guilty of failure of a child care center to disclose the death or serious injury of a child, a misdemeanor of the fourth degree.

HISTORY: 150 v H 11, § 1, eff. 5-18-05.

§ 2919.23 Interference with custody.

(A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1), (2), or (3) of this section from the parent, guardian, or custodian of the person identified in division (A)(1), (2), or (3) of this section:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or mentally retarded.

(B) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that the actor's conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the actor's shelter, protection, or influence.

(D)(1) Whoever violates this section is guilty of interference with custody.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) of this section is removed from the state or if the offender previously has been convicted of an offense under this section, a violation of division (A)(1) of this section is a felony of the fifth degree. If the child who is the subject of a violation of division (A)(1) of this section suffers physical harm as a result of the violation, a violation of division (A)(1) of this section is a felony of the fourth degree.

(3) A violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree.

(4) A violation of division (B) of this section is a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 85 (Eff 11-28-75); 141 v H 349 (Eff 3-6-86); 143 v S 3 (Eff 4-11-91); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2919.23 (RS § 294; 71 v 21; 81 v 153, 156; 99 v 108; CC § 12936; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2919.23.1] § 2919.231 Interfering with action to issue or modify support order.

(A) No person, by using physical harassment or threats of violence against another person, shall interfere with

the other person's initiation or continuance of, or attempt to prevent the other person from initiating or continuing, an action to issue or modify a support order under Chapter 3115. or under section 2151.23, 2151.231 [2151.23.1], 2151.232 [2151.23.2], 2151.33, 2151.36, 2151.361 [2151.36.1], 2151.49, 3105.18, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07, or 3113.31 of the Revised Code.

(B) Whoever violates this section is guilty of interfering with an action to issue or modify a support order, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or of section 3111.19 of the Revised Code, interfering with an action to issue or modify a support order is a felony of the fifth degree.

HISTORY: 144 v S 10 (Eff 7-15-92); 146 v H 167 (Eff 11-15-95); 146 v S 269 (Eff 7-1-96); 146 v H 274 (Eff 8-8-96); 147 v H 352 (Eff 1-1-98); 148 v S 180 (Eff 3-22-2001); 149 v S 27, Eff 3-15-2002.

§ 2919.24 Contributing to unruliness or delinquency of a child.

(A) No person, including a parent, guardian, or other custodian of a child, shall do any of the following:

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section 2152.02 of the Revised Code;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section 2152.02 of the Revised Code;

(3) If the person is the parent, guardian, or custodian of a child who has the duties under Chapters 2152. and 2950. of the Revised Code to register, register a new residence address, and periodically verify a residence address, and, if applicable, to send a notice of intent to reside, and if the child is not emancipated, as defined in section 2919.121 of the Revised Code, fail to ensure that the child complies with those duties under Chapters 2152. and 2950. of the Revised Code.

(B) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation of this section is a separate offense.

HISTORY: 141 v H 349 (Eff 3-6-86); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03.

The provisions of § 7 of S.B. 5 (150 v —) read as follows:

SECTION 7. (A) Section 2919.24 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by Am. Sub. S.B. 3 of the 124th General Assembly and Am. Sub. S.B. 179 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

[DOMESTIC VIOLENCE]

§ 2919.25 Domestic violence.

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D)(1) Whoever violates this section is guilty of domestic violence.

(2) Except as otherwise provided in division (D)(3) or (4) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.21 [2911.21.1], or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and a violation of division (C) of this section is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony of the third degree, and a violation of division (C) of this section is a misdemeanor of the first degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially similar to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section and sections 2919.251 [2919.25.1] and 2919.26 of the Revised Code:

(1) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the offender:

(i) A spouse, a person living as a spouse, or a former spouse of the offender;

(ii) A parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

HISTORY: 137 v H 835 (Eff 3-27-79); 138 v H 920 (Eff 4-9-81); 140 v H 587 (Eff 9-25-84); 142 v S 6 (Eff 6-10-87); 142 v H 172 (Eff 3-17-89); 143 v S 3 (Eff 4-11-91); 144 v H 536 (Eff 11-5-92); 145 v H 335 (Eff 12-9-94); 146 v S 2 (Eff 7-1-96); 147 v S 1 (Eff 10-21-97); 147 v H 238 (Eff 11-5-97); 149 v H 327 (Eff 7-8-2002); 149 v H 548. Eff 3-31-2003; 150 v S 50, § 1, eff. 1-8-04.

[§ 2919.25.1] § 2919.251 Considerations in setting bail in domestic violence cases; schedule; appearance by video conferencing equipment.

(A) Subject to division (D) of this section, a person who is charged with the commission of any offense of violence shall appear before the court for the setting of bail if the alleged victim of the offense charged was a family or household member at the time of the offense and if any of the following applies:

(1) The person charged, at the time of the alleged offense, was subject to the terms of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code or previously was convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a violation of section 2919.27 of the Revised Code involving a protection order or consent agreement of that type, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to either section, a violation of section 2909.06, 2909.07, 2911.12, or 2911.21 [2911.21.1] of the Revised Code if the victim of the violation was a family or household member at the time of the violation a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the offense;

(2) The arresting officer indicates in a police report or other document accompanying the complaint any of the following:

(a) That the arresting officer observed on the alleged victim objective manifestations of physical harm that the arresting officer reasonably believes are a result of the alleged offense;

(b) That the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon or dangerous ordnance;

(c) That the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.

(B) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, before setting bail for a person who appears before the court pursuant to division (A) of this section:

(1) Whether the person has a history of domestic violence or a history of other violent acts;

(2) The mental health of the person;

(3) Whether the person has a history of violating the orders of any court or governmental entity;

(4) Whether the person is potentially a threat to any other person;

(5) Whether the person has access to deadly weapons or a history of using deadly weapons;

(6) Whether the person has a history of abusing alcohol or any controlled substance;

(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

(8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

(9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim;

(10) Whether the person has expressed suicidal or homicidal ideations;

(11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

(C) Any court that has jurisdiction over charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense may set a schedule for bail to be used in cases involving those offenses. The schedule shall require that a judge consider all of the factors listed in division (B) of this section and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.

(D)(1) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by division (A) of this section to appear by video conferencing equipment.

(2) If in the opinion of the court the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by division (A) of this section is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under division (C) of this section or, if the court has not set a schedule for bail under that division, on one or both of the following types of bail in an amount set by the court:

(a) A bail bond secured by a deposit of ten per cent of the amount of the bond in cash;

(b) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

(3) Division (A) of this section does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged

with an offense of violence who is not described in that division from appearing before the court for the setting of bail.

(E) As used in this section:

(1) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(2) "Dangerous ordinance" and "deadly weapon" have the same meanings as in section 2923.11 of the Revised Code.

HISTORY: 141 v H 475 (Eff 3-7-86); 143 v S 3 (Eff 4-11-91); 144 v H 536 (Eff 11-5-92); 146 v S 2, Eff 7-1-96; 150 v S 50, § 1, eff. 1-8-04; 151 v H 29, § 1, eff. 8-26-05.

The provisions of § 3 of 151 v H 29 read as follows:

SECTION 3. The General Assembly acknowledges the Supreme Court's authority to prescribe rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution. Recognizing the dangers posed to victims of domestic violence and other crimes of violence when the alleged perpetrators are not physically restrained, even though they may be under bond or subject to orders of protection, the General Assembly respectfully urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the speedy resolution of cases involving domestic violence.

The effective date is set by section 6 of SB 2.

§ 2919.26 Motion for temporary protection order; form.

(A)(1) Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 [2911.21.1] of the Revised Code if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under section 2935.03 of the Revised Code may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint.

(2) For purposes of section 2930.09 of the Revised Code, all stages of a proceeding arising out of a complaint alleging the commission of a violation, offense of violence, or sexually oriented offense described in division (A)(1) of this section, including all proceedings on a motion for a temporary protection order, are critical stages of the case, and a victim may be accompanied by a victim advocate or another person to provide support to the victim as provided in that section.

(B) The motion shall be prepared on a form that is provided by the clerk of the court, which form shall be substantially as follows:

“MOTION FOR TEMPORARY PROTECTION ORDER

..... Court
Name and address of court

State of Ohio

v.

No.

.....
Name of Defendant

(name of person), moves the court to issue a temporary protection order containing terms designed to ensure the safety and protection of the complainant, alleged victim, and other family or household members, in relation to the named defendant, pursuant to its authority to issue such an order under section 2919.26 of the Revised Code.

A complaint, a copy of which has been attached to this motion, has been filed in this court charging the named defendant with (name of the specified violation, the offense of violence, or sexually oriented offense charged) in circumstances in which the victim was a family or household member in violation of (section of the Revised Code designating the specified violation, offense of violence, or sexually oriented offense charged), or charging the named defendant with a violation of a municipal ordinance that is substantially similar to (section of the Revised Code designating the specified violation, offense of violence, or sexually oriented offense charged) involving a family or household member.

I understand that I must appear before the court, at a time set by the court within twenty-four hours after the filing of this motion, for a hearing on the motion or that, if I am unable to appear because of hospitalization or a medical condition resulting from the offense alleged in the complaint, a person who can provide information about my need for a temporary protection order must appear before the court in lieu of my appearing in court. I understand that any temporary protection order granted pursuant to this motion is a pretrial condition of release and is effective only until the disposition of the criminal proceeding arising out of the attached complaint, or the issuance of a civil protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under section 3113.31 of the Revised Code.

.....
Signature of person

(or signature of the arresting officer who filed the motion on behalf of the alleged victim)

.....
Address of person (or office address of the arresting officer who filed the motion on behalf of the alleged victim)”

(C)(1) As soon as possible after the filing of a motion that requests the issuance of a temporary protection order, but not later than twenty-four hours after the filing of the motion, the court shall conduct a hearing to determine whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the person who requested the order is unable to appear and if the court finds that the failure to appear is because of the person’s hospitalization or medical condition resulting from the offense alleged in the complaint, another person who is able to provide the court with the information it requests may appear in lieu of the person who requested the order. If the court finds that the safety and protection of the

complainant, alleged victim, or any other family or household member of the alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant, alleged victim, or the family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, alleged victim, or the family or household member.

(2)(a) If the court issues a temporary protection order that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, the alleged victim, or the family or household member, the order shall state clearly that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant, alleged victim, or family or household member to enter the residence, school, business, or place of employment or by the alleged offender’s entry into one of those places otherwise upon the consent of the complainant, alleged victim, or family or household member.

(b) Division (C)(2)(a) of this section does not limit any discretion of a court to determine that an alleged offender charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a temporary protection order issued under this section, did not commit the violation or was not in contempt of court.

(D)(1) Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 [2911.21.1] of the Revised Code if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant, alleged victim, or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.

(2) If the court issues a temporary protection order under this section as an ex parte order, it shall conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified, or be revoked. The hearing shall be conducted under the standards set forth in division (C) of this section.

(3) An order issued under this section shall contain only those terms authorized in orders issued under division (C) of this section.

(4) If a municipal court or a county court issues a temporary protection order under this section and if,

subsequent to the issuance of the order, the alleged offender who is the subject of the order is bound over to the court of common pleas for prosecution of a felony arising out of the same activities as those that were the basis of the complaint upon which the order is based, notwithstanding the fact that the order was issued by a municipal court or county court, the order shall remain in effect, as though it were an order of the court of common pleas, while the charges against the alleged offender are pending in the court of common pleas, for the period of time described in division (E)(2) of this section, and the court of common pleas has exclusive jurisdiction to modify the order issued by the municipal court or county court. This division applies when the alleged offender is bound over to the court of common pleas as a result of the person waiving a preliminary hearing on the felony charge, as a result of the municipal court or county court having determined at a preliminary hearing that there is probable cause to believe that the felony has been committed and that the alleged offender committed it, as a result of the alleged offender having been indicted for the felony, or in any other manner.

(E) A temporary protection order that is issued as a pretrial condition of release under this section:

(1) Is in addition to, but shall not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the occurrence of either of the following:

(a) The disposition, by the court that issued the order or, in the circumstances described in division (D)(4) of this section, by the court of common pleas to which the alleged offender is bound over for prosecution, of the criminal proceeding arising out of the complaint upon which the order is based;

(b) The issuance of a protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint upon which the order is based, under section 3113.31 of the Revised Code;

(3) Shall not be construed as a finding that the alleged offender committed the alleged offense, and shall not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

(F) A person who meets the criteria for bail under Criminal Rule 46 and who, if required to do so pursuant to that rule, executes or posts bond or deposits cash or securities as bail, shall not be held in custody pending a hearing before the court on a motion requesting a temporary protection order.

(G)(1) A copy of any temporary protection order that is issued under this section shall be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the defendant on the same day that the order is entered. If a municipal court or a county court issues a temporary protection order under this section and if, subsequent to the issuance of the order, the defendant who is the subject of the order is bound over to the court of common pleas for prosecution as described in division (D)(4) of this section, the municipal court or county court shall direct that a copy of the order be delivered to the court of common pleas to which the defendant is bound over.

(2) All law enforcement agencies shall establish and maintain an index for the temporary protection orders delivered to the agencies pursuant to division (G)(1) of this section. With respect to each order delivered, each agency shall note on the index, the date and time of the receipt of the order by the agency.

(3) A complainant, alleged victim, or other person who obtains a temporary protection order under this section may provide notice of the issuance of the temporary protection order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county in accordance with division (N) of section 3113.31 of the Revised Code and filing a copy of the registered protection order with a law enforcement agency in the other county in accordance with that division.

(4) Any officer of a law enforcement agency shall enforce a temporary protection order issued by any court in this state in accordance with the provisions of the order, including removing the defendant from the premises, regardless of whether the order is registered in the county in which the officer's agency has jurisdiction as authorized by division (G)(3) of this section.

(H) Upon a violation of a temporary protection order, the court may issue another temporary protection order, as a pretrial condition of release, that modifies the terms of the order that was violated.

(I)(1) As used in divisions (I)(1) and (2) of this section, "defendant" means a person who is alleged in a complaint to have committed a violation, offense of violence, or sexually oriented offense of the type described in division (A) of this section.

(2) If a complaint is filed that alleges that a person committed a violation, offense of violence, or sexually oriented offense of the type described in division (A) of this section, the court may not issue a temporary protection order under this section that requires the complainant, the alleged victim, or another family or household member of the defendant to do or refrain from doing an act that the court may require the defendant to do or refrain from doing under a temporary protection order unless both of the following apply:

(a) The defendant has filed a separate complaint that alleges that the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act committed a violation or offense of violence of the type described in division (A) of this section.

(b) The court determines that both the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act and the defendant acted primarily as aggressors, that neither the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act nor the defendant acted primarily in self-defense, and, in accordance with the standards and criteria of this section as applied in relation to the separate complaint filed by the defendant, that it should issue the order to require the complainant, alleged victim, or other family or household member in question to do or refrain from doing the act.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee,

cost, deposit, or money in connection with the filing of a motion pursuant to this section, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K) As used in this section:

(1) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(2) "Victim advocate" means a person who provides support and assistance for a victim of an offense during court proceedings.

HISTORY: 137 v H 535 (Eff 3-27-79); 138 v H 920 (Eff 4-9-81); 140 v H 587 (Eff 9-25-84); 143 v S 3 (Eff 4-11-91); 144 v H 536 (Eff 11-5-92); 145 v H 335 (Eff 12-9-94); 147 v S 1 (Eff 10-21-97); 147 v S 98 (Eff 3-17-98); 148 v H 137 (Eff 3-10-2000); 149 v H 548. Eff 3-31-2003; 150 v S 50, § 1, eff. 1-8-04; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07.

Comment, Legislative Service Commission

Section 2919.26 of the Revised Code is amended by Am. Sub. S.B. 17 and Am. Sub. H.B. 95 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are identical, and that S.B. 17 is the later amendment concurred by the General Assembly.

§ 2919.27 Violating protection order.

(A) No person shall recklessly violate the terms of any of the following:

(1) A protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code;

(2) A protection order issued pursuant to section 2903.213 or 2903.214 [2903.21.3 or 2903.21.4] of the Revised Code;

(3) A protection order issued by a court of another state.

(B)(1) Whoever violates this section is guilty of violating a protection order.

(2) Except as otherwise provided in division (B)(3) or (4) of this section, violating a protection order is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of or pleaded guilty to a violation of a protection order issued pursuant to section 2903.213 or 2903.214 [2903.21.3 or 2903.21.4] of the Revised Code, two or more violations of section 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code that involved the same person who is the subject of the protection order or consent agreement, or one or more violations of this section, violating a protection order is a felony of the fifth degree.

(4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony of the third degree.

(C) It is an affirmative defense to a charge under division (A)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. 2265(b) for a protection order that must be accorded full faith and credit by a court of this state or that it is not entitled to full faith and credit under 18 U.S.C. 2265(c).

(D) As used in this section, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a tempo-

rary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

HISTORY: 140 v H 587 (Eff 9-25-84); 141 v H 475 (Eff 3-7-86); 144 v H 536 (Eff 11-5-92); 145 v H 335 (Eff 12-9-94); 146 v S 2 (Eff 7-1-96); 147 v S 1 (Eff 10-21-97); 147 v H 302 (Eff 7-29-98); 149 v H 548. Eff 3-31-2003; 150 v S 50, § 1, eff. 1-8-04.

[§ 2919.27.1] § 2919.271 Evaluation of defendant's mental condition.

(A)(1)(a) If a defendant is charged with a violation of section 2919.27 of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court may order an evaluation of the mental condition of the defendant if the court determines that either of the following criteria apply:

(i) If the alleged violation is a violation of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement, or conduct by the defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property.

(ii) If the alleged violation is a violation of a protection order issued pursuant to section 2903.213 [2903.21.3] or 2903.214 [2903.21.4] of the Revised Code or a protection order issued by a court of another state, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order, or conduct by the defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

(b) If a defendant is charged with a violation of section 2903.211 [2903.21.1] of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court may order an evaluation of the mental condition of the defendant.

(2) An evaluation ordered under division (A)(1) of this section shall be completed no later than thirty days from the date the order is entered pursuant to that division. In that order, the court shall do either of the following:

(a) Order that the evaluation of the mental condition of the defendant be preceded by an examination conducted either by a forensic center that is designated by the department of mental health to conduct examinations and make evaluations of defendants charged with violations of section 2903.211 [2903.21.1] or 2919.27 of the Revised Code or of substantially similar municipal ordinances in the area in which the court is located, or by any other program or facility that is designated by the department of mental health or the department of mental retardation and developmental disabilities to conduct

examinations and make evaluations of defendants charged with violations of section 2903.211 [2903.21.1] or 2919.27 of the Revised Code or of substantially similar municipal ordinances, and that is operated by either department or is certified by either department as being in compliance with the standards established under division (I) of section 5119.01 of the Revised Code or division (C) of section 5123.04 of the Revised Code.

(b) Designate a center, program, or facility other than one designated by the department of mental health or the department of mental retardation and developmental disabilities, as described in division (A)(2)(a) of this section, to conduct the evaluation and preceding examination of the mental condition of the defendant.

Whether the court acts pursuant to division (A)(2)(a) or (b) of this section, the court may designate examiners other than the personnel of the center, program, facility, or department involved to make the evaluation and preceding examination of the mental condition of the defendant.

(B) If the court considers that additional evaluations of the mental condition of a defendant are necessary following the evaluation authorized by division (A) of this section, the court may order up to two additional similar evaluations. These evaluations shall be completed no later than thirty days from the date the applicable court order is entered. If more than one evaluation of the mental condition of the defendant is ordered under this division, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations and preceding examinations.

(C)(1) The court may order a defendant who has been released on bail to submit to an examination under division (A) or (B) of this section. The examination shall be conducted either at the detention facility in which the defendant would have been confined if the defendant had not been released on bail, or, if so specified by the center, program, facility, or examiners involved, at the premises of the center, program, or facility. Additionally, the examination shall be conducted at the times established by the examiners involved. If such a defendant refuses to submit to an examination or a complete examination as required by the court or the center, program, facility, or examiners involved, the court may amend the conditions of the bail of the defendant and order the sheriff to take the defendant into custody and deliver the defendant to the detention facility in which the defendant would have been confined if the defendant had not been released on bail, or, if so specified by the center, program, facility, or examiners involved, to the premises of the center, program, or facility, for purposes of the examination.

(2) A defendant who has not been released on bail shall be examined at the detention facility in which the defendant is confined or, if so specified by the center, program, facility, or examiners involved, at the premises of the center, program, or facility.

(D) The examiner of the mental condition of a defendant under division (A) or (B) of this section shall file a written report with the court within thirty days after the entry of an order for the evaluation of the mental condition of the defendant. The report shall contain the findings of the examiner; the facts in reasonable detail on which the findings are based; the opinion of the examiner as to the mental condition of the defendant; the opinion of the examiner as to whether the defendant represents a substantial risk of physical harm to other persons as manifested by evidence of recent homicidal or other

violent behavior, evidence of recent threats that placed other persons in reasonable fear of violent behavior and serious physical harm, or evidence of present dangerousness; and the opinion of the examiner as to the types of treatment or counseling that the defendant needs. The court shall provide copies of the report to the prosecutor and defense counsel.

(E) The costs of any evaluation and preceding examination of a defendant that is ordered pursuant to division (A) or (B) of this section shall be taxed as court costs in the criminal case.

(F) If the examiner considers it necessary in order to make an accurate evaluation of the mental condition of a defendant, an examiner under division (A) or (B) of this section may request any family or household member of the defendant to provide the examiner with information. A family or household member may, but is not required to, provide information to the examiner upon receipt of the request.

(G) As used in this section:

(1) "Bail" includes a recognizance.

(2) "Examiner" means a psychiatrist, a licensed independent social worker who is employed by a forensic center that is certified as being in compliance with the standards established under division (I) of section 5119.01 or division (C) of section 5123.04 of the Revised Code, a licensed professional clinical counselor who is employed at a forensic center that is certified as being in compliance with such standards, or a licensed clinical psychologist, except that in order to be an examiner, a licensed clinical psychologist shall meet the criteria of division (I)(1) of section 5122.01 of the Revised Code or be employed to conduct examinations by the department of mental health or by a forensic center certified as being in compliance with the standards established under division (I) of section 5119.01 or division (C) of section 5123.04 of the Revised Code that is designated by the department of mental health.

(3) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(5) "Psychiatrist" and "licensed clinical psychologist" have the same meanings as in section 5122.01 of the Revised Code.

(6) "Protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

HISTORY: 141 v H 475 (Eff 3-7-86); 146 v S 2 (Eff 7-1-96); 146 v S 223 (Eff 3-18-97); 147 v S 1 (Eff 10-21-97); 147 v H 302 (Eff 7-29-98); 148 v H 202 (Eff 2-9-2000); 149 v H 94. Eff 9-5-2001.

The effective date is set by section 204 of HB 94.

[§ 2919.27.2] § 2919.272 Registration and filing of out-of-state protection order.

(A) As used in this section, "protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

(B) A person who has obtained a protection order issued by a court of another state may provide notice of the issuance of the order to judicial and law enforcement officials in any county of this state by registering the order in that county and filing a copy of the registered order with a law enforcement agency in that county. To register the order, the person shall obtain a certified copy of the

order from the clerk of the court that issued the order and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order is to be registered. Upon accepting the certified copy of the order for registration, the clerk shall place an endorsement of registration on the order and give the person a copy of the order that bears proof of registration. The person then may file with a law enforcement agency in that county a copy of the order that bears proof of registration.

(C) The clerk of each court of common pleas and the clerk of each municipal court and county court shall maintain a registry of certified copies of protection orders issued by courts of another state that have been registered with the clerk. Each law enforcement agency shall establish and maintain a registry for protection orders delivered to the agency pursuant to this section. The agency shall note in the registry the date and time that the agency received an order.

(D) An officer of a law enforcement agency shall enforce a protection order issued by a court of another state in accordance with the provisions of the order, including removing the person allegedly violating the order from the premises, regardless of whether the order is registered as authorized by division (B) of this section in the county in which the officer's agency has jurisdiction.

(E) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing, issuance, registration, or service of a protection order or consent agreement or for obtaining a certified copy of a protection order or consent agreement, including a protection order issued by a court of another state.

HISTORY: 147 v S 1 (Eff 10-21-97); 149 v H 548, Eff 3-31-2003.

CHAPTER 2921: OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

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[IN GENERAL]

§ 2921.01 Definitions.

As used in sections 2921.01 to 2921.45 of the Revised Code:

(A) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

(B) "Public servant" means any of the following:

(1) Any public official;

(2) Any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;

(3) A person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. A person is a candidate for purposes of this division if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election.

(C) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

(D) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

(E) "Detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of section 2945.37, 2945.371 [2945.37.1], 2945.38, 2945.39, 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under division (E) of section 311.29 of the Revised Code or division (B) of section 5149.03 of the Revised Code. For a person confined in a county jail who participates in a county jail industry program pursuant to section 5147.30 of the Revised Code, "detention" includes time spent at an assigned work site and going to and from the work site.

(F) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States.

(G) "Valuable thing or valuable benefit" includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(H) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," "political party," and "political contributing entity" have the same meanings as in section 3517.01 of the Revised Code.

(I) "Provider agreement" and "medical assistance program" have the same meanings as in section 2913.40 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 340 (Eff 5-20-86); 141 v H 300 (Eff 9-17-86); 141 v H 428 (Eff 12-23-86); 142 v H 708 (Eff 4-19-88); 143 v H 51 (Eff 11-8-90); 144 v S 37 (Eff 7-31-92); 145 v H 42 (Eff 2-9-94); 145 v H 571 (Eff 10-6-94); 146 v S 8 (Eff 8-23-95); 146 v S 2 (Eff 7-1-96); 146 v H 154 (Eff 10-4-96); 146 v S 285 (Eff 7-1-97); 147 v H 293 (Eff 3-17-98); 147 v S 134 (Eff 7-13-98); 148 v H 661, Eff 3-15-2001; 150 v H 1, § 1, eff. 3-31-05; 151 v S 115, § 1, eff. 4-26-05.

The provisions of § 3 of 151 v S 115 read as follows:

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that the Court of Common Pleas of Franklin County has issued a preliminary injunction prohibiting the enforcement of section 3599.03 of the Revised Code, as enacted by Am. Sub. H.B. 1 of the 125th General Assembly, Special Session, in *United Auto Workers Local Union 1112 v. Blackwell* (March 30, 2005), Case No. 05CVH-03-2553. Therefore, this act shall go into immediate effect.

[BRIBERY AND INTIMIDATION]

§ 2921.02 Bribery.

(A) No person, with purpose to corrupt a public servant or party official, or improperly to influence him with respect to the discharge of his duty, whether before or after he is elected, appointed, qualified, employed, summoned, or sworn, shall promise, offer, or give any valuable thing or valuable benefit.

(B) No person, either before or after he is elected, appointed, qualified, employed, summoned, or sworn as a public servant or party official, shall knowingly solicit or accept for himself or another person any valuable thing or valuable benefit to corrupt or improperly influence him or another public servant or party official with respect to the discharge of his or the other public servant's or party official's duty.

(C) No person, with purpose to corrupt a witness or improperly to influence him with respect to his testimony in an official proceeding, either before or after he is subpoenaed or sworn, shall promise, offer, or give him or another person any valuable thing or valuable benefit.

(D) No person, either before or after he is subpoenaed or sworn as a witness, shall knowingly solicit or accept for himself or another person any valuable thing or valuable benefit to corrupt or improperly influence him with respect to his testimony in an official proceeding.

(E) Whoever violates this section is guilty of bribery, a felony of the third degree.

(F) A public servant or party official who is convicted of bribery is forever disqualified from holding any public office, employment, or position of trust in this state.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 300, Eff 9-17-86.

Not analogous to former RC § 2921.02 (RS § 6807; S&S 261; 58 v 110; CC § 12393; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.03 Intimidation.

(A) No person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person's duty.

(B) Whoever violates this section is guilty of intimidation, a felony of the third degree.

(C) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under

this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v S 172 (Eff 9-26-84); 146 v H 88 (Eff 9-3-96); 146 v H 644. Eff 11-6-96.

Not analogous to former RC § 2921.03 (RS § 6886; S&S 262; 58 v 110; GC § 12394; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

† The first paragraph as amended by HB 88 (146 v —) reads as follows:

"... a party official, or an attorney or witness involved in a civil action or proceeding in the discharge of the duties of the public servant, party official, attorney, or witness."

Division (C) was added by HB 644 (146 v —).

§ 2921.04 Intimidation of attorney, victim or witness in criminal case.

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime in the filing or prosecution of criminal charges or a witness involved in a criminal action or proceeding in the discharge of the duties of the witness.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges or an attorney or witness involved in a criminal action or proceeding in the discharge of the duties of the attorney or witness.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Revised Code;

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the supreme court in accordance with Section 5 of Article IV, Ohio Constitution;

(3) A local rule of court, including, but not limited to, a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement, or other conciliation programs;

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim, or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony of the third degree.

HISTORY: 140 v S 172 (Eff 9-26-84); 146 v H 88. Eff 9-3-96.

Not analogous to former RC § 2921.04 (RS §§ 803-1, 803-2; GC § 12395; 92 v 89, §§ 1, 2; 106 v 341; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.05 Retaliation.

(A) No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness.

(B) No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against the victim of a crime because the victim filed or prosecuted criminal charges.

(C) Whoever violates this section is guilty of retaliation, a felony of the third degree.

HISTORY: 146 v H 88. Eff 9-3-96.

Not analogous to former RC § 2921.05 (RS §§ 7017-7, 7017-8; 95 v 305; GC §§ 12396, 12397; Bureau of Code Revision, 10-1-53; 132 v H 664), repealed 134 v H 511, § 2, eff 1-1-74.

[PERJURY]

§ 2921.11 Perjury.

(A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

(B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.

(C) It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.

(D) Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(E) No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

(F) Whoever violates this section is guilty of perjury, a felony of the third degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2921.11 (RS §§ 674-13, 6827b; 89 v 40; 97 v 307; GC § 12463; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.12 Tampering with evidence.

(A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:

(1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation;

(2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such

proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

(B) Whoever violates this section is guilty of tampering with evidence, a felony of the third degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2921.12 (RS § 6882; S&S 57; S&C 192, 449; 29 v 372; 64 v 128; GC § 12491; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.13 Falsification; in theft offense; to purchase firearm; to obtain concealed handgun license.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(1) The statement is made in any official proceeding.

(2) The statement is made with purpose to incriminate another.

(3) The statement is made with purpose to mislead a public official in performing the public official's official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio works first; prevention, retention, and contingency benefits and services; disability financial assistance; retirement benefits; economic development assistance, as defined in section 9.66 of the Revised Code; or other benefits administered by a governmental agency or paid out of a public treasury.

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.

(7) The statement is in writing on or in connection with a report or return that is required or authorized by law.

(8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender, to confer any degree, diploma, certificate of attainment, award of excellence, or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to that person's detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including, but not limited to, an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an account, form, record, stamp, label, or other writing that is required by law.

(12) The statement is made in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(13) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the secretary of state, a county recorder, or the clerk of a court of record.

(14) The statement is made with purpose to obtain an Ohio's best Rx program enrollment card under section 173.773 [173.77.3] of the Revised Code or a payment from the department of job and family services under section 173.801 [173.80.1] of the Revised Code.

(15) The statement is made in an application filed with a county sheriff pursuant to section 2923.125 [2923.12.5] of the Revised Code in order to obtain or renew a license to carry a concealed handgun or is made in an affidavit submitted to a county sheriff to obtain a temporary emergency license to carry a concealed handgun under section 2923.1213 [2923.12.13] of the Revised Code.

(16) The statement is required under section 5743.72 of the Revised Code in connection with the person's purchase of cigarettes or tobacco products in a delivery sale.

(B) No person, in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) No person, in an attempt to obtain a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code, shall knowingly present to a sheriff a fictitious or altered document that purports to be certification of the person's competence in handling a handgun as described in division (B)(3) of section 2923.125 [2923.12.5] of the Revised Code.

(D) It is no defense to a charge under division (A)(6) of this section that the oath or affirmation was administered or taken in an irregular manner.

(E) If contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false.

(F)(1) Whoever violates division (A)(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (13), (14), or (16) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars, falsification in a theft offense is a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars, falsification in a theft offense is a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more, falsification in a theft offense is a felony of the third degree.

(3) Whoever violates division (A)(12) or (B) of this section is guilty of falsification to purchase a firearm, a felony of the fifth degree.

(4) Whoever violates division (A)(15) or (C) of this section is guilty of falsification to obtain a concealed handgun license, a felony of the fourth degree.

(G) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 545 (Eff 1-17-77); 140 v H 632 (Eff 3-28-85); 141 v H 340 (Eff 5-20-86); 142 v H 708 (Eff 4-19-88); 143 v S 46 (Eff 1-1-90); 143 v H 347 (Eff 7-18-90); 143 v S 3 (Eff 4-11-91); 144 v H 298 (Eff 7-26-91); 145 v H 152 (Eff 7-1-93); 145 v H 107 (Eff 10-20-93); 146 v H 249 (Eff 7-17-95); 146 v H 4 (Eff 11-9-95); 146 v S 46 (Eff 11-15-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 644 (Eff 11-6-96); 147 v H 408 (Eff 10-1-97); 149 v H 94 (Eff 9-5-2001); 150 v H 95, § 1, eff. 6-26-03; 150 v H 311, § 1, eff. 12-18-03; 150 v H 12, § 1, eff. 4-8-04; 151 v H 66, § 101.01, eff. 6-30-05; 151 v H 468, § 1, eff. 4-6-07; 151 v H 468, § 4, eff. 7-1-07.

The effective date is set by § 612.21 of 151 v H 66.

151 v H 66, effective June 30, 2005, added (A)(16); corrected internal references in (F); and made minor stylistic changes.

See provisions of H.B. 12 (150 v —) following RC § 2911.21.

Comment, Legislative Service Commission

Section 2921.13 of the Revised Code is amended by Am. Sub. H.B. 311, Am. Sub. H.B. 12, and Am. Sub. H.B. 95 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2921.14 Making or causing false report of child abuse or neglect.

(A) No person shall knowingly make or cause another person to make a false report under division (B) of section 2151.421 [2151.42.1] of the Revised Code alleging that any person has committed an act or omission that resulted in a child being an abused child as defined in section 2151.031 [2151.03.1] of the Revised Code or a neglected child as defined in section 2151.03 of the Revised Code.

(B) Whoever violates this section is guilty of making or causing a false report of child abuse or child neglect, a misdemeanor of the first degree.

HISTORY: 143 v S 3, Eff 4-11-91.

Not analogous to former RC § 2921.14 (GC § 13116-1; 118 v 501; Bureau of Code Revision, 10-1-53; 126 v 575), repealed, 134 v H 511, § 2, eff 1-1-74.

§ 2921.15 Making false allegation of peace officer misconduct.

(A) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(B) No person shall knowingly file a complaint against a peace officer that alleges that the peace officer engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false.

(C) Whoever violates division (B) of this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.

HISTORY: 148 v S 317, Eff 3-22-2001.

Not analogous to former RC § 2921.15 (GC § 13116-2; 118 v 501, § 2), repealed 134 v H 511, § 2, eff 1-1-74.

[COMPOUNDING]

§ 2921.21 Compounding a crime.

(A) No person shall knowingly demand, accept, or agree to accept anything of value in consideration of abandoning or agreeing to abandon a pending criminal prosecution.

(B) It is an affirmative defense to a charge under this section when both of the following apply:

(1) The pending prosecution involved is for a violation of section 2913.02 or 2913.11, division (B)(2) of section 2913.21, or section 2913.47 of the Revised Code, of which the actor under this section was the victim.

(2) The thing of value demanded, accepted, or agreed to be accepted, in consideration of abandoning or agreeing to abandon the prosecution, did not exceed an amount that the actor reasonably believed due him as restitution for the loss caused him by the offense.

(C) When a prosecuting witness abandons or agrees to abandon a prosecution under division (B) of this section, the abandonment or agreement in no way binds the state to abandoning the prosecution.

(D) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 143 v H 347, Eff 7-18-90.

Not analogous to former RC § 2921.21 (125 v H 308), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2917.36 (RS § 6901; 76 v 23; 81 v 101; GC § 12861; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.22 Failure to report a crime or knowledge of a death or burn injury.

(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

(E)(1) As used in this division, "burn injury" means any of the following:

- (a) Second or third degree burns;
- (b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;
- (c) Any burn injury or wound that may result in death;
- (d) Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noise-makers, and wire sparklers, as each is defined by section 3743.01 of the Revised Code.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the state fire marshal. The report shall comply with the uniform standard developed by the state fire marshal pursuant to division (A)(15) of section 3737.22 of the Revised Code.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding section 4731.22 of the Revised Code, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted under division (E) of this section.

(F)(1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor, or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in section 3113.31 of the Revised Code, shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding section 4731.22 of the Revised Code, the doctor-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under division (F)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Divisions (A) and (D) of this section do not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under section 2739.04 or 2739.12 of the Revised Code.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to section 3793.06 of the Revised Code.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02 or 2907.05 of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A) of this section is a misdemeanor of the fourth degree. Violation of division (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K)(1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 750 (Eff 8-26-75); 136 v S 283 (Eff 11-26-75); 137 v H 1 (Eff 8-26-77); 137 v S 203 (Eff 1-13-78); 138 v H 284 (Eff 10-22-80); 142 v H 273 (Eff 9-10-87); 143 v H 317 (Eff 10-10-89); 144 v S 343 (Eff 3-24-93); 145 v H 335 (Eff 12-9-94); 146 v H 445 (Eff 9-3-96); 146 v S 223 (Eff 3-18-97); 149 v S 115, Eff 3-19-2003.

Not analogous to former RC § 2921.22 (125 v H 308), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 4 of SB 115 (149 v —) read as follows:

SECTION 4. Section 2921.22 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 445 and Sub. S.B. 223 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

§ 2921.23 Failure to aid a law enforcement officer.

(A) No person shall negligently fail or refuse to aid a law enforcement officer, when called upon for assistance in preventing or halting the commission of an offense, or in apprehending or detaining an offender, when such aid can be given without a substantial risk of physical harm to the person giving it.

(B) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor.

HISTORY: 134 v H 511, Eff 1-1-74.

Not analogous to former RC § 2921.23 (125 v H 308), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2917.32 (RS § 6918; S&C 430; 29 v 144; GC § 12857; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.24 Disclosure of confidential information.

(A) No officer or employee of a law enforcement agency or court, or of the office of the clerk of any court, shall disclose during the pendency of any criminal case the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case.

(B) Division (A) of this section does not prohibit a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee from disclosing the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's own home address, and does not apply to any person who discloses the home address of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee pursuant to a court-ordered disclosure under division (C) of this section.

(C) The court in which any criminal case is pending may order the disclosure of the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case, if the court determines after a written request for the disclosure that good cause exists for disclosing the home address of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee.

(D) Whoever violates division (A) of this section is guilty of disclosure of confidential information, a misdemeanor of the fourth degree.

(E) As used in this section:

(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(2) "Correctional employee" and "youth services employee" have the same meanings as in section 149.43 of the Revised Code.

HISTORY: 140 v H 403, Eff 9-26-84; 151 v H 141, § 1, eff. 3-30-07.

Not analogous to former RC § 2921.24 (125 v H 308), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.25 Disclosure of home addresses of certain public officials and employees.

(A) No judge of a court of record, or mayor presiding over a mayor's court, shall order a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness in a criminal case, to disclose the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's home address during the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's examination in the case, unless the judge or mayor determines that the defendant has a right to the disclosure.

(B) As used in this section:

(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(2) "Correctional employee" and "youth services employee" have the same meanings as in section 149.43 of the Revised Code.

HISTORY: 140 v H 403, Eff 9-26-84; 151 v H 141, § 1, eff. 3-30-07.

Not analogous to former RC § 2921.25 (125 v H 308; 130 v 663), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2921.29 Failure to disclose one's personal information.

(A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:

(1) The person is committing, has committed, or is about to commit a criminal offense.

(2) The person witnessed any of the following:

(a) An offense of violence that would constitute a felony under the laws of this state;

(b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or to property;

(c) Any attempt or conspiracy to commit, or complicity in committing, any offense identified in division (A)(2)(a) or (b) of this section;

(d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (b) of this section or any attempt, conspiracy, or complicity described in division (A)(2)(c) of this section has been, is being, or is about to be committed.

(B) Whoever violates this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.

(C) Nothing in this section requires a person to answer any questions beyond that person's name, address, or date of birth. Nothing in this section authorizes a law enforcement officer to arrest a person for not providing any information beyond that person's name, address, or date of birth or for refusing to describe the offense observed.

(D) It is not a violation of this section to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.

HISTORY: 151 v S 9, § 1, eff. 4-14-06.

[OBSTRUCTING AND ESCAPE]

§ 2921.31 Obstructing official business.

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division, obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v H 137. Eff 3-10-2000.

§ 2921.32 Obstructing justice.

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime, and no person, with purpose to hinder the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, shall do any of the following:

- (1) Harbor or conceal the other person or child;
- (2) Provide the other person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension;
- (3) Warn the other person or child of impending discovery or apprehension;
- (4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence;
- (5) Communicate false information to any person;
- (6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

(B) A person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of division (A) of this section regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. The crime or act the person or child aided committed shall be used under division (C) of this section in determining the penalty for the violation of division (A) of this section, regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delin-

quent child for committing the crime or act the person or child aided committed.

(C)(1) Whoever violates this section is guilty of obstructing justice.

(2) If the crime committed by the person aided is a misdemeanor or if the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or a misdemeanor of the same degree that the act committed by the child aided would be if committed by an adult.

(3) Except as otherwise provided in divisions (C)(4) and (5) of this section, if the crime committed by the person aided is a felony or if the act committed by the child aided would be a felony if committed by an adult, obstructing justice is a felony of the fifth degree.

(4) If the crime committed by the person aided is aggravated murder, murder, or a felony of the first or second degree or if the act committed by the child aided would be one of those offenses if committed by an adult and if the offender knows or has reason to believe that the crime committed by the person aided is one of those offenses or that the act committed by the child aided would be one of those offenses if committed by an adult, obstructing justice is a felony of the third degree.

(5) If the crime or act committed by the person or child aided is an act of terrorism, obstructing justice is one of the following:

(a) Except as provided in division (C)(5)(b) of this section, a felony of the second degree;

(b) If the act of terrorism resulted in the death of a person who was not a participant in the act of terrorism, a felony of the first degree.

(D) As used in this section:

(1) "Adult" and "child" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

(2) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(3) "Act of terrorism" has the same meaning as in section 2909.21 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 147 v H 161 (Eff 12-31-97); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 184. Eff 5-15-2002.

[§ 2921.32.1] § 2921.321 Assaulting or harassing police dog or horse or assistance dog.

(A) No person shall knowingly cause, or attempt to cause, physical harm to a police dog or horse in either of the following circumstances:

(1) The police dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted.

(2) The police dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.

(B) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike a police dog or horse;

(2) Throw an object or substance at a police dog or horse;

(3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:

(a) Inhibits or restricts the law enforcement officer's control of the police dog or horse;

(b) Deprives the law enforcement officer of control of the police dog or horse;

(c) Releases the police dog or horse from its area of control;

(d) Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer.

(4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse;

(5) If the person is the owner, keeper, or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

(C) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:

(1) The dog is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted.

(2) The dog is not assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is an assistance dog.

(D) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike an assistance dog;

(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:

(a) Inhibits or restricts the assisted or served person's control of the dog;

(b) Deprives the assisted or served person of control of the dog;

(c) Releases the dog from its area of control;

(d) Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the dog to assist the assisted or served person.

(4) Engage in any conduct that is likely to cause serious physical injury or death to an assistance dog;

(5) If the person is the owner, keeper, or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger an assistance dog that at the time of the conduct is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person or that the person knows is an assistance dog.

(E)(1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in the death of the police dog or horse, assaulting a police dog or horse is a felony of the third

degree. If the violation results in serious physical harm to the police dog or horse other than its death, assaulting a police dog or horse is a felony of the fourth degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree.

(2) Whoever violates division (B) of this section is guilty of harassing a police dog or horse. Except as otherwise provided in this division, harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in the death of the police dog or horse, harassing a police dog or horse is a felony of the third degree. If the violation results in serious physical harm to the police dog or horse, but does not result in its death, harassing a police dog or horse, is a felony of the fourth degree. If the violation results in physical harm to the police dog or horse, but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree.

(3) Whoever violates division (C) of this section is guilty of assaulting an assistance dog. Except as otherwise provided in this division, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, assaulting an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog other than its death, assaulting an assistance dog is a felony of the fourth degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree.

(4) Whoever violates division (D) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this division, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, harassing an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog, but does not result in its death, harassing an assistance dog is a felony of the fourth degree. If the violation results in physical harm to the assistance dog, but does not result in its death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree.

(5) In addition to any other sanction or penalty imposed for the offense under this section, Chapter 2929., or any other provision of the Revised Code, whoever violates division (A), (B), (C), or (D) of this section is responsible for the payment of all of the following:

(a) Any veterinary bill or bill for medication incurred as a result of the violation by the police department regarding a violation of division (A) or (B) of this section or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of division (C) or (D) of this section;

(b) The cost of any damaged equipment that results from the violation;

(c) If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the blind,

deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog;

(d) If the violation resulted in the death of the police dog or horse or the assistance dog that was the subject of the violation or resulted in serious physical harm to that dog or horse to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

(F) This section does not apply to a licensed veterinarian whose conduct is in accordance with Chapter 4741. of the Revised Code.

(G) This section only applies to an offender who knows or should know at the time of the violation that the police dog or horse or assistance dog that is the subject of a violation under this section is a police dog or horse or an assistance dog.

(H) As used in this section:

(1) "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(2) "Police dog or horse" means a dog or horse that has been trained, and may be used, to assist law enforcement officers in the performance of their official duties.

(3) "Serious physical harm" means any of the following:

(a) Any physical harm that carries a substantial risk of death;

(b) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming;

(c) Any physical harm that causes acute pain of a duration that results in substantial suffering.

(4) "Assistance dog," "blind," and "mobility impaired person" have the same meanings as in section 955.011 [955.01.1] of the Revised Code.

HISTORY: 145 v S 116 (Eff 9-29-94); 146 v S 2 (Eff 7-1-96); 148 v H 701. Eff 4-9-2001; 150 v H 369, § 1, eff. 11-26-04; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

§ 2921.33 Resisting arrest.

(A) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another.

(B) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer.

(C) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person if either of the following applies:

(1) The offender, during the course of or as a result of the resistance or interference, recklessly causes physical harm to a law enforcement officer by means of a deadly weapon;

(2) The offender, during the course of the resistance or interference, brandishes a deadly weapon.

(D) Whoever violates this section is guilty of resisting arrest. A violation of division (A) of this section is a

misdemeanor of the second degree. A violation of division (B) of this section is a misdemeanor of the first degree. A violation of division (C) of this section is a felony of the fourth degree.

(E) As used in this section, "deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 147 v H 151. Eff 9-16-97.

[§ 2921.33.1] § 2921.331 Failure to comply with order or signal of police officer.

(A) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(C)(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

(2) A violation of division (A) of this section is a misdemeanor of the first degree.

(3) Except as provided in divisions (C) (4) and (5) of this section, a violation of division (B) of this section is a misdemeanor of the first degree.

(4) Except as provided in division (C) (5) of this section, a violation of division (B) of this section is a felony of the fourth degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony.

(5)(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

(i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.

(ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

(b) If a police officer pursues an offender who is violating division (B) of this section and division (C) (5) (a) of this section applies, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for a violation of division (B) of this section, shall consider, along with the factors set forth in sections 2929.12 and 2929.13 of the Revised Code that are required to be considered, all of the following:

(i) The duration of the pursuit;

(ii) The distance of the pursuit;

(iii) The rate of speed at which the offender operated the motor vehicle during the pursuit;

(iv) Whether the offender failed to stop for traffic lights or stop signs during the pursuit;

(v) The number of traffic lights or stop signs for which the offender failed to stop during the pursuit;

(vi) Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;

(vii) Whether the offender committed a moving violation during the pursuit;

(viii) The number of moving violations the offender committed during the pursuit;

(ix) Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

(D) If an offender is sentenced pursuant to division (C) (4) or (5) of this section for a violation of division (B) of this section, and if the offender is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender.

(E) In addition to any other sanction imposed for a violation of this section, the court shall impose a class two suspension from the range specified in division (A)(2) of section 4510.02 of the Revised Code. If the offender previously has been found guilty of an offense under this section, the court shall impose a class one suspension as described in division (A)(1) of that section. The court shall not grant limited driving privileges to the offender. No judge shall suspend the first three years of suspension under a class two suspension of an offender's license, permit, or privilege required by this division on any portion of the suspension under a class one suspension of an offender's license, permit, or privilege required by this division.

(F) As used in this section:

(1) "Moving violation" has the same meaning as in section 2743.70 of the Revised Code.

(2) "Police officer" has the same meaning as in section 4511.01 of the Revised Code.

HISTORY: GC § 6307-3; 119 v 766, § 3; Bureau of Code Revision, RC § 4511.02, 10-1-53; 132 v H 380 (Eff 1-1-68); 137 v S 381 (Eff 10-19-78); RC § 2921.33.1, 143 v S 49 (Eff 11-3-89); 148 v H 29, Eff 10-29-99; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

§ 2921.34 Escape.

Effective until 1-1-08.

(A)(1) No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.

(2) Division (A)(2) of this section applies to any person who is adjudicated a sexually violent predator and is sentenced to a prison term pursuant to division (A)(3) of section 2971.03 of the Revised Code for the sexually violent offense, to any person who is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and is sentenced to a prison term pursuant to division (B)(1)(a), (b), or (c) of section 2971.03 of the Revised Code for the violation, and to any person who is convicted of or pleads guilty to attempted rape committed on or after the effective date

of this amendment and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code and is sentenced to a prison term pursuant to division (B)(2)(a), (b), or (c) of section 2971.03 of the Revised Code for the attempted rape. No person to whom this division applies, for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, and who, pursuant to that modification, is restricted to a geographic area, knowing that the person is under a geographic restriction or being reckless in that regard, shall purposely leave the geographic area to which the restriction applies or purposely fail to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time.

(B) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense to a charge under this section if the detention is pursuant to judicial order or in a detention facility. In the case of any other detention, irregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:

(1) The escape involved no substantial risk of harm to the person or property of another.

(2) The detaining authority knew or should have known there was no legal basis or authority for the detention.

(C) Whoever violates this section is guilty of escape.

(1) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if the act for which the offender was under detention would not be a felony if committed by an adult, escape is a misdemeanor of the first degree.

(2) If the offender, at the time of the commission of the offense, was under detention in any other manner, the offender is a person who was adjudicated a sexually violent predator for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, the offender is a person who was convicted of or pleaded guilty to committing on or after the effective date of this amendment a violation of division (A)(1)(b) of section 2907.02 of the Revised Code for whom the requirement that the entire prison term imposed upon the person pursuant to division (B)(1)(a), (b), or (c) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, or the offender is a person who was convicted of or pleaded guilty to committing on or after the effective date of this amendment attempted rape, who also was convicted of or pleaded guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, who was sentenced pursuant to division (B)(2)(a), (b), or (c) of section 2971.03 of the Revised Code, and for whom the requirement that the entire prison term imposed pursuant to that division be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, escape is one of the following:

(a) A felony of the second degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), or (B)(2)(a), (b), or (c) of section 2971.03 of the Revised Code is aggravated murder, murder, or a felony of the first or second degree or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be aggravated murder, murder, or a felony of the first or second degree if committed by an adult;

(b) A felony of the third degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), or (B)(2)(a), (b), or (c) of section 2971.03 of the Revised Code is a felony of the third, fourth, or fifth degree or an unclassified felony or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be a felony of the third, fourth, or fifth degree or an unclassified felony if committed by an adult;

(c) A felony of the fifth degree, when any of the following applies:

(i) The most serious offense for which the person was under detention is a misdemeanor.

(ii) The person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement in a facility under an order made pursuant to or under authority of section 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code.

(d) A misdemeanor of the first degree, when the most serious offense for which the person was under detention is a misdemeanor and when the person fails to return to detention at a specified time following temporary leave granted for a specific purpose or limited period or at the time required when serving a sentence in intermittent confinement.

(D) As used in this section:

(1) "Adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(2) "Sexually violent offense" has the same meaning as in section 2971.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v H 298 (Eff 7-26-91); 144 v S 37 (Eff 7-31-92); 144 v H 725 (Eff 4-16-93); 145 v H 42 (Eff 2-9-94); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 146 v S 285, Eff 7-1-97; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

§ 2921.34 Escape.

Effective 1-1-08.

(A)(1) No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.

(2)(a) Division (A)(2)(b) of this section applies to any person who is sentenced to a prison term pursuant to

division (A)(3) or (B) of section 2971.03 of the Revised Code.

(b) No person to whom this division applies, for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, and who, pursuant to that modification, is restricted to a geographic area, knowing that the person is under a geographic restriction or being reckless in that regard, shall purposely leave the geographic area to which the restriction applies or purposely fail to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time.

(B) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense to a charge under this section if the detention is pursuant to judicial order or in a detention facility. In the case of any other detention, irregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:

(1) The escape involved no substantial risk of harm to the person or property of another.

(2) The detaining authority knew or should have known there was no legal basis or authority for the detention.

(C) Whoever violates this section is guilty of escape.

(1) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if the act for which the offender was under detention would not be a felony if committed by an adult, escape is a misdemeanor of the first degree.

(2) If the offender, at the time of the commission of the offense, was under detention in any other manner or if the offender is a person for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, escape is one of the following:

(a) A felony of the second degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code is aggravated murder, murder, or a felony of the first or second degree or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be aggravated murder, murder, or a felony of the first or second degree if committed by an adult;

(b) A felony of the third degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code is a felony of the third, fourth, or fifth degree or an unclassified felony or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be a felony of the third, fourth, or fifth degree or an unclassified felony if committed by an adult;

(c) A felony of the fifth degree, when any of the following applies:

(i) The most serious offense for which the person was under detention is a misdemeanor.

(ii) The person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement in a facility under an order made pursuant to or under authority of section 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code.

(d) A misdemeanor of the first degree, when the most serious offense for which the person was under detention is a misdemeanor and when the person fails to return to detention at a specified time following temporary leave granted for a specific purpose or limited period or at the time required when serving a sentence in intermittent confinement.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v H 298 (Eff 7-26-91); 144 v S 37 (Eff 7-31-92); 144 v H 725 (Eff 4-16-93); 145 v H 42 (Eff 2-9-94); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 146 v S 285, Eff 7-1-97; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:

SECTION 3. Section 2921.34 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 180 and Am. Sub. S.B. 285 of the 121st General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The effective date is set by section 4 of SB 285.

§ 2921.35 Aiding escape or resistance to lawful authority.

(A) No person, with purpose to promote or facilitate an escape or resistance to lawful authority, shall convey into a detention facility, or provide anyone confined therein with any instrument or thing which may be used for such purposes.

(B) No person who is confined in a detention facility, and with purpose to promote or facilitate an escape or resistance to lawful authority, shall make, procure, conceal, unlawfully possess, or give to another inmate, any instrument or thing which may be used for such purposes.

(C) Whoever violates this section is guilty of aiding escape or resistance to lawful authority, a felony of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2921.36 Illegal conveyance of weapons or prohibited items onto grounds of detention facility or institution.

(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution that is under the control of the department of mental health or the department of mental retardation and developmental disabilities, any of the following items:

(1) Any deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code, or any

part of or ammunition for use in such a deadly weapon or dangerous ordnance;

(2) Any drug of abuse, as defined in section 3719.011 [3719.01.1] of the Revised Code;

(3) Any intoxicating liquor, as defined in section 4301.01 of the Revised Code.

(B) Division (A) of this section does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution under the control of the department of mental health or the department of mental retardation and developmental disabilities pursuant to the written authorization of the person in charge of the detention facility or the institution and in accordance with the written rules of the detention facility or the institution.

(C) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility or to any patient in an institution under the control of the department of mental health or the department of mental retardation and developmental disabilities, any item listed in division (A)(1), (2), or (3) of this section.

(D) No person shall knowingly deliver, or attempt to deliver, cash to any person who is confined in a detention facility.

(E) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility a cellular telephone, two-way radio, or other electronic communications device.

(F)(1) It is an affirmative defense to a charge under division (A)(1) of this section that the weapon or dangerous ordnance in question was being transported in a motor vehicle for any lawful purpose, that it was not on the actor's person, and, if the weapon or dangerous ordnance in question was a firearm, that it was unloaded and was being carried in a closed package, box, or case or in a compartment that can be reached only by leaving the vehicle.

(2) It is an affirmative defense to a charge under division (C) of this section that the actor was not otherwise prohibited by law from delivering the item to the confined person or the patient and that either of the following applies:

(a) The actor was permitted by the written rules of the detention facility or the institution to deliver the item to the confined person or the patient.

(b) The actor was given written authorization by the person in charge of the detention facility or the institution to deliver the item to the confined person or the patient.

(G)(1) Whoever violates division (A)(1) of this section or commits a violation of division (C) of this section involving an item listed in division (A)(1) of this section is guilty of illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution, a felony of the fourth degree. If the offender is an officer or employee of the department of rehabilitation and correction, the court shall impose a mandatory prison term.

(2) Whoever violates division (A)(2) of this section or commits a violation of division (C) of this section involving any drug of abuse is guilty of illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution, a felony of the third degree. If the offender is an officer or employee of the department of rehabilitation and correction or of the department of youth services, the court shall impose a mandatory prison term.

(3) Whoever violates division (A)(3) of this section or commits a violation of division (C) of this section involving any intoxicating liquor is guilty of illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution, a misdemeanor of the second degree.

(4) Whoever violates division (D) of this section is guilty of illegal conveyance of cash onto the grounds of a detention facility, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section, illegal conveyance of cash onto the grounds of a detention facility is a felony of the fifth degree.

(5) Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a detention facility, a misdemeanor of the first degree, or if the offender previously has been convicted of or pleaded guilty to a violation of division (E) of this section, a felony of the fifth degree.

HISTORY: 137 v H 630 (Eff 5-23-78); 138 v H 900 (Eff 7-1-80); 143 v S 258 (Eff 11-20-90); 145 v H 571 (Eff 10-6-94); 146 v S 2 (Eff 7-1-96); 147 v S 111 (Eff 3-17-98); 148 v H 357 (Eff 8-10-2000); 149 v H 510. Eff 3-31-2003.

§ 2921.37 Arrest powers of detention facility chief.

The person in charge of a detention facility shall, on the grounds of the detention facility, have the same power as a peace officer, as defined in section 2935.01 of the Revised Code, to arrest a person who violates section 2921.36 of the Revised Code.

HISTORY: 137 v H 630. Eff 5-23-78.

§ 2921.38 Harassment with bodily substance.

(A) No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(C) No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) of this section is a felony of the fifth degree. A

violation of division (C) of this section is a felony of the third degree.

(E)(1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis.

(2) The court shall charge the offender with the costs of the test or tests ordered under division (E)(1) of this section unless the court determines that the accused is unable to pay, in which case the costs shall be charged to the entity that operates the detention facility in which the alleged offense occurred.

(F) This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health or the department of mental retardation and developmental disabilities.

HISTORY: 147 v H 37. Eff 6-11-97; 151 v H 259, § 1, eff. 4-4-07.

[PECULATION AND DERELICTION]

§ 2921.41 Theft in office; restitution; withholding of retirement benefits.

(A) No public official or party official shall commit any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, when either of the following applies:

(1) The offender uses the offender's office in aid of committing the offense or permits or assents to its use in aid of committing the offense;

(2) The property or service involved is owned by this state, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund.

(B) Whoever violates this section is guilty of theft in office. Except as otherwise provided in this division, theft in office is a felony of the fifth degree. If the value of property or services stolen is five hundred dollars or more and is less than five thousand dollars, theft in office is a felony of the fourth degree. If the value of property or services stolen is five thousand dollars or more, theft in office is a felony of the third degree.

(C)(1) A public official or party official who is convicted of or pleads guilty to theft in office is forever disqualified from holding any public office, employment, or position of trust in this state.

(2)(a) A court that imposes sentence for a violation of this section based on conduct described in division (A)(2) of this section shall require the public official or party official who is convicted of or pleads guilty to the offense to make restitution for all of the property or the service that is the subject of the offense, in addition to the term of imprisonment and any fine imposed. A court that imposes sentence for a violation of this section based on conduct described in division (A)(1) of this section and that determines at trial that this state or a political subdivision of this state if the offender is a public official, or a political party in the United States or this state if the offender is a party official, suffered actual loss as a result of the offense shall require the offender to make restitu-

tion to the state, political subdivision, or political party for all of the actual loss experienced, in addition to the term of imprisonment and any fine imposed.

(b)(i) In any case in which a sentencing court is required to order restitution under division (C)(2)(a) of this section and in which the offender, at the time of the commission of the offense or at any other time, was a member of the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, or the state highway patrol retirement system; was an electing employee, as defined in section 3305.01 of the Revised Code, participating in an alternative retirement plan provided pursuant to Chapter 3305. of the Revised Code; was a participating employee or continuing member, as defined in section 148.01 of the Revised Code, in a deferred compensation program offered by the Ohio public employees deferred compensation board; was an officer or employee of a municipal corporation who was a participant in a deferred compensation program offered by that municipal corporation; was an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, who was a participant in a deferred compensation program offered by that government unit, or was a participating employee, continuing member, or participant in any deferred compensation program described in this division and a member of a retirement system specified in this division or a retirement system of a municipal corporation, the entity to which restitution is to be made may file a motion with the sentencing court specifying any retirement system, any provider as defined in section 3305.01 of the Revised Code, and any deferred compensation program of which the offender was a member, electing employee, participating employee, continuing member, or participant and requesting the court to issue an order requiring the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution from any payment that is to be made under a pension, annuity, or allowance, under an option in the alternative retirement plan, under a participant account, as defined in section 148.01 of the Revised Code, or under any other type of benefit, other than a survivorship benefit, that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that retirement system, that provider of the option under the alternative retirement plan, or that deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, and from any payment of any other amounts to be paid to the offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code. A motion described in this division may be filed at any time subsequent to the conviction of the offender or entry of a guilty plea. Upon the filing of the motion, the clerk of the court in which the motion is filed shall notify the offender, the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, in writing, of all of the following: that the motion was filed; that the offender will be granted a hearing on the issuance of the requested order

if the offender files a written request for a hearing with the clerk prior to the expiration of thirty days after the offender receives the notice; that, if a hearing is requested, the court will schedule a hearing as soon as possible and notify the offender, any specified retirement system, any specified provider under an alternative retirement plan, and any specified deferred compensation program of the date, time, and place of the hearing; that, if a hearing is conducted, it will be limited only to a consideration of whether the offender can show good cause why the requested order should not be issued; that, if a hearing is conducted, the court will not issue the requested order if the court determines, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; that the court will issue the requested order if a hearing is not requested or if a hearing is conducted but the court does not determine, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; and that, if the requested order is issued, any retirement system, any provider under an alternative retirement plan, and any deferred compensation program specified in the motion will be required to withhold the amount required as restitution from payments to the offender.

(ii) In any case in which a sentencing court is required to order restitution under division (C)(2)(a) of this section and in which a motion requesting the issuance of a withholding order as described in division (C)(2)(b)(i) of this section is filed, the offender may receive a hearing on the motion by delivering a written request for a hearing to the court prior to the expiration of thirty days after the offender's receipt of the notice provided pursuant to division (C)(2)(b)(i) of this section. If a request for a hearing is made by the offender within the prescribed time, the court shall schedule a hearing as soon as possible after the request is made and shall notify the offender, the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, of the date, time, and place of the hearing. A hearing scheduled under this division shall be limited to a consideration of whether there is good cause, based on evidence presented by the offender, for the requested order not to be issued. If the court determines, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall deny the motion and shall not issue the requested order. If the offender does not request a hearing within the prescribed time or if the court conducts a hearing but does not determine, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall order the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution under division (C)(2)(a) of this section from any payments to be made under a pension, annuity, or allowance, under a participant account, as defined in section 148.01 of the Revised Code, under an option in the alternative retirement plan, or under any other type of benefit, other than a survivorship benefit, that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that

retirement system, that provider under the alternative retirement plan, or that deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, and from any payment of any other amounts to be paid to the offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code, and to continue the withholding for that purpose, in accordance with the order, out of each payment to be made on or after the date of issuance of the order, until further order of the court. Upon receipt of an order issued under this division, the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, a municipal corporation retirement system, the provider under the alternative retirement plan, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code, whichever are applicable, shall withhold the amount required as restitution, in accordance with the order, from any such payments and immediately shall forward the amount withheld to the clerk of the court in which the order was issued for payment to the entity to which restitution is to be made.

(iii) Service of a notice required by division (C)(2)(b)(i) or (ii) of this section shall be effected in the same manner as provided in the Rules of Civil Procedure for the service of process.

(D) Upon the filing of charges against a person under this section, the prosecutor, as defined in section 2935.01 of the Revised Code, who is assigned the case shall send written notice that charges have been filed against that person to the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, the provider under an alternative retirement plan, any municipal corporation retirement system in this state, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code. The written notice shall specifically identify the person charged.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v H 265 (Eff 9-20-84); 144 v S 300 (Eff 11-5-92); 146 v S 2 (Eff 7-1-96); 146 v H 586 (Eff 3-31-97); 148 v H 222 (Eff 11-2-99); 148 v H 628 (Eff 9-21-2000); 148 v H 535. Eff 4-1-2001.

The effective date is set by section 13(A) of HB 535.

§ 2921.42 Having an unlawful interest in a public contract.

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;

(2) Authorize, or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the public official, a

member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;

(5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;

(3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public moneys if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the moneys are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with sections 309.06 and 2921.421 [2921.42.1] of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 [733.62.1] and 2921.421 [2921.42.1] of the Revised Code, or for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 [504.15.1] and 2921.421 [2921.42.1] of the Revised Code.

(G) This section does not apply to a public contract in which a township trustee in a township with a population of five thousand or less in its unincorporated area, a member of the township trustee's family, or one of the township trustee's business associates has an interest, if all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the township and the amount of the contract is less than five thousand dollars per year.

(2) The supplies or services are being furnished to the township as part of a continuing course of dealing established before the township trustee held that office with the township;

(3) The treatment accorded the township is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted with full knowledge by the township of the interest of the township trustee, member of the township trustee's family, or the township trustee's business associate.

(H) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of this section is void and unenforceable.

(I) As used in this section:

(1) "Public contract" means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either;

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(2) "Chief legal officer" has the same meaning as in section 733.621 [733.62.1] of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 144 v S 359 (Eff 12-22-92); 145 v H 152 (Eff 7-1-93); 145 v H 285 (Eff 3-2-94); 145 v H 150. Eff 6-23-94; 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is, set by § 812.03 of 152 v H 119.

The provisions of § 824.03 of 152 v H 119 read in part as follows:

SECTION 824.03. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 2921.42 of the Revised Code as amended by both Sub. H.B. 150 and Am. Sub. H.B. 285 of the 120th General Assembly.

The finding in this section takes effect at the same time as the section referenced in the finding takes effect.

[§ 2921.42.1] § 2921.421 Conditions for prosecuting attorney's appointment of assistants and employees who are associated in the private practice of law.

(A) As used in this section:

(1) "Chief legal officer" has the same meaning as in section 733.621 [733.62.1] of the Revised Code.

(2) "Political subdivision" means a county, a municipal corporation, or a township that adopts a limited home rule government under Chapter 504. of the Revised Code.

(B) A prosecuting attorney may appoint assistants and employees, except a member of the family of the prosecuting attorney, in accordance with division (B) of section 309.06 of the Revised Code, a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation may appoint assistants and employees, except a member of the family of the chief legal officer or official designated as prosecutor, in accordance with section 733.621 [733.62.1] of the Revised Code, and a township law director appointed under section 504.15 of the Revised Code may appoint assistants and employees, except a member of the family of the township law director, in accordance with section 504.151 [504.15.1] of the Revised Code, if all of the following apply:

(1) The services to be furnished by the appointee or employee are necessary services for the political subdivision or are authorized by the legislative authority, governing board, or other contracting authority of the political subdivision.

(2) The treatment accorded the political subdivision is either preferential to or the same as that accorded other clients or customers of the appointee or employee in similar transactions, or the legislative authority, governing board, or other contracting authority of the political subdivision, in its sole discretion, determines that the compensation and other terms of appointment or employment of the appointee or employee are fair and reasonable to the political subdivision.

(3) The appointment or employment is made after prior written disclosure to the legislative authority, governing board, or other contracting authority of the political subdivision of the business relationship between the prosecuting attorney, the chief legal officer or official designated as prosecutor in a municipal corporation, or the township law

director and the appointee or employee thereof. In the case of a municipal corporation, the disclosure may be made or evidenced in an ordinance, resolution, or other document that does either or both of the following:

(a) Authorizes the furnishing of services as required under division (B)(1) of this section;

(b) Determines that the compensation and other terms of appointment or employment of the appointee or employee are fair and reasonable to the political subdivision as required under division (B)(2) of this section.

(4) The prosecuting attorney, the elected chief legal officer, or the township law director does not receive any distributive share or other portion, in whole or in part, of the earnings of the business associate, partner, or employee paid by the political subdivision to the business associate, partner, or employee for services rendered for the political subdivision.

(C) It is not a violation of this section or of section 102.03 or 2921.42 of the Revised Code for the legislative authority, the governing board, or other contracting authority of a political subdivision to engage the services of any firm that practices the profession of law upon the terms approved by the legislative authority, the governing board, or the contracting authority, or to designate any partner, officer, or employee of that firm as a nonelected public official or employee of the political subdivision, whether the public office or position of employment is created by statute, charter, ordinance, resolution, or other legislative or administrative action.

HISTORY: 145 v H 285 (Eff 3-2-94); 148 v H 187. Eff 9-20-99.

§ 2921.43 Soliciting or receiving improper compensation.

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use, and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B), and (C) of this section do not prohibit a person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity from accepting voluntary contributions.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v S 46 (Eff 7-23-74); 141 v H 300 (Eff 9-17-86); 146 v S 8 (Eff 8-23-95); 147 v S 134. Eff 7-13-98; 150 v H 1, § 1, eff. 3-31-05; 151 v S 115, § 1, eff. 4-26-05.

See provisions of § 3 of 151 v S 115 following RC § 2921.01.

§ 2921.44 Dereliction of duty.

(A) No law enforcement officer shall negligently do any of the following:

(1) Fail to serve a lawful warrant without delay;

(2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in the law enforcement officer's power to do so alone or with available assistance.

(B) No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(C) No officer, having charge of a detention facility, shall negligently do any of the following:

(1) Allow the detention facility to become littered or unsanitary;

(2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter, and medical attention;

(3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;

(4) Allow a prisoner to escape;

(5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

(D) No public official of the state shall recklessly create a deficiency, incur a liability, or expend a greater sum than is appropriated by the general assembly for the use in any one year of the department, agency, or institution of the state with which the public official is connected.

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

(G) As used in this section, "public servant" includes an officer or employee of a contractor as defined in section 9.08 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v S 12. Eff 6-8-2000.

§ 2921.45 Interfering with civil rights.

(A) No public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

HISTORY: 134 v H 511. Eff 1-1-74.

[IMPERSONATING PEACE OFFICER]

§ 2921.51 Impersonating peace officer, private police officer, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer.

(A) As used in this section:

(1) "Peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state, a member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, a member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, a state university law enforcement officer appointed under section 3345.04 of the Revised Code, a veterans' home police officer appointed under section 5907.02 of the Revised Code, a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a state highway patrol trooper and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

(2) "Private police officer" means any security guard, special police officer, private detective, or other person who is privately employed in a police capacity.

(3) "Federal law enforcement officer" means an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.

(4) "Impersonate" means to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

(5) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.

(B) No person shall impersonate a peace officer, private police officer, or investigator of the bureau of criminal identification and investigation, or a federal law enforcement officer.

(C) No person, by impersonating a peace officer, private police officer, or investigator of the bureau of criminal identification and investigation, or a federal law enforcement officer, shall arrest or detain any person, search any person, or search the property of any person.

(D) No person, with purpose to commit or facilitate the commission of an offense, shall impersonate a peace officer, private police officer, a federal law enforcement

officer, officer, agent, or employee of the state, or investigator of the bureau of criminal identification and investigation.

(E) No person shall commit a felony while impersonating a peace officer, private police officer, a federal law enforcement officer, officer, agent, or employee of the state, or investigator of the bureau of criminal identification and investigation.

(F) It is an affirmative defense to a charge under division (B) of this section that the impersonation of the peace officer, private police officer, or investigator of the bureau of criminal identification and investigation was for a lawful purpose.

(G) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the first degree. If the purpose of a violation of division (D) of this section is to commit or facilitate the commission of a felony, a violation of division (D) is a felony of the fourth degree. Whoever violates division (E) of this section is guilty of a felony of the third degree.

HISTORY: 142 v H 708 (Eff 4-19-88); 144 v S 144 (Eff 8-8-91); 146 v S 2 (Eff 7-1-96); 148 v S 137 (Eff 5-17-2000); 149 v H 675. Eff 3-14-2003; 151 v S 281, § 1, eff. 1-4-07; 151 v H 259, § 1, eff. 4-4-07.

Analogous to former RC § 2921.51 (136 v H 1144; 137 v H 588; 140 v H 129; 142 v H 231; 142 v H 261), repealed 142 v H 708, § 2, eff 4-19-88.

§ 2921.52 Using sham legal process.

(A) As used in this section:

(1) "Lawfully issued" means adopted, issued, or rendered in accordance with the United States constitution, the constitution of a state, and the applicable statutes, rules, regulations, and ordinances of the United States, a state, and the political subdivisions of a state.

(2) "State" means a state of the United States, including without limitation, the state legislature, the highest court of the state that has statewide jurisdiction, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. "State" does not include the political subdivisions of the state.

(3) "Political subdivisions" means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic that are organized under state law and are responsible for governmental activities only in geographical areas smaller than that of a state.

(4) "Sham legal process" means an instrument that meets all of the following conditions:

(a) It is not lawfully issued.

(b) It purports to do any of the following:

(i) To be a summons, subpoena, judgment, or order of a court, a law enforcement officer, or a legislative, executive, or administrative body.

(ii) To assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of any person or property.

(iii) To require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property.

(c) It is designed to make another person believe that it is lawfully issued.

(B) No person shall, knowing the sham legal process to be sham legal process, do any of the following:

(1) Knowingly issue, display, deliver, distribute, or otherwise use sham legal process;

(2) Knowingly use sham legal process to arrest, detain, search, or seize any person or the property of another person;

(3) Knowingly commit or facilitate the commission of an offense, using sham legal process;

(4) Knowingly commit a felony by using sham legal process.

(C) It is an affirmative defense to a charge under division (B)(1) or (2) of this section that the use of sham legal process was for a lawful purpose.

(D) Whoever violates this section is guilty of using sham legal process. A violation of division (B)(1) of this section is a misdemeanor of the fourth degree. A violation of division (B)(2) or (3) of this section is a misdemeanor of the first degree, except that, if the purpose of a violation of division (B)(3) of this section is to commit or facilitate the commission of a felony, a violation of division (B)(3) of this section is a felony of the fourth degree. A violation of division (B)(4) of this section is a felony of the third degree.

(E) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

HISTORY: 146 v H 644. Eff 11-6-96.

**CHAPTER 2923: CONSPIRACY,
ATTEMPT, AND COMPLICITY;
WEAPONS CONTROL; CORRUPT
ACTIVITY**

Section

[CONSPIRACY, ATTEMPT, AND COMPLICITY]

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[WEAPONS CONTROL]

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**[CONSPIRACY, ATTEMPT, AND
COMPLICITY]**

§ 2923.01 Conspiracy.

(A) No person, with purpose to commit or to promote or facilitate the commission of aggravated murder, murder, kidnapping, compelling prostitution, promoting prostitution, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, engaging in a pattern of corrupt activity, corrupting another with drugs, a felony drug trafficking, manufacturing, processing, or possession offense, theft of drugs, or illegal processing of drug documents, the commission of a felony offense of

unauthorized use of a vehicle, illegally transmitting multiple commercial electronic mail messages or unauthorized access of a computer in violation of section 2923.421 [2923.42.1] of the Revised Code, or the commission of a violation of any provision of Chapter 3734. of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes, shall do either of the following:

(1) With another person or persons, plan or aid in planning the commission of any of the specified offenses;

(2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the commission of any of the specified offenses.

(B) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the accused or a person with whom the accused conspired, subsequent to the accused's entrance into the conspiracy. For purposes of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(C) When the offender knows or has reasonable cause to believe that a person with whom the offender conspires also has conspired or is conspiring with another to commit the same offense, the offender is guilty of conspiring with that other person, even though the other person's identity may be unknown to the offender.

(D) It is no defense to a charge under this section that, in retrospect, commission of the offense that was the object of the conspiracy was impossible under the circumstances.

(E) A conspiracy terminates when the offense or offenses that are its objects are committed or when it is abandoned by all conspirators. In the absence of abandonment, it is no defense to a charge under this section that no offense that was the object of the conspiracy was committed.

(F) A person who conspires to commit more than one offense is guilty of only one conspiracy, when the offenses are the object of the same agreement or continuous conspiratorial relationship.

(G) When a person is convicted of committing or attempting to commit a specific offense or of complicity in the commission of or attempt to commit the specific offense, the person shall not be convicted of conspiracy involving the same offense.

(H)(1) No person shall be convicted of conspiracy upon the testimony of a person with whom the defendant conspired, unsupported by other evidence.

(2) If a person with whom the defendant allegedly has conspired testifies against the defendant in a case in which the defendant is charged with conspiracy and if the testimony is supported by other evidence, the court, when it charges the jury, shall state substantially the following:

"The testimony of an accomplice that is supported by other evidence does not become inadmissible because of the accomplice's complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect the witness' credibility and make the witness' testimony subject to grave suspicion, and require that it be weighed with great caution.

It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth."

(3) "Conspiracy," as used in division (H)(1) of this section, does not include any conspiracy that results in an attempt to commit an offense or in the commission of an offense.

(I) The following are affirmative defenses to a charge of conspiracy:

(1) After conspiring to commit an offense, the actor thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

(2) After conspiring to commit an offense, the actor abandoned the conspiracy prior to the commission of or attempt to commit any offense that was the object of the conspiracy, either by advising all other conspirators of the actor's abandonment, or by informing any law enforcement authority of the existence of the conspiracy and of the actor's participation in the conspiracy.

(J) Whoever violates this section is guilty of conspiracy, which is one of the following:

(1) A felony of the first degree, when one of the objects of the conspiracy is aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life;

(2) A felony of the next lesser degree than the most serious offense that is the object of the conspiracy, when the most serious offense that is the object of the conspiracy is a felony of the first, second, third, or fourth degree;

(3) A felony punishable by a fine of not more than twenty-five thousand dollars or imprisonment for not more than eighteen months, or both, when the offense that is the object of the conspiracy is a violation of any provision of Chapter 3734. of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes;

(4) A misdemeanor of the first degree, when the most serious offense that is the object of the conspiracy is a felony of the fifth degree.

(K) This section does not define a separate conspiracy offense or penalty where conspiracy is defined as an offense by one or more sections of the Revised Code, other than this section. In such a case, however:

(1) With respect to the offense specified as the object of the conspiracy in the other section or sections, division (A) of this section defines the voluntary act or acts and culpable mental state necessary to constitute the conspiracy;

(2) Divisions (B) to (I) of this section are incorporated by reference in the conspiracy offense defined by the other section or sections of the Revised Code.

(L)(1) In addition to the penalties that otherwise are imposed for conspiracy, a person who is found guilty of conspiracy to engage in a pattern of corrupt activity is subject to divisions (B)(2) and (3) of section 2923.32, division (A) of section 2981.04, and division (D) of section 2981.06 of the Revised Code.

(2) If a person is convicted of or pleads guilty to conspiracy and if the most serious offense that is the object of the conspiracy is a felony drug trafficking, manufacturing, processing, or possession offense, in addition to the penalties or sanctions that may be imposed for the conspiracy under division (J)(2) or (4) of this section and Chapter 2929. of the Revised Code, both of the following apply:

(a) The provisions of divisions (D), (F), and (G) of section 2925.03, division (D) of section 2925.04, division (D) of section 2925.05, division (D) of section 2925.06, and division (E) of section 2925.11 of the Revised Code

that pertain to mandatory and additional fines, driver's or commercial driver's license or permit suspensions, and professionally licensed persons and that would apply under the appropriate provisions of those divisions to a person who is convicted of or pleads guilty to the felony drug trafficking, manufacturing, processing, or possession offense that is the most serious offense that is the basis of the conspiracy shall apply to the person who is convicted of or pleads guilty to the conspiracy as if the person had been convicted of or pleaded guilty to the felony drug trafficking, manufacturing, processing, or possession offense that is the most serious offense that is the basis of the conspiracy.

(b) The court that imposes sentence upon the person who is convicted of or pleads guilty to the conspiracy shall comply with the provisions identified as being applicable under division (L)(2) of this section, in addition to any other penalty or sanction that it imposes for the conspiracy under division (J)(2) or (4) of this section and Chapter 2929. of the Revised Code.

(M) As used in this section:

(1) "Felony drug trafficking, manufacturing, processing, or possession offense" means any of the following that is a felony:

(a) A violation of section 2925.03, 2925.04, 2925.05, or 2925.06 of the Revised Code;

(b) A violation of section 2925.11 of the Revised Code that is not a minor drug possession offense.

(2) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 300 (Eff 7-1-76); 139 v H 108 (Eff 6-23-82); 139 v S 199 (Eff 7-1-83); 140 v S 210 (Eff 7-1-83); 140 v H 651 (Eff 10-1-84); 141 v H 5 (Eff 1-1-86); 141 v H 338 (Eff 9-17-86); 141 v H 428 (Eff 12-23-86); 146 v S 2 (Eff 7-1-96); 146 v H 125 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 149 v S 123, § 1, eff. 1-1-04; 150 v H 383, § 1, eff. 5-6-05; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 4 of S.B. 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

The provisions of § 8 of S.B. 123 read as follows:

SECTION 8. Section 2923.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 125 and Am. Sub. S.B. 269 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

§ 2923.02 Attempt.

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

(B) It is no defense to a charge under this section that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that

offense could have been committed had the attendant circumstances been as the actor believed them to be.

(C) No person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an offense shall be convicted of an attempt to commit the same offense in violation of this section.

(D) It is an affirmative defense to a charge under this section that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

(E)(1) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree. An attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of Chapter 3734. of the Revised Code that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. In the case of an attempt to commit a violation of any provision of Chapter 3734. of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes, an attempt is a felony punishable by a fine of not more than twenty-five thousand dollars or imprisonment for not more than eighteen months, or both. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section.

(2) If a person is convicted of or pleads guilty to attempted rape and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, the offender shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code.

(3) In addition to any other sanctions imposed pursuant to division (E)(1) of this section for an attempt to commit aggravated murder or murder in violation of division (A) of this section, if the offender used a motor vehicle as the means to attempt to commit the offense, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(F) As used in this section:

(1) "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(2) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v S 210 (Eff 7-1-83); 140 v H 651 (Eff 10-1-84); 144 v H 225 (Eff 10-23-91); 146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07.

Not analogous to former RC § 2923.02 (GC §§ 12819-1, 12819-2; 102 v 124; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.03 Complicity.

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

- (1) Solicit or procure another to commit the offense;
- (2) Aid or abet another in committing the offense;
- (3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code;
- (4) Cause an innocent or irresponsible person to commit the offense.

(B) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(C) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of section 2923.02 of the Revised Code.

(D) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense, or an offense, the court, when it charges the jury, shall state substantially the following:

"The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.

It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth."

(E) It is an affirmative defense to a charge under this section that, prior to the commission of or attempt to commit the offense, the actor terminated his complicity, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(F) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 141 v H 338. Eff 9-17-86.

Not analogous to former RC § 2923.03 (GC §§ 12819-3; 115 v 189; Bureau of Code Revision, 10-1-53; 129 v 420), repealed 134 v H 511, § 2, eff 1-1-74.

[WEAPONS CONTROL]

§ 2923.11 Definitions.

As used in sections 2923.11 to 2923.24 of the Revised Code:

(A) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(B)(1) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.

(C) "Handgun" means any of the following:

- (1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand;
- (2) Any combination of parts from which a firearm of a type described in division (C)(1) of this section can be assembled.

(D) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(E) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.

(F) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.

(G) "Zip-gun" means any of the following:

- (1) Any firearm of crude and extemporized manufacture;
- (2) Any device, including without limitation a starter's pistol, that is not designed as a firearm, but that is specially adapted for use as a firearm;
- (3) Any industrial tool, signalling device, or safety device, that is not designed as a firearm, but that as designed is capable of use as such, when possessed, carried, or used as a firearm.

(H) "Explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

(I) "Incendiary device" means any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.

(J) "Ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(K) "Dangerous ordnance" means any of the following, except as provided in division (L) of this section:

- (1) Any automatic or sawed-off firearm, zip-gun, or ballistic knife;
- (2) Any explosive device or incendiary device;
- (3) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pectretol, cyclotol, and other high explosive compositions; plastic explosives;

dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions;

(4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;

(5) Any firearm muffler or silencer;

(6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(L) "Dangerous ordnance" does not include any of the following:

(1) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;

(2) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm;

(3) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(4) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (L)(3) of this section during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(5) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece.

(6) Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act.

(M) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as class A, class B, or class C explosives by the United States department of transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks," as defined in section 3743.01 of the Revised Code, or any explosive that is not subject to regulation under the rules of the fire marshal adopted pursuant to section 3737.82 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 728 (Eff 8-22-78); 141 v H 51 (Eff 7-30-86); 142 v H 24 (Eff 7-31-87); 143 v S 96 (Eff 6-13-90); 146 v S 2, Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04.

Not analogous to former RC § 2923.11 (RS § 7035; 67 v 25; 78 v 131; GC § 12693; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2923.12 Carrying concealed weapons.

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

(1) A deadly weapon other than a handgun;

(2) A handgun other than a dangerous ordnance;

(3) A dangerous ordnance.

(B) No person who has been issued a license or temporary emergency license to carry a concealed handgun under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code shall do any of the following:

(1) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then is carrying a concealed handgun;

(2) If the person is stopped for a law enforcement purpose and if the person is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;

(4) If the person is stopped for a law enforcement purpose and if the person is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(C)(1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the requirements of section 109.801 [109.80.1] of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (C)(1)(b) of this section does not apply to the person.

(2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code, unless the person knowingly is in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code.

(D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the weapon and that any of the following applies:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of a character or was necessarily carried on in a manner or at a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(4) The weapon was being transported in a motor vehicle for any lawful purpose, was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of division (C) of section 2923.16 of the Revised Code.

(E) It is an affirmative defense to a charge under division (A) of this section of carrying or having control of a handgun other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the handgun and that the handgun was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home, provided that this affirmative defense is not available unless the actor, prior to arriving at the actor's own home, did not transport or possess the handgun in a motor vehicle in a manner prohibited by division (B) or (C) of section 2923.16 of the Revised Code while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(F) No person who is charged with a violation of this section shall be required to obtain a license or temporary emergency license to carry a concealed handgun under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code as a condition for the dismissal of the charge.

(G)(1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or division (G)(2) of this section, carrying concealed weapons in violation of division (A) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or division (G)(2) of this section, if the offender previously has been convicted

of a violation of this section or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony of the fourth degree. Except as otherwise provided in division (G)(2) of this section, if the weapon involved is a firearm and the violation of this section is committed at premises for which a D permit has been issued under Chapter 4303. of the Revised Code or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of division (A) of this section is a felony of the third degree.

(2) If a person being arrested for a violation of division (A)(2) of this section promptly produces a valid license or temporary emergency license to carry a concealed handgun issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code, and if at the time of the violation the person was not knowingly in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code, the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce any of those types of license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that division, and the offender shall be punished as follows:

(a) The offender shall be guilty of a minor misdemeanor if both of the following apply:

(i) Within ten days after the arrest, the offender presents a license or temporary emergency license to carry a concealed handgun issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer.

(ii) At the time of the arrest, the offender was not knowingly in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code.

(b) The offender shall be guilty of a misdemeanor and shall be fined five hundred dollars if all of the following apply:

(i) The offender previously had been issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code and that was similar in nature to a license issued under section 2923.125 [2923.12.5] of the Revised Code, and that license expired within the two years immediately preceding the arrest.

(ii) Within forty-five days after the arrest, the offender presents any type of license identified in division (G)(2)(a)(i) of this section to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in section 2945.71 of the Revised Code.

(iii) At the time of the commission of the offense, the offender was not knowingly in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code.

(c) If neither division (G)(2)(a) nor (b) of this section applies, the offender shall be punished under division (G)(1) of this section.

(3) Carrying concealed weapons in violation of division (B)(1) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of division (B)(1) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code.

(4) Carrying concealed weapons in violation of division (B)(2) or (4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) or (4) of this section, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (B)(2) or (4) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code.

(5) Carrying concealed weapons in violation of division (B)(3) of this section is a felony of the fifth degree.

(H) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop.

HISTORY: 134 v H 511 (EFF 1-1-74); 135 v H 716 (EFF 1-1-74); 141 v H 51 (EFF 7-30-86); 146 v S 2, EFF 7-1-96; 150 v H 12, § 1, EFF. 4-8-04; 151 v H 347, § 1, EFF. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

The provisions of § 6, H.B. 12 (150 v —), read as follows:

SECTION 6. In amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.13, 2923.16, 2953.32, and 4749.10 of the Revised Code and in enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to defend the individual's person and the members of the individual's family;

(B) The fact that the right described in division (A) of this section predates the adoption of the United States Constitution, the adoption of the Ohio Constitution, and the enactment of all statutory laws by the General Assembly and may not be infringed by any enactment of the General Assembly.

The provisions of § 7, H.B. 12 (150 v —), read as follows:

SECTION 7. In enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code in this act and in amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.13, 2923.16, 2953.32, and 4749.10 of the Revised Code in this act relative to licenses to carry a concealed handgun, the General Assembly hereby declares that it is not its intent to declare or otherwise give the impression that, prior to the effective date of this act, an individual did not have an inalienable and fundamental right, or a right under the Ohio Constitution or the United States Constitution, to carry a con-

cealed handgun or other firearm for the defense of the individual's person or a member of the individual's family while engaged in lawful activity. Further, the General Assembly declares that it is not its intent to invalidate any prior convictions for violating any section of the Revised Code or a municipal ordinance prior to the effective date of this act or to prevent the prosecution of any violation committed prior to the effective date of this act.

The provisions of § 9, H.B. 12 (150 v —), read as follows:

SECTION 9. The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly in amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2953.32, and 4749.10 and enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

The provisions of § 10, H.B. 12 (150 v —), read as follows:

SECTION 10. If any provision of sections 1547.69, 2911.21, 2921.02, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2929.14, 2953.32, and 4749.10 of the Revised Code, as amended by this act, any provision of sections 109.69, 109.731, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, and 2923.1213 of the Revised Code, as enacted by this act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable.

Not analogous to former RC § 2923.12 (GC § 13421-23; 108 v Ptl, 189; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, EFF 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2923.12.1] § 2923.121 Illegal possession of firearm in liquor permit premises.

(A) No person shall possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303, of the Revised Code or in an open air arena for which a permit of that nature has been issued.

(B)(1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry firearms and is acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry firearms, and who is subject to and in compliance with the requirements of section 109.801 [109.80.1] of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (B)(1)(b) of this section does not apply to the person.

(2) This section does not apply to any room used for the accommodation of guests of a hotel, as defined in section 4301.01 of the Revised Code.

(3) This section does not prohibit any person who is a member of a veteran's organization, as defined in section

2915.01 of the Revised Code, from possessing a rifle in any room in any premises owned, leased, or otherwise under the control of the veteran's organization, if the rifle is not loaded with live ammunition and if the person otherwise is not prohibited by law from having the rifle.

(4) This section does not apply to any person possessing or displaying firearms in any room used to exhibit unloaded firearms for sale or trade in a soldiers' memorial established pursuant to Chapter 345. of the Revised Code, in a convention center, or in any other public meeting place, if the person is an exhibitor, trader, purchaser, or seller of firearms and is not otherwise prohibited by law from possessing, trading, purchasing, or selling the firearms.

(C) It is an affirmative defense to a charge under this section of illegal possession of a firearm in liquor permit premises that involves the possession of a firearm other than a handgun, that the actor was not otherwise prohibited by law from having the firearm, and that any of the following apply:

(1) The firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the actor's home, such as would justify a prudent person in going armed.

(D) No person who is charged with a violation of this section shall be required to obtain a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code as a condition for the dismissal of the charge.

(E) Whoever violates this section is guilty of illegal possession of a firearm in liquor permit premises, a felony of the fifth degree.

HISTORY: 141 v H 51 (Eff 7-30-86); 141 v H 39 (Eff 2-21-87); 146 v S 2, Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of §§ 6, 7, 9, and 10 of H.B. 12 (150 v —) following RC § 2923.12.

The effective date is set by section 6 of SB 2.

[§ 2923.12.2] § 2923.122 Illegal conveyance or possession of deadly weapon or dangerous ordnance or illegal possession of object indistinguishable from firearm in school safety zone.

(A) No person shall knowingly convey, or attempt to convey, a deadly weapon or dangerous ordnance into a school safety zone.

(B) No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone.

(C) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired.

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(D)(1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of section 109.801 [109.80.1] of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (D)(1)(b) of this section does not apply to the person.

(2) Division (C) of this section does not apply to premises upon which home schooling is conducted. Division (C) of this section also does not apply to a school administrator, teacher, or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher, or employee, or any other person who with the express prior approval of a school administrator possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, reenactment, or other dramatic presentation, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid license to carry a concealed handgun issued to the person under section 2923.125 [2923.12.5] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code.

(c) The person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B).

(d) The person is not knowingly in a place described in division (B) (1) or (B)(3) to (10) of section 2923.126 [2923.12.6] of the Revised Code.

(E)(1) Whoever violates division (A) or (B) of this section is guilty of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Except as otherwise provided in this division, illegal

conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fifth degree. If the offender previously has been convicted of a violation of this section, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fourth degree.

(2) Whoever violates division (C) of this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony of the fifth degree.

(F)(1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section and subject to division (F)(2) of this section, if the offender has not attained nineteen years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in division (A)(4) of section 4510.02 of the Revised Code and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.

If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits, or privileges specified in division (F)(1) of this section or deny the issuance of one of the temporary instruction permits specified in that division, the court in its discretion may choose not to impose the suspension, revocation, or denial required in that division.

(G) As used in this section, "object that is indistinguishable from a firearm" means an object made, constructed, or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

HISTORY: 144 v H 154 (Eff 7-31-92); 146 v S 2 (Eff 7-1-96); 146 v H 72 (Eff 3-18-97); 146 v H 124 (Eff 9-30-97); 148 v S 1, Eff 8-6-99; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 2923.01.

The provisions of § 3 of SB 1 (148 v —) read as follows:

SECTION 3. Section 2923.122 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 72 and Am. Sub. H.B. 124 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

† Section 3, H.B. 12, Acts 2004, purported to amend the version of RC § 2923.122 as amended by S.B. 123 (149 v —), which took effect on January 1, 2004. However, H.B. 12, Acts 2004 was approved January 8, 2004, and became effective April 8, 2004.

[§ 2923.12.3] § 2923.123 Illegal conveyance of deadly weapon or dangerous ordnance into courthouse; illegal possession or control in courthouse.

(A) No person shall knowingly convey or attempt to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located.

(B) No person shall knowingly possess or have under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

(C) This section does not apply to any of the following:

(1) Except as provided in division (E) of this section, a judge of a court of record of this state or a magistrate;

(2) A peace officer, officer of a law enforcement agency, or person who is in either of the following categories:

(a) Except as provided in division (E) of this section, a peace officer, or an officer of a law enforcement agency of another state, a political subdivision of another state, or the United States, who is authorized to carry a deadly weapon or dangerous ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(b) Except as provided in division (E) of this section, a person who is employed in this state, who is authorized to carry a deadly weapon or dangerous ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that person's duties, and who is subject to and in compliance with the requirements of section 109.801 [109.80.1] of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (C)(2)(b) of this section does not apply to the person.

(3) A person who conveys, attempts to convey, possesses, or has under the person's control a deadly weapon or dangerous ordnance that is to be used as evidence in a pending criminal or civil action or proceeding;

(4) Except as provided in division (E) of this section, a bailiff or deputy bailiff of a court of record of this state who is authorized to carry a firearm pursuant to section 109.77 of the Revised Code, who possesses or has under that individual's control a firearm as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(5) Except as provided in division (E) of this section, a prosecutor, or a secret service officer appointed by a county prosecuting attorney, who is authorized to carry a deadly weapon or dangerous ordnance in the performance of the individual's duties, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that

individual's duties at the time of that possession or control;

(6) Except as provided in division (E) of this section, a person who conveys or attempts to convey a handgun into a courthouse or into another building or structure in which a courtroom is located, who, at the time of the conveyance or attempt, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code, and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse or building. The officer shall secure the handgun until the licensee is prepared to leave the premises. The exemption described in this division applies only if the officer who has charge of the courthouse or building provides services of the nature described in this division. An officer who has charge of the courthouse or building is not required to offer services of the nature described in this division.

(D)(1) Whoever violates division (A) of this section is guilty of illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse. Except as otherwise provided in this division, illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse is a felony of the fifth degree. If the offender previously has been convicted of a violation of division (A) or (B) of this section, illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse is a felony of the fourth degree.

(2) Whoever violates division (B) of this section is guilty of illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse. Except as otherwise provided in this division, illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse is a felony of the fifth degree. If the offender previously has been convicted of a violation of division (A) or (B) of this section, illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse is a felony of the fourth degree.

(E) The exemptions described in divisions (C)(1), (2)(a), (2)(b), (4), (5), and (6) of this section do not apply to any judge, magistrate, peace officer, officer of a law enforcement agency, bailiff, deputy bailiff, prosecutor, secret service officer, or other person described in any of those divisions if a rule of superintendence or another type of rule adopted by the supreme court pursuant to Article IV, Ohio Constitution, or an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

(F) As used in this section:

(1) "Magistrate" means an individual who is appointed by a court of record of this state and who has the powers and may perform the functions specified in Civil Rule 53, Criminal Rule 19, or Juvenile Rule 40.

(2) "Peace officer" and "prosecutor" have the same meanings as in section 2935.01 of the Revised Code.

HISTORY: 146 v H 88 (Eff 9-3-96); 147 v H 151, Eff 9-16-97; 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of §§ 6, 7, 9, and 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.4] § 2923.124 Definitions.

As used in sections 2923.124 [2923.12.4] to 2923.1213 [2923.12.13] of the Revised Code:

(A) "Application form" means the application form prescribed pursuant to division (A)(1) of section 109.731 [109.73.1] of the Revised Code and includes a copy of that form.

(B) "Competency certification" and "competency certificate" mean a document of the type described in division (B)(3) of section 2923.125 [2923.12.5] of the Revised Code.

(C) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(D) "Licensee" means a person to whom a license to carry a concealed handgun has been issued under section 2923.125 [2923.12.5] of the Revised Code and, except when the context clearly indicates otherwise, includes a person to whom a temporary emergency license to carry a concealed handgun has been issued under section 2923.1213 [2923.12.13] of the Revised Code.

(E) "License fee" or "license renewal fee" means the fee for a license to carry a concealed handgun or the fee to renew that license that is prescribed pursuant to division (C) of section 109.731 [109.73.1] of the Revised Code and that is to be paid by an applicant for a license of that type.

(F) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(G) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(H) "Valid license" means a license or temporary emergency license to carry a concealed handgun that has been issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code, that is currently valid, that is not under a suspension under division (A)(1) of section 2923.128 [2923.12.8] or under section 2923.1213 [2923.12.13] of the Revised Code, and that has not been revoked under division (B)(1) of section 2923.128 [2923.12.8] or under section 2923.1213 [2923.12.13] of the Revised Code.

(I) "Civil protection order" means a protection order issued, or consent agreement approved, under section 2903.214 [2903.21.4] or 3113.31 of the Revised Code.

(J) "Temporary protection order" means a protection order issued under section 2903.213 [2903.21.3] or 2919.26 of the Revised Code.

(K) "Protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

(L) "Child day-care center," "type A family day-care home" and "type B family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(M) "Type C family day-care home" means a family day-care home authorized to provide child care by Sub. H.B. 62 of the 121st general assembly, as amended by Am. Sub. S.B. 160 of the 121st general assembly and Sub. H.B. 407 of the 123rd general assembly.

(N) "Foreign air transportation," "interstate air transportation," and "intrastate air transportation" have the

same meanings as in 49 U.S.C. 40102, as now or hereafter amended.

(O) "Commercial motor vehicle" has the same meaning as in division (A) of section 4506.25 of the Revised Code.

(P) "Motor carrier enforcement unit" has the same meaning as in section 2923.16 of the Revised Code.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 150 v H 11, § 1, eff. 5-18-05; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of §§ 6, 7, 9, and 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.5] § 2923.125 Application for license to carry concealed handgun; issuance, renewal.

(A) Upon the request of a person who wishes to obtain a license to carry a concealed handgun or to renew a license to carry a concealed handgun, a sheriff, as provided in division (I) of this section, shall provide to the person free of charge an application form and a copy of the pamphlet described in division (B) of section 109.731 [109.73.1] of the Revised Code. A sheriff shall accept a completed application form and the fee, items, materials, and information specified in divisions (B)(1) to (5) of this section at the times and in the manners described in division (I) of this section.

(B) An applicant for a license to carry a concealed handgun shall submit a completed application form and all of the following to the sheriff of the county in which the applicant resides or to the sheriff of any county adjacent to the county in which the applicant resides:

(1) A nonrefundable license fee prescribed by the Ohio peace officer training commission pursuant to division (C) of section 109.731 [109.73.1] of the Revised Code, except that the sheriff shall waive the payment of the license fee in connection with an initial or renewal application for a license that is submitted by an applicant who is a retired peace officer, a retired person described in division (B)(1)(b) of section 109.77 of the Revised Code, or a retired federal law enforcement officer who, prior to retirement, was authorized under federal law to carry a firearm in the course of duty, unless the retired peace officer, person, or federal law enforcement officer retired as the result of a mental disability;

(2) A color photograph of the applicant that was taken within thirty days prior to the date of the application;

(3) One or more of the following competency certifications, each of which shall reflect that, regarding a certification described in division (B)(3)(a), (b), (c), (e), or (f) of this section, within the three years immediately preceding the application the applicant has performed that to which the competency certification relates and that, regarding a certification described in division (B)(3)(d) of this section, the applicant currently is an active or reserve member of the armed forces of the United States or within the six years immediately preceding the application the honorable discharge or retirement to which the competency certification relates occurred:

(a) An original or photocopy of a certificate of completion of a firearms safety, training, or requalification or firearms safety instructor course, class, or program that was offered by or under the auspices of the national rifle

association and that complies with the requirements set forth in division (G) of this section;

(b) An original or photocopy of a certificate of completion of a firearms safety, training, or requalification or firearms safety instructor course, class, or program that satisfies all of the following criteria:

(i) It was open to members of the general public.

(ii) It utilized qualified instructors who were certified by the national rifle association, the executive director of the Ohio peace officer training commission pursuant to section 109.75 or 109.78 of the Revised Code, or a governmental official or entity of another state.

(iii) It was offered by or under the auspices of a law enforcement agency of this or another state or the United States, a public or private college, university, or other similar postsecondary educational institution located in this or another state, a firearms training school located in this or another state, or another type of public or private entity or organization located in this or another state.

(iv) It complies with the requirements set forth in division (G) of this section.

(c) An original or photocopy of a certificate of completion of a state, county, municipal, or department of natural resources peace officer training school that is approved by the executive director of the Ohio peace officer training commission pursuant to section 109.75 of the Revised Code and that complies with the requirements set forth in division (G) of this section, or the applicant has satisfactorily completed and been issued a certificate of completion of a basic firearms training program, a firearms requalification training program, or another basic training program described in section 109.78 or 109.801 [109.80.1] of the Revised Code that complies with the requirements set forth in division (G) of this section;

(d) A document that evidences both of the following:

(i) That the applicant is an active or reserve member of the armed forces of the United States, was honorably discharged from military service in the active or reserve armed forces of the United States, is a retired trooper of the state highway patrol, or is a retired peace officer or federal law enforcement officer described in division (B)(1) of this section or a retired person described in division (B)(1)(b) of section 109.77 of the Revised Code and division (B)(1) of this section;

(ii) That, through participation in the military service or through the former employment described in division (B)(3)(d)(i) of this section, the applicant acquired experience with handling handguns or other firearms, and the experience so acquired was equivalent to training that the applicant could have acquired in a course, class, or program described in division (B)(3)(a), (b), or (c) of this section.

(e) A certificate or another similar document that evidences satisfactory completion of a firearms training, safety, or requalification or firearms safety instructor course, class, or program that is not otherwise described in division (B)(3)(a), (b), (c), or (d) of this section, that was conducted by an instructor who was certified by an official or entity of the government of this or another state or the United States or by the national rifle association, and that complies with the requirements set forth in division (G) of this section;

(f) An affidavit that attests to the applicant's satisfactory completion of a course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section and that is subscribed by the applicant's instructor or an autho-

rized representative of the entity that offered the course, class, or program or under whose auspices the course, class, or program was offered.

(4) A certification by the applicant that the applicant has read the pamphlet prepared by the Ohio peace officer training commission pursuant to section 109.731 [109.73.1] of the Revised Code that reviews firearms, dispute resolution, and use of deadly force matters.

(5) A set of fingerprints of the applicant provided as described in section 311.41 of the Revised Code through use of an electronic fingerprint reading device or, if the sheriff to whom the application is submitted does not possess and does not have ready access to the use of such a reading device, on a standard impression sheet prescribed pursuant to division (C)(2) of section 109.572 [109.57.2] of the Revised Code.

(C) Upon receipt of an applicant's completed application form, supporting documentation, and, if not waived, license fee, a sheriff, in the manner specified in section 311.41 of the Revised Code, shall conduct or cause to be conducted the criminal records check and the incompetency records check described in section 311.41 of the Revised Code.

(D)(1) Except as provided in division (D)(3), (4), or (5) of this section, within forty-five days after a sheriff's receipt of an applicant's completed application form for a license to carry a concealed handgun, the supporting documentation, and, if not waived, the license fee, the sheriff shall make available through the law enforcement automated data system in accordance with division (H) of this section the information described in that division and, upon making the information available through the system, shall issue to the applicant a license to carry a concealed handgun that shall expire as described in division (D)(2)(a) of this section if all of the following apply:

(a) The applicant is legally living in the United States, has been a resident of this state for at least forty-five days, and has been a resident of the county in which the person seeks the license or a county adjacent to the county in which the person seeks the license for at least thirty days.

(b) The applicant is at least twenty-one years of age.

(c) The applicant is not a fugitive from justice.

(d) The applicant is not under indictment for or otherwise charged with a felony; an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; a misdemeanor offense of violence; or a violation of section 2903.14 or 2923.1211 [2923.12.11] of the Revised Code.

(e) The applicant has not been convicted of or pleaded guilty to a felony or an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony or would be an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; and has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a violation of section 2903.13 of the Revised Code when the victim of the violation is a peace officer, regardless of whether the applicant was sentenced under division (C)(3) of that section.

(f) The applicant, within three years of the date of the application, has not been convicted of or pleaded guilty to a misdemeanor offense of violence other than a misdemeanor violation of section 2921.33 of the Revised Code or a violation of section 2903.13 of the Revised Code when the victim of the violation is a peace officer, or a misdemeanor violation of section 2923.1211 [2923.12.11] of the Revised Code; and has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a misdemeanor offense of violence other than a misdemeanor violation of section 2921.33 of the Revised Code or a violation of section 2903.13 of the Revised Code when the victim of the violation is a peace officer or for committing an act that if committed by an adult would be a misdemeanor violation of section 2923.1211 [2923.12.11] of the Revised Code.

(g) Except as otherwise provided in division (D)(1)(e) of this section, the applicant, within five years of the date of the application, has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing two or more violations of section 2903.13 or 2903.14 of the Revised Code.

(h) The applicant, within ten years of the date of the application, has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a violation of section 2921.33 of the Revised Code.

(i) The applicant has not been adjudicated as a mental defective, has not been committed to any mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a mentally ill person subject to hospitalization by court order, and is not an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to hospitalization by court order" and "patient" have the same meanings as in section 5122.01 of the Revised Code.

(j) The applicant is not currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state.

(k) The applicant certifies that the applicant desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity.

(l) The applicant submits a competency certification of the type described in division (B)(3) of this section and submits a certification of the type described in division (B)(4) of this section regarding the applicant's reading of the pamphlet prepared by the Ohio peace officer training commission pursuant to section 109.731 [109.73.1] of the Revised Code.

(m) The applicant currently is not subject to a suspension imposed under division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code of a license to carry a concealed handgun, or a temporary emergency license to carry a concealed handgun, that previously was issued to the applicant under this section or section 2923.1213 [2923.12.13] of the Revised Code.

(2)(a) A license to carry a concealed handgun that a sheriff issues under division (D)(1) of this section on or after the effective date of this amendment shall expire five years after the date of issuance. A license to carry a concealed handgun that a sheriff issued under division (D)(1) of this section prior to the effective date of this amendment shall expire four years after the date of issuance.

If a sheriff issues a license under this section, the sheriff shall place on the license a unique combination of

letters and numbers identifying the license in accordance with the procedure prescribed by the Ohio peace officer training commission pursuant to section 109.731 [109.73.1] of the Revised Code.

(b) If a sheriff denies an application under this section because the applicant does not satisfy the criteria described in division (D)(1) of this section, the sheriff shall specify the grounds for the denial in a written notice to the applicant. The applicant may appeal the denial pursuant to section 119.12 of the Revised Code in the county served by the sheriff who denied the application. If the denial was as a result of the criminal records check conducted pursuant to section 311.41 of the Revised Code and if, pursuant to section 2923.127 [2923.12.7] of the Revised Code, the applicant challenges the criminal records check results using the appropriate challenge and review procedure specified in that section, the time for filing the appeal pursuant to section 119.12 of the Revised Code and this division is tolled during the pendency of the request or the challenge and review. If the court in an appeal under section 119.12 of the Revised Code and this division enters a judgment sustaining the sheriff's refusal to grant to the applicant a license to carry a concealed handgun, the applicant may file a new application beginning one year after the judgment is entered. If the court enters a judgment in favor of the applicant, that judgment shall not restrict the authority of a sheriff to suspend or revoke the license pursuant to section 2923.128 [2923.12.8] or 2923.1213 [2923.12.13] of the Revised Code or to refuse to renew the license for any proper cause that may occur after the date the judgment is entered. In the appeal, the court shall have full power to dispose of all costs.

(3) If the sheriff with whom an application for a license to carry a concealed handgun was filed under this section becomes aware that the applicant has been arrested for or otherwise charged with an offense that would disqualify the applicant from holding the license, the sheriff shall suspend the processing of the application until the disposition of the case arising from the arrest or charge.

(4) If the sheriff determines that the applicant is legally living in the United State and is a resident of the county in which the applicant seeks the license or of an adjacent county but does not yet meet the residency requirements described in division (D)(1)(a) of this section, the sheriff shall not deny the license because of the residency requirements but shall not issue the license until the applicant meets those residency requirements.

(E) If a license to carry a concealed handgun issued under this section is lost or is destroyed, the licensee may obtain from the sheriff who issued that license a duplicate license upon the payment of a fee of fifteen dollars and the submission of an affidavit attesting to the loss or destruction of the license. The sheriff, in accordance with the procedures prescribed in section 109.731 [109.73.1] of the Revised Code, shall place on the replacement license a combination of identifying numbers different from the combination on the license that is being replaced.

(F) A licensee who wishes to renew a license to carry a concealed handgun issued under this section shall do so not earlier than ninety days before the expiration date of the license and not later than thirty days after the expiration date of the license by filing with the sheriff of the county in which the applicant resides or with the sheriff of an adjacent county an application for renewal of

the license obtained pursuant to division (D) of this section, a new color photograph of the licensee that was taken within thirty days prior to the date of the renewal application, a certification by the applicant that, subsequent to the issuance of the license, the applicant has reread the pamphlet prepared by the Ohio peace officer training commission pursuant to section 109.731 [109.73.1] of the Revised Code that reviews firearms, dispute resolution, and use of deadly force matters, a new set of fingerprints provided in the manner specified in division (B)(5) of this section regarding initial applications for a license to carry a concealed handgun, and a nonrefundable license renewal fee unless the fee is waived. The licensee also shall submit a competency certification of the type described in division (B)(3) of this section that is not older than six years or a renewed competency certification of the type described in division (G)(4) of this section that is not older than six years. A sheriff shall accept a completed renewal application and the fee, items, materials, and information specified in this division at the times and in the manners described in division (I) of this section.

Upon receipt of a completed renewal application, color photograph, certification that the applicant has reread the specified pamphlet prepared by the Ohio peace officer training commission, new set of fingerprints, competency certification or renewed competency certification, and license renewal fee unless the fee is waived, a sheriff, in the manner specified in section 311.41 of the Revised Code shall conduct or cause to be conducted the criminal records check and the incompetency records check described in section 311.41 of the Revised Code. The sheriff shall renew the license if the sheriff determines that the applicant continues to satisfy the requirements described in division (D)(1) of this section, except that the applicant is required to submit a renewed competency certification only in the circumstances described in division (G)(4) of this section. A renewed license that is renewed on or after the effective date of this amendment shall expire five years after the date of issuance, and a renewed license that is renewed prior to the effective date of this amendment shall expire four years after the date of issuance. A renewed license is subject to division (E) of this section and sections 2923.126 [2923.12.6] and 2923.128 [2923.12.8] of the Revised Code. A sheriff shall comply with divisions (D)(2) to (4) of this section when the circumstances described in those divisions apply to a requested license renewal. If a sheriff denies the renewal of a license to carry a concealed handgun, the applicant may appeal the denial, or challenge the criminal record check results that were the basis of the denial if applicable, in the same manner as specified in division (D)(2)(b) of this section and in section 2923.127 [2923.12.7] of the Revised Code, regarding the denial of a license under this section.

(G)(1) Each course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section shall provide to each person who takes the course, class, or program a copy of the pamphlet prepared by the Ohio peace officer training commission pursuant to section 109.731 [109.73.1] of the Revised Code that reviews firearms, dispute resolution, and use of deadly force matters. Each such course, class, or program described in one of those divisions shall include at least twelve hours of training in the safe handling and use of a firearm that shall include all of the following:

(a) At least ten hours of training on the following matters:

(i) The ability to name, explain, and demonstrate the rules for safe handling of a handgun and proper storage practices for handguns and ammunition;

(ii) The ability to demonstrate and explain how to handle ammunition in a safe manner;

(iii) The ability to demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner;

(iv) Gun handling training.

(b) At least two hours of training that consists of range time and live-fire training.

(2) To satisfactorily complete the course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section, the applicant shall pass a competency examination that shall include both of the following:

(a) A written section on the ability to name and explain the rules for the safe handling of a handgun and proper storage practices for handguns and ammunition;

(b) A physical demonstration of competence in the use of a handgun and in the rules for safe handling and storage of a handgun and a physical demonstration of the attitude necessary to shoot a handgun in a safe manner.

(3) The competency certification described in division (B)(3)(a), (b), (c), or (e) of this section shall be dated and shall attest that the course, class, or program the applicant successfully completed met the requirements described in division (G)(1) of this section and that the applicant passed the competency examination described in division (G)(2) of this section.

(4) A person who has received a competency certification as described in division (B)(3) of this section, or who previously has received a renewed competency certification as described in this division, may obtain a renewed competency certification pursuant to this division. If the person has received a competency certification within the preceding six years, or previously has received a renewed competency certification within the preceding six years, the person may obtain a renewed competency certification from an entity that offers a course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section by passing a competency examination of the type described in division (G)(2) of this section. In these circumstances, the person is not required to attend the course, class, or program in order to be eligible to take the competency examination for the renewed competency certification. If more than six years has elapsed since the person last received a competency certification or a renewed competency certification, in order for the person to obtain a renewed competency certification, the person shall both satisfactorily complete a course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section and pass a competency examination of the type described in division (G)(2) of this section. A renewed competency certification issued under this division shall be dated and shall attest that the applicant passed the competency examination of the type described in division (G)(2) of this section and, if applicable, that the person successfully completed a course, class, or program that met the requirements described in division (G)(1) of this section.

(H) Upon deciding to issue a license, deciding to issue a replacement license, or deciding to renew a license to carry a concealed handgun pursuant to this section, and before actually issuing or renewing the license, the sheriff shall make available through the law enforcement auto-

mated data system all information contained on the license. If the license subsequently is suspended under division (A)(1) or (2) of section 2923.128 [2923.12.8] of the Revised Code, revoked pursuant to division (B)(1) of section 2923.128 [2923.12.8] of the Revised Code, or lost or destroyed, the sheriff also shall make available through the law enforcement automated data system a notation of that fact. The superintendent of the state highway patrol shall ensure that the law enforcement automated data system is so configured as to permit the transmission through the system of the information specified in this division.

(I) A sheriff shall accept a completed application form or renewal application, and the fee, items, materials, and information specified in divisions (B)(1) to (5) or division (F) of this section, whichever is applicable, and shall provide an application form or renewal application and a copy of the pamphlet described in division (B) of section 109.731 [109.73.1] of the Revised Code to any person during at least fifteen hours a week. The sheriff shall post notice of the hours during which the sheriff is available to accept or provide the information described in this division.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.6] § 2923.126 Expiration of license; carrying of license and identification; notice of change of residence; motor vehicle and law enforcement stops; prohibited places; retired peace officers.

(A) A license to carry a concealed handgun that is issued under section 2923.125 [2923.12.5] of the Revised Code on or after the effective date of this amendment shall expire five years after the date of issuance, and a license that is so issued prior to the effective date of this amendment shall expire four years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of thirty days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within forty-five days after that change.

If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law

enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (E) of section 2923.16 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in section 5503.04 of the Revised Code and if the licensee is transporting or has a loaded handgun in the commercial motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun.

If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (B) of section 2923.12 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(B) A valid license issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to division (A) of section 5119.02 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;

(2) A school safety zone, in violation of section 2923.122 [2923.12.2] of the Revised Code;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of section 2923.123 [2923.12.3] of the Revised Code;

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303. of the Revised Code, in violation of section 2923.121 [2923.12.1] of the Revised Code;

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

(10) A place in which federal law prohibits the carrying of handguns.

(C)(1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this section shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(2)(a) A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this section, "private employer" includes a private college, university, or other institution of higher education, except that the

(b) A political subdivision shall be immune from the offense liability in a civil action, to the extent and in the sheriff

provided in Chapter 2744. of the Revised Code, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, "political subdivision" has the same meaning as in section 2744.01 of the Revised Code.

(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. A person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and is guilty of a misdemeanor of the fourth degree.

(D) A person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the attorney general pursuant to a reciprocity agreement entered into pursuant to section 109.69 of the Revised Code has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(E) A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

(F)(1) A qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (F)(2) of this section and a valid firearms requalification certification issued pursuant to division (F)(3) of this section has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code and is subject to the same restrictions that apply to a person who carries a license issued under that section. For purposes of reciprocity with other states, a qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (F)(2) of this section and a valid firearms requalification certification issued pursuant to division (F)(3) of this section shall be considered to be a licensee in this state.

(2)(a) Each public agency of this state or of a political subdivision of this state that is served by one or more peace officers shall issue a retired peace officer identification card to any person who retired from service as a peace officer with that agency, if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following:

(i) The person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability.

(ii) Before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any

violation of law and the person had statutory powers of arrest.

(iii) At the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties.

(iv) Before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of fifteen years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency.

(v) The person has a nonforfeitable right to benefits under the retirement plan of that agency.

(b) A retired peace officer identification card issued to a person under division (F)(2)(a) of this section shall identify the person by name, contain a photograph of the person, identify the public agency of this state or of the political subdivision of this state from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section. In addition to the required content specified in this division, a retired peace officer identification card issued to a person under division (F)(2)(a) of this section may include the firearms requalification certification described in division (F)(3) of this section, and if the identification card includes that certification, the identification card shall serve as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with division (F)(2)(a) of this section by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED."

(c) A public agency of this state or of a political subdivision of this state may charge persons who retired from service as a peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to division (F)(2)(a) of this section.

(3) If a person retired from service as a peace officer with a public agency of this state or of a political subdivision of this state and the person satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code. The retired peace officer may be required to pay the cost of the course.

If a retired peace officer who satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section attends a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of division (F) of this section for one year from the date on which the program was successfully completed, and the requalification is valid during that

one-year period. If a retired peace officer who satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section satisfactorily completes such a firearms requalification program, the retired peace officer shall be issued a firearms requalification certification that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies that the requalification is valid for one year from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer under division (F)(2) of this section.

A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code may be required to pay the cost of the program.

(4) As used in division (F) of this section:

(a) "Qualified retired peace officer" means a person who satisfies all of the following:

(i) The person satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section.

(ii) The person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(iii) The person is not prohibited by federal law from receiving firearms.

(b) "Retired peace officer identification card" means an identification card that is issued pursuant to division (F)(2) of this section to a person who is a retired peace officer.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.7] § 2923.127 Challenge of criminal records check.

(A) If a sheriff denies an application for a license to carry a concealed handgun, denies the renewal of a license to carry a concealed handgun, or denies an application for a temporary emergency license to carry a concealed handgun as a result of the criminal records check conducted pursuant to section 311.41 of the Revised Code and if the applicant believes the denial was based on incorrect information reported by the source the sheriff used in conducting the criminal records check, the applicant may challenge the criminal records check results using whichever of the following is applicable:

(1) If the bureau of criminal identification and investigation performed the criminal records check, by using the bureau's existing challenge and review procedures;

(2) If division (A)(1) of this section does not apply, by using the existing challenge and review procedure of the sheriff who denied the application or, if the sheriff does not have a challenge and review procedure, by using the challenge and review procedure prescribed by the bureau of criminal identification and investigation pursuant to division (B) of this section.

(B) The bureau of criminal identification and investigation shall prescribe a challenge and review procedure

for applicants to use to challenge criminal records checks under division (A)(2) of this section in counties in which the sheriff with whom the application for a license to carry a concealed handgun or for the renewal of a license to carry a concealed handgun was filed or with whom the application for a temporary emergency license to carry a concealed handgun was submitted does not have an existing challenge and review procedure.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.8] § 2923.128 Suspension or revocation of license.

(A)(1)(a) If a licensee holding a valid license issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code is arrested for or otherwise charged with an offense described in division (D)(1)(d) of section 2923.125 [2923.12.5] of the Revised Code or with a violation of section 2923.15 of the Revised Code or becomes subject to a temporary protection order or to a protection order issued by a court of another state that is substantially equivalent to a temporary protection order, the sheriff who issued the license or temporary emergency license shall suspend it and shall comply with division (A)(3) of this section upon becoming aware of the arrest, charge, or protection order. Upon suspending the license or temporary emergency license, the sheriff also shall comply with division (H) of section 2923.125 [2923.12.5] of the Revised Code.

(b) A suspension under division (A)(1)(a) of this section shall be considered as beginning on the date that the licensee is arrested for or otherwise charged with an offense described in that division or on the date the appropriate court issued the protection order described in that division, irrespective of when the sheriff notifies the licensee under division (A)(3) of this section. The suspension shall end on the date on which the charges are dismissed or the licensee is found not guilty of the offense described in division (A)(1)(a) of this section or, subject to division (B) of this section, on the date the appropriate court terminates the protection order described in that division. If the suspension so ends, the sheriff shall return the license or temporary emergency license to the licensee.

(2)(a) If a licensee holding a valid license issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code is convicted of or pleads guilty to a misdemeanor violation of division (B)(1), (2), or (4) of section 2923.12 of the Revised Code or of division (E)(3), (4), or (6) of section 2923.16 of the Revised Code, the sheriff who issued the license or temporary emergency license shall suspend it and shall comply with division (A)(3) of this section upon becoming aware of the conviction or guilty plea. Upon suspending the license or temporary emergency license, the sheriff also shall comply with division (H) of section 2923.125 [2923.12.5] of the Revised Code.

(b) A suspension under division (A)(2)(a) of this section shall be considered as beginning on the date that the licensee is convicted of or pleads guilty to the offense described in that division, irrespective of when the sheriff

notifies the licensee under division (A)(3) of this section. If the suspension is imposed for a misdemeanor violation of division (B)(1) or (2) of section 2923.12 of the Revised Code or of division (E)(3) or (4) of section 2923.16 of the Revised Code, it shall end of the date that is one year after the date that the licensee is convicted of or pleads guilty to that violation. If the suspension is imposed for a misdemeanor violation of division (B)(4) of section 2923.12 of the Revised Code or of division (E)(6) of section 2923.16 of the Revised Code, it shall end on the date that is two years after the date that the licensee is convicted of or pleads guilty to that violation. If the licensee's license was issued under section 2923.125 [2923.12.5] of the Revised Code and the license remains valid after the suspension ends as described in this division, when the suspension ends, the sheriff shall return the license to the licensee. If the licensee's license was issued under section 2923.125 [2923.12.5] of the Revised Code and the license expires before the suspension ends as described in this division, or if the licensee's license was issued under section 2923.1213 [2923.12.13] of the Revised Code, the licensee is not eligible to apply for a new license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or to renew the license under section 2923.125 [2923.12.5] of the Revised Code until after the suspension ends as described in this division.

(3) Upon becoming aware of an arrest, charge, or protection order described in division (A)(1)(a) of this section with respect to a licensee who was issued a license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code, or a conviction of or plea of guilty to a misdemeanor offense described in division (A)(2)(a) of this section with respect to a licensee who was issued a license under either section, the sheriff who issued the licensee's license or temporary emergency license to carry a concealed handgun shall notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the license or temporary emergency license has been suspended and that the licensee is required to surrender the license or temporary emergency license at the sheriff's office within ten days of the date on which the notice was mailed. If the suspension is pursuant to division (A)(2) of this section, the notice shall identify the date on which the suspension ends.

(B)(1) A sheriff who issues a license or temporary emergency license to carry a concealed handgun to a licensee under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code shall revoke the license or temporary emergency license in accordance with division (B)(2) of this section upon becoming aware that the licensee satisfies any of the following:

- (a) The licensee is under twenty-one years of age.
- (b) At the time of the issuance of the license or temporary emergency license, the licensee did not satisfy the eligibility requirements of division (D)(1)(c), (d), (e), (f), (g), or (h) of section 2923.125 [2923.12.5] of the Revised Code.
- (c) On or after the date on which the license or temporary emergency license was issued, the licensee is convicted of or pleads guilty to a violation of section 2923.15 of the Revised Code or an offense described in division (D)(1)(e), (f), (g), or (h) of section 2923.125 [2923.12.5] of the Revised Code.

(d) On or after the date on which the license or temporary emergency license was issued, the licensee

becomes subject to a civil protection order or to a protection order issued by a court of another state that is substantially equivalent to a civil protection order.

(e) The licensee knowingly carries a concealed handgun into a place that the licensee knows is an unauthorized place specified in division (B) of section 2923.126 [2923.12.6] of the Revised Code.

(f) On or after the date on which the license or temporary emergency license was issued, the licensee is adjudicated as a mental defective or is committed to a mental institution.

(g) At the time of the issuance of the license or temporary emergency license, the licensee did not meet the residency requirements described in division (D)(1) of section 2923.125 [2923.12.5] of the Revised Code and currently does not meet the residency requirements described in that division.

(h) Regarding a license issued under section 2923.125 [2923.12.5] of the Revised Code, the competency certificate the licensee submitted was forged or otherwise was fraudulent.

(2) Upon becoming aware of any circumstance listed in division (B)(1) of this section that applies to a particular licensee who was issued a license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code, the sheriff who issued the license or temporary emergency license to carry a concealed handgun to the licensee shall notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the license or temporary emergency license is subject to revocation and that the licensee may come to the sheriff's office and contest the sheriff's proposed revocation within fourteen days of the date on which the notice was mailed. After the fourteen-day period and after consideration of any information that the licensee provides during that period, if the sheriff determines on the basis of the information of which the sheriff is aware that the licensee is described in division (B)(1) of this section and no longer satisfies the requirements described in division (D)(1) of section 2923.125 [2923.12.5] of the Revised Code that are applicable to the licensee's type of license, the sheriff shall revoke the license or temporary emergency license, notify the licensee of that fact, and require the licensee to surrender the license or temporary emergency license. Upon revoking the license or temporary emergency license, the sheriff also shall comply with division (H) of section 2923.125 [2923.12.5] of the Revised Code.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.9] § 2923.129 Immunity; confidentiality of records; journalist may request disclosure of information; report by sheriff.

(A)(1) If a sheriff, the superintendent of the bureau of criminal identification and investigation, the employees of the bureau, the Ohio peace officer training commission, or the employees of the commission make a good faith effort in performing the duties imposed upon the sheriff, the superintendent, the bureau's employees, the commission, or the commission's employees by sections

109.731 [109.73.1], 311.41, and 2923.124 [2923.12.4] to 2923.1213 [2923.12.13] of the Revised Code, in addition to the personal immunity provided by section 9.86 of the Revised Code or division (A)(6) of section 2744.03 of the Revised Code and the governmental immunity of sections 2744.02 and 2744.03 of the Revised Code and in addition to any other immunity possessed by the bureau, the commission, and their employees, the sheriff, the sheriff's office, the county in which the sheriff has jurisdiction, the bureau, the superintendent of the bureau, the bureau's employees, the commission, and the commission's employees are immune from liability in a civil action for injury, death, or loss to person or property that allegedly was caused by or related to any of the following:

(a) The issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun;

(b) The failure to issue, renew, suspend, or revoke a license to carry a concealed handgun or the failure to issue, suspend, or revoke a temporary emergency license to carry a concealed handgun;

(c) Any action or misconduct with a handgun committed by a licensee.

(2) Any action of a sheriff relating to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun shall be considered to be a governmental function for purposes of Chapter 2744. of the Revised Code.

(3) An entity that or instructor who provides a competency certification of a type described in division (B)(3) of section 2923.125 [2923.12.5] of the Revised Code is immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by or related to a person to whom the entity or instructor has issued the competency certificate if all of the following apply:

(a) The alleged liability of the entity or instructor relates to the training provided in the course, class, or program covered by the competency certificate.

(b) The entity or instructor makes a good faith effort in determining whether the person has satisfactorily completed the course, class, or program and makes a good faith effort in assessing the person in the competency examination conducted pursuant to division (G)(2) of section 2923.125 [2923.12.5] of the Revised Code.

(c) The entity or instructor did not issue the competency certificate with malicious purpose, in bad faith, or in a wanton or reckless manner.

(4) An entity that or instructor who provides a renewed competency certification of a type described in division (G)(4) of section 2923.125 [2923.12.5] of the Revised Code is immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by or related to a person to whom the entity or instructor has issued the renewed competency certificate if all of the following apply:

(a) The entity or instructor makes a good faith effort in assessing the person in the competency examination conducted pursuant to division (G)(2) of section 2923.125 [2923.12.5] of the Revised Code.

(b) The entity or instructor did not issue the renewed competency certificate with malicious purpose, in bad faith, or in a wanton or reckless manner.

(5) A law enforcement agency that employs a peace officer is immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by any act of that peace officer if the act occurred while the peace officer carried a concealed handgun and was off duty and if the act allegedly involved the peace officer's use of the concealed handgun. Sections 9.86 and 9.87, and Chapter 2744., of the Revised Code apply to any civil action involving a peace officer's use of a concealed handgun in the performance of the peace officer's official duties while the peace officer is off duty.

(B)(1) Notwithstanding section 149.43 of the Revised Code, except as provided in division (B)(2) of this section, the records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a license, completed affidavits submitted regarding an application for a temporary emergency license, reports of criminal records checks and incompetency records checks under section 311.41 of the Revised Code, and applicants' social security numbers and fingerprints that are obtained under division (A) of section 311.41 of the Revised Code, are confidential and are not public records. Except as provided in division (B)(2) of this section, no person shall release or otherwise disseminate records that are confidential under this division unless required to do so pursuant to a court order.

(2)(a) A journalist, on or after April 8, 2004, may submit to a sheriff a signed, written request to view the name, county of residence, and date of birth of each person to whom the sheriff has issued a license or replacement license to carry a concealed handgun, renewed a license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code, or a signed, written request to view the name, county of residence, and date of birth of each person for whom the sheriff has suspended or revoked a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun under section 2923.128 [2923.12.8] of the Revised Code. The request shall include the journalist's name and title, shall include the name and address of the journalist's employer, and shall state that disclosure of the information sought would be in the public interest. If a journalist submits a signed, written request to the sheriff to view the information described in this division, the sheriff shall grant the journalist's request. The journalist shall not copy the name, county of residence, or date of birth of each person to or for whom the sheriff has issued, suspended, or revoked a license described in this division.

(b) As used in division (B)(2) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C) Each sheriff shall report to the Ohio peace officer training commission the number of licenses to carry a concealed handgun that the sheriff issued, renewed, suspended, revoked, or denied during the previous quar-

ter of the calendar year, the number of applications for those licenses for which processing was suspended in accordance with division (D)(3) of section 2923.125 [2923.12.5] of the Revised Code during the previous quarter of the calendar year, and the number of temporary emergency licenses to carry a concealed handgun that the sheriff issued, suspended, revoked, or denied during the previous quarter of the calendar year. The sheriff shall not include in the report the name or any other identifying information of an applicant or licensee. The sheriff shall report that information in a manner that permits the commission to maintain the statistics described in division (D) of section 109.731 [109.73.1] of the Revised Code and to timely prepare the statistical report described in that division. The information that is received by the commission under this division is a public record kept by the commission for the purposes of section 149.43 of the Revised Code.

(D) Law enforcement agencies may use the information a sheriff makes available through the use of the law enforcement automated data system pursuant to division (H) of section 2923.125 [2923.12.5] or division (B)(2) or (D) of section 2923.1213 [2923.12.13] of the Revised Code for law enforcement purposes only. The information is confidential and is not a public record. A person who releases or otherwise disseminates this information obtained through the law enforcement automated data system in a manner not described in this division is guilty of a violation of section 2913.04 of the Revised Code.

(E) Whoever violates division (B) of this section is guilty of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed under Chapter 2929. of the Revised Code for a violation of division (B) of this section or a violation of section 2913.04 of the Revised Code described in division (D) of this section, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender shall be subject to a civil fine of one thousand dollars. Any person who is harmed by a violation of division (B) or (C) of this section or a violation of section 2913.04 of the Revised Code described in division (D) of this section has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 9, § 1, eff. 9-29-07.

The effective date is set by § 5 of 151 v H 9.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.10] § 2923.1210 Form
of application.

The application for a license to carry a concealed handgun or for the renewal of a license of that nature that is to be used under section 2923.125 [2923.12.5] of the Revised Code shall conform substantially to the following form:

“Ohio Peace Officer
Training Commission

APPLICATION FOR A LICENSE
TO CARRY A CONCEALED HANDGUN

Please Type or Print in Ink

SECTION I

This application will not be processed unless all applicable questions have been answered and until all required supporting documents as described in division (B) or (F) of section 2923.125 [2923.12.5] of the Ohio Revised Code and, unless waived, a cashier's check, certified check, or money order in the amount of the applicable license fee or license renewal fee have been submitted. FEES ARE NONREFUNDABLE.

SECTION II.

Name: _____

Last	First	Middle
.....		...

Social Security Number:

Current Residence:

Street City State County Zip

Mailing Address (If Different From Above):

Street City State Zip

Date of Birth	Place of Birth	Sex	Race	Residence	Telephone
/ /				10	(...)

SECTION III. THE FOLLOWING QUESTIONS
ARE TO BE ANSWERED YES OR NO

(1)(a) Are you legally living in the United States?

... YES ... NO

(b) Have you been a resident of Ohio for at least forty-five days and have you been a resident for thirty days of the county with whose sheriff you are filing this application or of a county adjacent to that county?

... YES ... NO

(2) Are you at least twenty-one years of age? ... YES

... NO

(3) Are you a fugitive from justice? ... YES ... NO

(4) Are you under indictment for a felony, have you ever been convicted of or pleaded guilty to a felony, or have you ever been adjudicated a delinquent child for committing an act that would be a felony if committed by an adult?

YES NO

... YES ... NO

(5) Are you under indictment for or otherwise charged with, or have you ever been convicted of or pleaded guilty to, an offense under Chapter 2925., 3719., or 4729. of the Ohio Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse, or have you ever been adjudicated a delinquent child for committing an act that would be an offense of that nature if committed by an adult?

... YES ... NO

(6) Are you under indictment for or otherwise charged with, or have you been convicted of or pleaded guilty to within three years of the date of this application, a misdemeanor that is an offense of violence or the offense of possessing a revoked or suspended concealed handgun license, or have you been adjudicated a delinquent child within three years of the date of this application for committing an act that would be a misdemeanor of that nature if committed by an adult? ... YES ... NO

... YES ... NO

(7) Are you under indictment for or otherwise charged with, or have you been convicted of or pleaded guilty to within ten years of the date of this application, resisting arrest, or have you been adjudicated a delinquent child for committing, within ten years of the date of this application an act that if committed by an adult would be the offense of resisting arrest? YES NO

... YES ... NO

(8)(a) Are you under indictment for or otherwise charged with assault or negligent assault? ... YES
... NO

- (b) Have you been convicted of, pleaded guilty to, or adjudicated a delinquent child two or more times for committing assault or negligent assault within five years of the date of this application? ... YES ... NO
- (c) Have you ever been convicted of, pleaded guilty to, or adjudicated a delinquent child for assaulting a peace officer? ... YES ... NO
- (9)(a) Have you ever been adjudicated as a mental defective? ... YES ... NO
- (b) Have you ever been committed to a mental institution? ... YES ... NO
- (10) Are you currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state? ... YES ... NO
- (11) Are you currently subject to a suspension imposed under division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code of a license to carry a concealed handgun, or a temporary emergency license to carry a concealed handgun, that previously was issued to you? ... YES ... NO

SECTION IV. YOU MUST COMPLETE THIS SECTION OF THE APPLICATION BY PROVIDING, TO THE BEST OF YOUR KNOWLEDGE, THE ADDRESS OF EACH PLACE OF RESIDENCE AT WHICH YOU RESIDED AT ANY TIME AFTER YOU ATTAINED EIGHTEEN YEARS OF AGE AND UNTIL YOU COMMENCED YOUR RESIDENCE AT THE LOCATION IDENTIFIED IN SECTION II OF THIS FORM, AND THE DATES OF RESIDENCE AT EACH OF THOSE ADDRESSES. IF YOU NEED MORE SPACE, COMPLETE AN ADDITIONAL SHEET WITH THE RELEVANT INFORMATION, ATTACH IT TO THE APPLICATION, AND NOTE THE ATTACHMENT AT THE END OF THIS SECTION.

Residence 1:
Street City State County Zip
.....
Dates of residence at this address

Residence 2:
Street City State County Zip
.....
Dates of residence at this address

Residence 3:
Street City State County Zip
.....
Dates of residence at this address

Residence 4:
Street City State County Zip
.....
Dates of residence at this address

SECTION V.
YOU MUST COMPLETE THIS SECTION OF THE APPLICATION BY ANSWERING THE QUESTION POSED IN PART (1) AND, IF THE ANSWER TO THE QUESTION IS "YES," BY PROVIDING IN PART (2) THE INFORMATION SPECIFIED. IF YOU NEED MORE SPACE, COMPLETE AN ADDITIONAL SHEET WITH THE RELEVANT INFORMATION, ATTACH IT TO THE APPLICATION, AND NOTE THE ATTACHMENT AT THE END OF THIS SECTION.

- (1) Have you previously applied in any county in Ohio or in any other state for a license to carry a concealed

- handgun or a temporary emergency license to carry a concealed handgun? ... YES ... NO
- (2) If your answer to the question in part (1) of this section of the application is "yes," you must complete this part by listing each county in Ohio, and each other state, in which you previously applied for either type of license and, to the best of your knowledge, the date on which you made the application.
- Previous application made in (insert name of Ohio county or other state) on (insert date of application.)
- Previous application made in (insert name of Ohio county or other state) on (insert date of application.)
- Previous application made in (insert name of Ohio county or other state) on (insert date of application.)
- Previous application made in (insert name of Ohio county or other state) on (insert date of application.)

SECTION VI.
AN APPLICANT WHO KNOWINGLY GIVES A FALSE ANSWER TO ANY QUESTION OR SUBMITS FALSE INFORMATION ON, OR A FALSE DOCUMENT WITH THE APPLICATION MAY BE PROSECUTED FOR FALSIFICATION TO OBTAIN A CONCEALED HANDGUN LICENSE, A FELONY OF THE FOURTH DEGREE, IN VIOLATION OF SECTION 2921.13 OF THE OHIO REVISED CODE.

(1) I have been furnished, and have read, the pamphlet that explains the Ohio firearms laws, that provides instruction in dispute resolution and explains the Ohio laws related to that matter, and that provides information regarding all aspects of the use of deadly force with a firearm, and I am knowledgeable of the provisions of those laws and of the information on those matters.

(2) I desire a legal means to carry a concealed handgun for defense of myself or a member of my family while engaged in lawful activity.

(3) I have never been convicted of or pleaded guilty to a crime of violence in the state of Ohio or elsewhere. I am of sound mind. I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statements herein I am subject to penalties prescribed by law. I authorize the sheriff or the sheriff's designee to inspect only those records or documents relevant to information required for this application.

(4) The information contained in this application and all attached documents are true and correct to the best of my knowledge.

.....
Signature of Applicant"
HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.
See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.11] § 2923.1211 Falsification of concealed handgun license or possessing revoked or suspended license.

- (A) No person shall alter a license or temporary emergency license to carry a concealed handgun that was issued pursuant to section 2923.125 [2923.12.5] or

2923.1213 [2923.12.13] of the Revised Code or create a fictitious document that purports to be a license of that nature.

(B) No person, except in the performance of official duties, shall possess a license to carry a concealed handgun that was issued and that has been revoked or suspended pursuant to section 2923.128 [2923.12.8] of the Revised Code or a temporary emergency license to carry a concealed handgun that was issued and that has been revoked pursuant to section 2923.1213 [2923.12.13] of the Revised Code.

(C) Whoever violates division (A) of this section is guilty of falsification of a concealed handgun license, a felony of the fifth degree. Whoever violates division (B) of this section is guilty of possessing a revoked or suspended concealed handgun license, a misdemeanor of the third degree.

HISTORY: 150 v H 12, § 1, eff. 4-8-04.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.12] § 2923.1212 Posting of signs prohibiting deadly weapon or dangerous ordinance.

(A) The following persons, boards, and entities, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordinance onto these premises.":

(1) The director of public safety or the person or board charged with the erection, maintenance, or repair of police stations, municipal jails, and the municipal courthouse and courtrooms in a conspicuous location at all police stations, municipal jails, and municipal courthouses and courtrooms;

(2) The sheriff or sheriff's designee who has charge of the sheriff's office in a conspicuous location in that office;

(3) The superintendent of the state highway patrol or the superintendent's designee in a conspicuous location at all state highway patrol stations;

(4) Each sheriff, chief of police, or person in charge of every county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or other local or state correctional institution or detention facility within the state, or that person's designee, in a conspicuous location at that facility under that person's charge;

(5) The board of trustees of a regional airport authority, chief administrative officer of an airport facility, or other person in charge of an airport facility in a conspicuous location at each airport facility under that person's control;

(6) The officer or officer's designee who has charge of a courthouse or the building or structure in which a courtroom is located in a conspicuous location in that building or structure;

(7) The superintendent of the bureau of criminal identification and investigation or the superintendent's designee in a conspicuous location in all premises controlled by that bureau;

(8) The owner, administrator, or operator of a child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home;

(9) The officer of this state or of the political subdivision of this state, or the officer's designee, who has charge of a building that is owned by this state or the political subdivision of this state, or who has charge of the portion of a building that is not owned by any governmental entity listed in this division but that is leased by a governmental entity listed in this division.

(B) The following boards, bodies, and persons, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to Ohio Revised Code section 2923.122 [2923.12.2], no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordinance into a school safety zone.":

(1) A board of education of a city, local, exempted village, or joint vocational school district or that board's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

(2) A governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code or that body's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school;

(3) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.

HISTORY: 150 v H 12, § 1, eff. 4-8-04.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

[§ 2923.12.13] § 2923.1213 Temporary emergency license to carry concealed handgun.

(A) As used in this section:

(1) "Evidence of imminent danger" means any of the following:

(a) A statement sworn by the person seeking to carry a concealed handgun that is made under threat of perjury and that states that the person has reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed;

(b) A written document prepared by a governmental entity or public official describing the facts that give the person seeking to carry a concealed handgun reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed. Written documents of this nature include, but are not limited to, any temporary protection order, civil protection order, protection order issued by another state, or other court order, any court report, and any report filed with or made by a law enforcement agency or prosecutor.

(2) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B)(1) A person seeking a temporary emergency license to carry a concealed handgun shall submit to the sheriff of the county in which the person resides all of the following:

(a) Evidence of imminent danger to the person or a member of the person's family;

(b) A sworn affidavit that contains all of the information required to be on the license and attesting that the person is legally living in the United States; is at least twenty-one years of age; is not a fugitive from justice; is not under indictment for or otherwise charged with an offense identified in division (D)(1)(d) of section 2923.125 [2923.12.5] of the Revised Code; has not been convicted of or pleaded guilty to an offense, and has not been adjudicated a delinquent child for committing an act, identified in division (D)(1)(e) of that section; within three years of the date of the submission, has not been convicted of or pleaded guilty to an offense, and has not been adjudicated a delinquent child for committing an act, identified in division (D)(1)(f) of that section; within five years of the date of the submission, has not been convicted of, pleaded guilty, or adjudicated a delinquent child for committing two or more violations identified in division (D)(1)(g) of that section; within ten years of the date of the submission, has not been convicted of, pleaded guilty, or adjudicated a delinquent child for committing a violation identified in division (D)(1)(h) of that section; has not been adjudicated as a mental defective, has not been committed to any mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a mentally ill person subject to hospitalization by court order, and is not an involuntary patient other than one who is a patient only for purposes of observation, as described in division (D)(1)(i) of that section; is not currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state, as described in division (D)(1)(j) of that section; and is not currently subject to a suspension imposed under division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code of a license to carry a concealed handgun, or a temporary emergency license to carry a concealed handgun, that previously was issued to the person;

(c) A temporary emergency license fee established by the Ohio peace officer training commission for an amount that does not exceed the actual cost of conducting the criminal background check or thirty dollars;

(d) A set of fingerprints of the applicant provided as described in section 311.41 of the Revised Code through use of an electronic fingerprint reading device or, if the sheriff to whom the application is submitted does not possess and does not have ready access to the use of an electronic fingerprint reading device, on a standard impression sheet prescribed pursuant to division (C)(2) of section 109.572 [109.57.2] of the Revised Code. If the fingerprints are provided on a standard impression sheet, the person also shall provide the person's social security number to the sheriff.

(2) A sheriff shall accept the evidence of imminent danger, the sworn affidavit, the fee, and the set of fingerprints required under division (B)(1) of this section at the times and in the manners described in division (I) of this section. Upon receipt of the evidence of imminent danger, the sworn affidavit, the fee, and the set of fingerprints required under division (B)(1) of this section, the sheriff, in the manner specified in section 311.41 of the Revised Code, immediately shall conduct or cause to be conducted the criminal records check and the incompetency records check described in section 311.41 of the Revised Code. Immediately upon receipt of the results of the records checks, the sheriff shall review the informa-

tion and shall determine whether the criteria set forth in divisions (D)(1)(a) to (j) and (m) of section 2923.125 [2923.12.5] of the Revised Code apply regarding the person. If the sheriff determines that all of criteria set forth in divisions (D)(1)(a) to (j) and (m) of section 2923.125 [2923.12.5] of the Revised Code apply regarding the person, the sheriff shall immediately make available through the law enforcement automated data system all information that will be contained on the temporary emergency license for the person if one is issued, and the superintendent of the state highway patrol shall ensure that the system is so configured as to permit the transmission through the system of that information. Upon making that information available through the law enforcement automated data system, the sheriff shall immediately issue to the person a temporary emergency license to carry a concealed handgun.

If the sheriff denies the issuance of a temporary emergency license to the person, the sheriff shall specify the grounds for the denial in a written notice to the person. The person may appeal the denial, or challenge criminal records check results that were the basis of the denial if applicable, in the same manners specified in division (D)(2) of section 2923.125 [2923.12.5] and in section 2923.127 [2923.12.7] of the Revised Code, regarding the denial of an application for a license to carry a concealed handgun under that section.

The temporary emergency license under this division shall be in the form, and shall include all of the information, described in divisions (A)(2) and (5) of section 109.731 [109.73.1] of the Revised Code, and also shall include a unique combination of identifying letters and numbers in accordance with division (A)(4) of that section.

The temporary emergency license issued under this division is valid for ninety days and may not be renewed. A person who has been issued a temporary emergency license under this division shall not be issued another temporary emergency license unless at least four years has expired since the issuance of the prior temporary emergency license.

(C) A person who holds a temporary emergency license to carry a concealed handgun has the same right to carry a concealed handgun as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code, and any exceptions to the prohibitions contained in section 1547.69 and sections 2923.12 to 2923.16 of the Revised Code for a licensee under section 2923.125 [2923.12.5] of the Revised Code apply to a licensee under this section. The person is subject to the same restrictions, and to all other procedures, duties, and sanctions, that apply to a person who carries a license issued under section 2923.125 [2923.12.5] of the Revised Code, other than the license renewal procedures set forth in that section.

(D) A sheriff who issues a temporary emergency license to carry a concealed handgun under this section shall not require a person seeking to carry a concealed handgun in accordance with this section to submit a competency certificate as a prerequisite for issuing the license and shall comply with division (H) of section 2923.125 [2923.12.5] of the Revised Code in regards to the license. The sheriff shall suspend or revoke the license in accordance with section 2923.128 [2923.12.8] of the Revised Code. In addition to the suspension or revocation procedures set forth in section 2923.128 [2923.12.8] of the Revised Code, the sheriff may revoke

the license upon receiving information, verifiable by public documents, that the person is not eligible to possess a firearm under either the laws of this state or of the United States or that the person committed perjury in obtaining the license; if the sheriff revokes a license under this additional authority, the sheriff shall notify the person, by certified mail, return receipt requested, at the person's last known residence address that the license has been revoked and that the person is required to surrender the license at the sheriff's office within ten days of the date on which the notice was mailed. Division (H) of section 2923.125 [2923.12.5] of the Revised Code applies regarding any suspension or revocation of a temporary emergency license to carry a concealed handgun.

(E) A sheriff who issues a temporary emergency license to carry a concealed handgun under this section shall retain, for the entire period during which the temporary emergency license is in effect, the evidence of imminent danger that the person submitted to the sheriff and that was the basis for the license, or a copy of that evidence, as appropriate.

(F) If a temporary emergency license to carry a concealed handgun issued under this section is lost or is destroyed, the licensee may obtain from the sheriff who issued that license a duplicate license upon the payment of a fee of fifteen dollars and the submission of an affidavit attesting to the loss or destruction of the license. The sheriff, in accordance with the procedures prescribed in section 109.731 [109.73.1] of the Revised Code, shall place on the replacement license a combination of identifying numbers different from the combination on the license that is being replaced.

(G) The Ohio peace officer training commission shall prescribe, and shall make available to sheriffs, a standard form to be used under division (B) of this section by a person who applies for a temporary emergency license to carry a concealed handgun on the basis of imminent danger of a type described in division (A)(1)(a) of this section.

(H) A sheriff who receives any fees paid by a person under this section shall deposit all fees so paid into the sheriff's concealed handgun license issuance expense fund established under section 311.42 of the Revised Code.

(I) A sheriff shall accept evidence of imminent danger, a sworn affidavit, the fee, and the set of fingerprints specified in division (B)(1) of this section at any time during normal business hours. In no case shall a sheriff require an appointment, or designate a specific period of time, for the submission or acceptance of evidence of imminent danger, a sworn affidavit, the fee, and the set of fingerprints specified in division (B)(1) of this section, or for the provision to any person of a standard form to be used for a person to apply for a temporary emergency license to carry a concealed handgun.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of § 10 of H.B. 12 (150 v —) following RC § 2923.12.

§ 2923.13 Having weapons while under disability.

(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall

knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) The person is a fugitive from justice.

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

(3) The person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

(4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

(5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to hospitalization by court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to hospitalization by court order" and "patient" have the same meanings as in section 5122.01 of the Revised Code.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04.

See the provisions of §§ 6 and 7 of H.B. 12 (150 v —) following RC § 2923.12.

Not analogous to former RC § 2923.13 (GC § 13421-24; 108 v PU, 189; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.56 (133 v H 484), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2923.13.1] § 2923.131 Possession of deadly weapon while under detention.

(A) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(B) No person under detention at a detention facility shall possess a deadly weapon.

(C) Whoever violates this section is guilty of possession of a deadly weapon while under detention.

(1) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if at the time the offender commits the act for which the offender was under detention it would not be a felony if committed by an adult, possession of a deadly weapon while under detention is a misdemeanor of the first degree.

(2) If the offender, at the time of the commission of the offense, was under detention in any other manner, possession of a deadly weapon while under detention is one of the following:

(a) A felony of the first degree, when the most serious offense for which the person was under detention is aggravated murder or murder and regardless of when the aggravated murder or murder occurred or, if the person was under detention as an alleged or adjudicated delin-

quent child, when the most serious act for which the person was under detention would be aggravated murder or murder if committed by an adult and regardless of when that act occurred:

(b) A felony of the second degree if any of the following applies:

(i) The most serious offense for which the person was under detention is a felony of the first degree committed on or after July 1, 1996, or an aggravated felony of the first degree committed prior to July 1, 1996.

(ii) If the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention was committed on or after July 1, 1996, and would be a felony of the first degree if committed by an adult, or was committed prior to July 1, 1996, and would have been an aggravated felony of the first degree if committed by an adult.

(c) A felony of the third degree if any of the following applies:

(i) The most serious offense for which the person was under detention is a felony of the second degree committed on or after July 1, 1996, or is an aggravated felony of the second degree or a felony of the first degree committed prior to July 1, 1996.

(ii) If the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention was committed on or after July 1, 1996, and would be a felony of the second degree if committed by an adult, or was committed prior to July 1, 1996, and would have been an aggravated felony of the second degree or a felony of the first degree if committed by an adult.

(d) A felony of the fourth degree if any of the following applies:

(i) The most serious offense for which the person was under detention is a felony of the third degree committed on or after July 1, 1996, is an aggravated felony of the third degree or a felony of the second degree committed prior to July 1, 1996, or is a felony of the third degree committed prior to July 1, 1996, that, if it had been committed on or after July 1, 1996, also would be a felony of the third degree.

(ii) If the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention was committed on or after July 1, 1996, and would be a felony of the third degree if committed by an adult, was committed prior to July 1, 1996, and would have been an aggravated felony of the third degree or a felony of the second degree if committed by an adult, or was committed prior to July 1, 1996, would have been a felony of the third degree if committed by an adult, and, if it had been committed on or after July 1, 1996, also would be a felony of the third degree if committed by an adult.

(e) A felony of the fifth degree if any of the following applies:

(i) The most serious offense for which the person was under detention is a felony of the fourth or fifth degree committed on or after July 1, 1996, is a felony of the third degree committed prior to July 1, 1996, that, if committed on or after July 1, 1996, would be a felony of the fourth degree, is a felony of the fourth degree committed prior to July 1, 1996, or is an unclassified felony or a misdemeanor regardless of when the unclassified felony or misdemeanor is committed.

(ii) If the person was under detention as an alleged or adjudicated delinquent child, the most serious act for

which the person was under detention was committed on or after July 1, 1996, and would be a felony of the fourth or fifth degree if committed by an adult, was committed prior to July 1, 1996, would have been a felony of the third degree if committed by an adult, and, if it had been committed on or after July 1, 1996, would be a felony of the fourth degree if committed by an adult, was committed prior to July 1, 1996, and would have been a felony of the fourth degree if committed by an adult, or would be an unclassified felony if committed by an adult regardless of when the act is committed.

HISTORY: 146 v H 154. Eff 10-4-96.

§ 2923.14 Relief from disability.

(A) Any person who, solely by reason of the person's disability under division (A) (2) or (3) of section 2923.13 of the Revised Code, is prohibited from acquiring, having, carrying, or using firearms, may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.

(B) The application shall recite the following:

(1) All indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and any release granted under a community control sanction, post-release control sanction, or parole, any partial or conditional pardon granted, or other disposition of each case;

(2) Facts showing the applicant to be a fit subject for relief under this section.

(C) A copy of the application shall be served on the county prosecutor. The county prosecutor shall cause the matter to be investigated and shall raise before the court any objections to granting relief that the investigation reveals.

(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(1) The applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance.

(2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

(E) Costs of the proceeding shall be charged as in other civil cases, and taxed to the applicant.

(F) Relief from disability granted pursuant to this section:

(1) Applies only with respect to indictments, convictions, or adjudications recited in the application;

(2) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;

(3) Does not apply with respect to dangerous ordinance;

(4) May be revoked by the court at any time for good cause shown and upon notice to the applicant;

(5) Is automatically void upon commission by the applicant of any offense set forth in division (A) (2) or (3) of section 2923.13 of the Revised Code, or upon the applicant's becoming one of the class of persons named in division (A) (1), (4), or (5) of that section.

(G) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(2) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

HISTORY: 134 v H 511. Eff 1-1-74; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2923.14 (GC § 13421-25; 108 v Ptl, 189; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.56 (133 v H 484), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.15 Using weapons while intoxicated.

(A) No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.

(B) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2923.15 (GC § 13421-26; 108 v Ptl, 189; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.16 Improperly handling firearms in a motor vehicle.

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless it is unloaded and is carried in one of the following ways:

(1) In a closed package, box, or case;

(2) In a compartment that can be reached only by leaving the vehicle;

(3) In plain sight and secured in a rack or holder made for the purpose;

(4) In plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol prohibited for persons operating a vehicle, as specified in division (A) of section 4511.19 of the Revised Code, regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

(E) No person who has been issued a license or temporary emergency license to carry a concealed handgun under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code shall do any of the following:

(1) Knowingly transport or have a loaded handgun in a motor vehicle unless one of the following applies:

(a) The loaded handgun is in a holster on the person's person.

(b) The loaded handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun.

(c) The loaded handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is locked.

(2) If the person is transporting or has a loaded handgun in a motor vehicle in a manner authorized under division (E)(1) of this section, knowingly remove or attempt to remove the loaded handgun from the holster, case, bag, box, container, or glove compartment, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers while the motor vehicle is being operated on a street, highway, or public property unless the person removes, attempts to remove, grasps, holds, or has the contact with the loaded handgun pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in section 5503.34 of the Revised Code, and if the person is transporting or has a loaded handgun in the motor vehicle or commercial vehicle in any manner, fail to do any of the following that is applicable:

(a) If the person is the driver or an occupant of a motor vehicle stopped as a result of a traffic stop or a stop for another law enforcement purpose, fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the motor vehicle;

(b) If the person is the driver or an occupant of a commercial motor vehicle stopped by an employee of the motor carrier enforcement unit for any of the defined purposes, fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the commercial motor vehicle.

(4) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(5) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose, if the person is transporting or has a loaded handgun in the motor vehicle in a manner authorized under division (E)(1) of this section, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster,

case, bag, box, container, or glove compartment, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;

(6) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(F)(1) Divisions (A), (B), (C), and (E) of this section do not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of section 109.801 [109.80.1] of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (F)(1)(b) of this section does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply:

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the chief of the division of wildlife of the department of natural resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

(i) While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(ii) In the direction of a street, highway, or other public or private property used by the public for vehicular traffic or parking;

(iii) At or into an occupied structure that is a permanent or temporary habitation;

(iv) In the commission of any violation of law, including, but not limited to, a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(3) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply:

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (D)(3)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (D)(3)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic or parking.

(4) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, all of the following apply:

(a) The person transporting or possessing the handgun is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code.

(b) The person transporting or possessing the handgun is not knowingly in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code.

(c) One of the following applies:

(i) The handgun is in a holster on the person's person.

(ii) The handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun.

(iii) The handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is locked.

(G)(1) The affirmative defenses authorized in divisions (D)(1) and (2) of section 2923.12 of the Revised Code are affirmative defenses to a charge under division (B) or (C) of this section that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(H) No person who is charged with a violation of division (B), (C), or (D) of this section shall be required to obtain a license or temporary emergency license to carry a concealed handgun under section 2923.125

[2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code as a condition for the dismissal of the charge.

(I) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of division (A) of this section is a felony of the fourth degree. Violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (D) of this section is a felony of the fifth degree or, if the loaded handgun is concealed on the person's person, a felony of the fourth degree. A violation of division (E)(3) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to division (A) (2) of section 2923.128 of the Revised Code. A violation of division (E)(1), (2), or (5) of this section is a felony of the fifth degree. A violation of division (E)(4) or (6) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (E)(4) or (6) of this section, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (E)(4) or (6) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to division (A)(2) of section 2923.128 [2923.12.8] of the Revised Code. A violation of division (B) of this section is whichever of the following is applicable:

(1) If, at the time of the transportation or possession in violation of division (B) of this section, the offender was carrying a valid license or temporary emergency license to carry a concealed handgun issued to the offender under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under section 109.69 of the Revised Code and the offender was not knowingly in a place described in division (B) of section 2923.126 [2923.12.6] of the Revised Code, the violation is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B) of this section, a felony of the fourth degree.

(2) If division (I)(1) of this section does not apply, a felony of the fourth degree.

(J) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop.

(K) As used in this section:

(1) "Motor vehicle," "street," and "highway" have the same meanings as in section 4511.01 of the Revised Code.

(2) "Occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(3) "Agriculture" has the same meaning as in section 519.01 of the Revised Code.

(4) "Tenant" has the same meaning as in section 1531.01 of the Revised Code.

(5) "Unloaded" means, with respect to a firearm employing a percussion cap, flintlock, or other obsolete

ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(6) "Commercial motor vehicle" has the same meaning as in division (A) of section 4506.25 of the Revised Code.

(7) "Motor carrier enforcement unit" means the motor carrier enforcement unit in the department of public safety, division of state highway patrol, that is created by section 5503.34 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 147 v H 275. Eff 12-31-97; 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

See the provisions of §§ 6, 7, 9, and 10 of H.B. 12 (150 v —) following RC § 2923.12.

Not analogous to former RC § 2923.16 (RS § 7031; S&C 448, 449; 29 v 161; GC § 13390; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2923.16.1] § 2923.161 Improperly discharging firearm at or into habitation; school-related offenses.

(A) No person, without privilege to do so, shall knowingly do any of the following:

(1) Discharge a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual;

(2) Discharge a firearm at, in, or into a school safety zone;

(3) Discharge a firearm within one thousand feet of any school building or of the boundaries of any school premises, with the intent to do any of the following:

(a) Cause physical harm to another who is in the school, in the school building, or at a function or activity associated with the school;

(b) Cause panic or fear of physical harm to another who is in the school, in the school building, or at a function or activity associated with the school;

(c) Cause the evacuation of the school, the school building, or a function or activity associated with the school.

(B) This section does not apply to any officer, agent, or employee of this or any other state or the United States, or to any law enforcement officer, who discharges the firearm while acting within the scope of the officer's, agent's, or employee's duties.

(C) Whoever violates this section is guilty of improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, a felony of the second degree.

(D) As used in this section, "occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

HISTORY: 143 v S 258 (Eff 11-20-90); 146 v S 2 (Eff 7-1-96); 147 v H 5 (Eff 6-30-98); 148 v S 1 (Eff 8-6-99); 149 v H 442. Eff 10-11-2002.

[§ 2923.16.2] § 2923.162 Discharge of firearm on or near prohibited premises.

(A) No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a

firearm upon or over a cemetery or within one hundred yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution;

(3) Discharge a firearm upon or over a public road or highway.

(B)(1) Division (A)(1) of this section does not apply to a person who, while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) Whoever violates this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) of this section shall be punished as follows:

(1) Except as otherwise provided in division (C)(2), (3), or (4) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in division (C)(3) or (4) of this section, if the violation created a substantial risk of physical harm to any person or caused serious physical harm to property, a violation of division (A)(3) of this section is a felony of the third degree.

(3) Except as otherwise provided in division (C)(4) of this section, if the violation caused physical harm to any person, a violation of division (A)(3) of this section is a felony of the second degree.

(4) If the violation caused serious physical harm to any person, a violation of division (A)(3) of this section is a felony of the first degree.

HISTORY: 148 v S 107. Eff 3-23-2000; 150 v H 52, § 1, eff. 6-1-04.

§ 2923.17 Unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives.

(A) No person shall knowingly acquire, have, carry, or use any dangerous ordnance.

(B) No person shall manufacture or process an explosive at any location in this state unless the person first has been issued a license, certificate of registration, or permit to do so from a fire official of a political subdivision of this state or from the office of the fire marshal.

(C) Division (A) of this section does not apply to:

(1) Officers, agents, or employees of this or any other state or the United States, members of the armed forces of the United States or the organized militia of this or any other state, and law enforcement officers, to the extent that any such person is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of the person's duties;

(2) Importers, manufacturers, dealers, and users of explosives, having a license or user permit issued and in effect pursuant to the "Organized Crime Control Act of 1970," 84 Stat. 952, 18 U.S.C. 843, and any amendments or additions thereto or reenactments thereof, with respect to explosives and explosive devices lawfully acquired, possessed, carried, or used under the laws of this state and applicable federal law;

(3) Importers, manufacturers, and dealers having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 923, and any amendments or additions thereto or reenactments thereof, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used under the laws of this state and applicable federal law;

(4) Persons to whom surplus ordnance has been sold, loaned, or given by the secretary of the army pursuant to 70A Stat. 262 and 263, 10 U.S.C. 4684, 4685, and 4686, and any amendments or additions thereto or reenactments thereof, with respect to dangerous ordnance when lawfully possessed and used for the purposes specified in such section;

(5) Owners of dangerous ordnance registered in the national firearms registration and transfer record pursuant to the act of October 22, 1968, 82 Stat. 1229, 26 U.S.C. 5841, and any amendments or additions thereto or reenactments thereof, and regulations issued thereunder.

(6) Carriers, warehousemen, and others engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with the laws of this state and applicable federal law;

(7) The holders of a license or temporary permit issued and in effect pursuant to section 2923.18 of the Revised Code, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for the purposes and in the manner specified in such license or permit.

(D) Whoever violates division (A) of this section is guilty of unlawful possession of dangerous ordnance, a felony of the fifth degree.

(E) Whoever violates division (B) of this section is guilty of illegally manufacturing or processing explosives, a felony of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 728 (Eff 8-22-78); 146 v S 2. Eff 7-1-96.

Not analogous to former RC § 2923.17 (RS § 6990; 73 v 154; GC § 12678; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.04 (GC §§ 12819-4, 12819-5; 115 v 189; Bureau of Code Revision, 10-1-53; 132 v H 43), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2923.18 License or permit to possess dangerous ordnance.

(A) Upon application to the sheriff of the county or safety director or police chief of the municipality where the applicant resides or has his principal place of business, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry, or use dangerous ordnance, for the following purposes:

(1) Contractors, wreckers, quarrymen, mine operators, and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried, or used in the course of such business;

(2) Farmers, with respect to explosives and explosive devices acquired, possessed, carried, or used for agricultural purposes on lands farmed by them;

(3) Scientists, engineers, and instructors, with respect to dangerous ordnance acquired, possessed, carried, or used in the course of bona fide research or instruction;

(4) Financial institution and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried, or used by any such person while acting within the scope of his duties;

(5) In the discretion of the issuing authority, any responsible person, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for a legitimate research, scientific, educational, industrial, or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the sheriff of the county or safety director or police chief of the municipality where the applicant resides or has his principal place of business. The application shall be accompanied by an application fee of fifty dollars when the application is for a license, and an application fee of five dollars when the application is for a temporary permit. The fees shall be paid into the general revenue fund of the county or municipality. The application shall contain the following information:

(1) The name, age, address, occupation, and business address of the applicant, if he is a natural person, or the name, address, and principal place of business of the applicant, if the applicant is a corporation;

(2) A description of the dangerous ordnance for which a permit is requested;

(3) A description of the place or places where and the manner in which the dangerous ordnance is to be kept, carried, and used;

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried, or used;

(5) Such other information as the issuing authority may require in giving effect to this section.

(C) Upon investigation, the issuing authority shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using dangerous ordnance;

(2) The applicant is age twenty-one or over, if he is a natural person;

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry, or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and ensure the safety of persons and property;

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried, and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage, or use of the dangerous ordnance as the issuing authority considers advisable to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices, and other consumable dangerous ordnance, and shall expire within thirty days of its issuance. A license shall be issued for the regular use of consumable dangerous ordnance, or for

any nonconsumable dangerous ordnance, which license need not specify an expiration date, but the issuing authority may specify such expiration date, not earlier than one year from the date of issuance, as it considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. The holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the issuing authority.

(G) The issuing authority shall forward to the state fire marshal a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in dangerous ordnance and of each report of lost or stolen dangerous ordnance, given to the local law enforcement authority as required by divisions (A)(4) and (5) of section 2923.20 of the Revised Code. The state fire marshal shall keep a permanent file of all licenses and temporary permits issued pursuant to this section, and of all records of transactions in, and losses or thefts of dangerous ordnance forwarded by local law enforcement authorities pursuant to this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 590. Eff 7-1-79.

Not analogous to former RC § 2923.18 (RS § 2127; Bates § 1536-740; 66 v 202; 95 v 428; GC §§ 12785, 12786; 108 v Ptl, 236; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.04 (GC §§ 12819-4, 12819-5; 115 v 189, 190; Bureau of Code Revision, 10-1-53; 132 v H 43), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 3 of HB 590.

§ 2923.19 Failure to secure dangerous ordnance.

(A) No person, in acquiring, possessing, carrying, or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person;

(2) To insure the safety of persons and property.

(B) Whoever violates this section is guilty of failure to secure dangerous ordnance, a misdemeanor of the second degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2923.19 (RS § 6875; S&S 487; 62 v 67; 71 v 34; 73 v 63; GC § 12637; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.20 Unlawful transaction in weapons.

(A) No person shall:

(1) Recklessly sell, lend, give, or furnish any firearm to any person prohibited by section 2923.13 or 2923.15 of the Revised Code from acquiring or using any firearm, or recklessly sell, lend, give, or furnish any dangerous ordnance to any person prohibited by section 2923.13, 2923.15, or 2923.17 of the Revised Code from acquiring or using any dangerous ordnance;

(2) Possess any firearm or dangerous ordnance with purpose to dispose of it in violation of division (A) of this section;

(3) Manufacture, possess for sale, sell, or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon;

(4) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordnance pursuant to section 2923.17 of the Revised Code, or negligently fail to take a complete record of the transaction and forthwith forward a copy of that record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place;

(5) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control.

(B) Whoever violates this section is guilty of unlawful transactions in weapons. A violation of division (A)(1) or (2) of this section is a felony of the fourth degree. A violation of division (A)(3) or (4) of this section is a misdemeanor of the second degree. A violation of division (A)(5) of this section is a misdemeanor of the fourth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 728 (Eff 6-22-78); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2923.20 (RS § 6875; S&S 487; 62 v 67; 71 v 34; 73 v 63; GC § 12637; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

[§ 2923.20.1] § 2923.201 Defacing identification marks of firearm.

(A) No person shall do either of the following:

(1) Change, alter, remove, or obliterate the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on a firearm.

(2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on the firearm has been changed, altered, removed, or obliterated.

(B)(1) Whoever violates division (A)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this division, defacing identification marks of a firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(1) of this section, defacing identification marks of a firearm is a felony of the fourth degree.

(2) Whoever violates division (A)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this division, possessing a defaced firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) of this section, possessing a defaced firearm is a felony of the fourth degree.

(C) Division (A) of this section does not apply to any firearm on which no manufacturer's serial number was inscribed at the time of its manufacture.

HISTORY: 151 v H 279, § 1, eff. 9-28-06.

§ 2923.21 Improperly furnishing firearms to a minor.

(A) No person shall do any of the following:

(1) Sell any firearm to a person who is under eighteen years of age;

(2) Subject to division (B) of this section, sell any handgun to a person who is under twenty-one years of age;

(3) Furnish any firearm to a person who is under eighteen years of age or, subject to division (B) of this section, furnish any handgun to a person who is under twenty-one years of age, except for lawful hunting, sporting, or educational purposes, including, but not limited to, instruction in firearms or handgun safety, care, handling, or marksmanship under the supervision or control of a responsible adult;

(4) Sell or furnish a firearm to a person who is eighteen years of age or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the firearm for the purpose of selling the firearm in violation of division (A)(1) of this section to a person who is under eighteen years of age or for the purpose of furnishing the firearm in violation of division (A)(3) of this section to a person who is under eighteen years of age;

(5) Sell or furnish a handgun to a person who is twenty-one years of age or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the handgun for the purpose of selling the handgun in violation of division (A)(2) of this section to a person who is under twenty-one years of age or for the purpose of furnishing the handgun in violation of division (A)(3) of this section to a person who is under twenty-one years of age;

(6) Purchase or attempt to purchase any firearm with the intent to sell the firearm in violation of division (A)(1) of this section to a person who is under eighteen years of age or with the intent to furnish the firearm in violation of division (A)(3) of this section to a person who is under eighteen years of age;

(7) Purchase or attempt to purchase any handgun with the intent to sell the handgun in violation of division (A)(2) of this section to a person who is under twenty-one years of age or with the intent to furnish the handgun in violation of division (A)(3) of this section to a person who is under twenty-one years of age.

(B) Divisions (A)(1) and (2) of this section do not apply to the sale or furnishing of a handgun to a person eighteen years of age or older and under twenty-one years of age if the person eighteen years of age or older and under twenty-one years of age is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio peace officer training council or equivalent firearms training.

(C) Whoever violates this section is guilty of improperly furnishing firearms to a minor, a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v H 4 (Eff 11-9-95); 146 v S 269 (Eff 7-1-96); 146 v H 124, Eff 3-31-97.

Not analogous to former RC § 2923.21 (RS § 6876; S&C 1642; 37 v 17; GC § 12638; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

[§ 2923.21.1] § 2923.211 Underage purchase of firearm or handgun.

(A) No person under eighteen years of age shall purchase or attempt to purchase a firearm.

(B) No person under twenty-one years of age shall purchase or attempt to purchase a handgun, provided that this division does not apply to the purchase or attempted purchase of a handgun by a person eighteen years of age or older and under twenty-one years of age if the person eighteen years of age or older and under twenty-one years of age is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio peace officer training council or equivalent firearms training.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, a delinquent act that would be a felony of the fourth degree if it could be committed by an adult. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

HISTORY: 146 v H 4 (Eff 11-9-95); 146 v H 124 (Eff 3-31-97); 148 v S 179, § 3, Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2923.22 Permitted interstate transactions in firearms.

(A) Any resident of Ohio age eighteen or over, and not prohibited by section 2923.13 or 2923.15 of the Revised Code or any applicable law of another state or the United States from acquiring or using firearms, may purchase or obtain a rifle, shotgun, or ammunition therefor in Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia.

(B) Any resident of Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia, age eighteen or over, and not prohibited by section 2923.13 or 2923.15 of the Revised Code or the laws of his domicile or the United States from acquiring or using firearms, may purchase or obtain a rifle, shotgun, or ammunition therefor in Ohio.

(C) Any purchase and sale pursuant to this section shall be for such purposes and under such circumstances and upon such conditions as are prescribed by the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 922(b)(3), and any amendments or additions thereto or reenactments thereof.

HISTORY: 134 v H 511, Eff 1-1-74.

Not analogous to former RC § 2923.22 (RS § 6884; S&S 694; 71 v 105; 77 v 145; 79 v 131; 89 v 234; GC § 12639; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2923.57 (133 v H 484), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.23 Immunity from prosecution.

(A) No person who acquires, possesses, or carries a firearm or dangerous ordnance in violation of section 2923.13 or 2923.17 of the Revised Code shall be prosecuted for such violation, if he reports his possession of firearms or dangerous ordnance to any law enforcement authority, describes the firearms of [or] dangerous ordnance in his possession and where they may be found, and voluntarily surrenders the firearms or dangerous ordnance to the law enforcement authority. A surrender is not voluntary if it occurs when the person is taken into custody or during a pursuit or attempt to take the person into custody under circumstances indicating that the surrender is made under threat of force.

(B) No person in violation of section 2923.13 of the Revised Code solely by reason of his being under indictment shall be prosecuted for such violation if, within ten days after service of the indictment, he voluntarily surrenders the firearms and dangerous ordnance in his possession to any law enforcement authority pursuant to division (A) of this section, for safekeeping pending disposition of the indictment or of an application for relief under section 2923.14 of the Revised Code.

(C) Evidence obtained from or by reason of an application or proceeding under section 2923.14 of the Revised Code for relief from disability, shall not be used in a prosecution of the applicant for any violation of section 2923.13 of the Revised Code.

(D) Evidence obtained from or by reason of an application under section 2923.18 of the Revised Code for a permit to possess dangerous ordnance, shall not be used in a prosecution of the applicant for any violation of section 2923.13 or 2923.17 of the Revised Code.

HISTORY: 134 v H 511, Eff 1-1-74.

Not analogous to former RC § 2923.23 (GC § 12642, repealed in 113 v 685; 115 v 70; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.24 Possessing criminal tools.

(A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

(B) Each of the following constitutes prima-facie evidence of criminal purpose:

(1) Possession or control of any dangerous ordnance, or the materials or parts for making dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use;

(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use;

(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96.

Not analogous to former RC § 2923.24 (RS § 6928-1; 92 v 97; GC § 12779; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 6 of SB 2.

§ 2923.25 Federally licensed firearms dealers to offer locking device to purchaser.

Each federally licensed firearms dealer who sells any firearm, at the time of the sale of the firearm, shall offer for sale to the purchaser of the firearm a trigger lock, gun lock, or gun locking device that is appropriate for that firearm. Each federally licensed firearms dealer shall post

in a conspicuous location in the dealer's place of business the poster furnished to the dealer pursuant to section 5502.63 of the Revised Code and shall make available to all purchasers of firearms from the dealer the brochure furnished to the dealer pursuant to that section.

As used in this section, "federally licensed firearms dealer" has the same meaning as in section 5502.63 of the Revised Code.

HISTORY: 150 v H 12, § 1, eff. 4-8-04; 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

Not analogous to former RC § 2923.25, repealed, 134 v H 511, § 2 [GC § 12798-6; 108 v PtL 419; Bureau of Code Revision, 10-1-53]. Eff 1-1-74.

[CORRUPT ACTIVITY]

§ 2923.31 Definitions.

As used in sections 2923.31 to 2923.36 of the Revised Code:

(A) "Beneficial interest" means any of the following:

(1) The interest of a person as a beneficiary under a trust in which the trustee holds title to personal or real property;

(2) The interest of a person as a beneficiary under any other trust arrangement under which any other person holds title to personal or real property for the benefit of such person;

(3) The interest of a person under any other form of express fiduciary arrangement under which any other person holds title to personal or real property for the benefit of such person.

"Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership.

(B) "Costs of investigation and prosecution" and "costs of investigation and litigation" mean all of the costs incurred by the state or a county or municipal corporation under sections 2923.31 to 2923.36 of the Revised Code in the prosecution and investigation of any criminal action or in the litigation and investigation of any civil action, and includes, but is not limited to, the costs of resources and personnel.

(C) "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises.

(D) "Innocent person" includes any bona fide purchaser of property that is allegedly involved in a violation of section 2923.32 of the Revised Code, including any person who establishes a valid claim to or interest in the property in accordance with division (E) of section 2981.04 of the Revised Code, and any victim of an alleged violation of that section or of any underlying offense involved in an alleged violation of that section.

(E) "Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.

(F) "Pecuniary value" means money, a negotiable instrument, a commercial interest, or anything of value, as defined in section 1.03 of the Revised Code, or any other property or service that has a value in excess of one hundred dollars.

(G) "Person" means any person, as defined in section 1.59 of the Revised Code, and any governmental officer, employee, or entity.

(H) "Personal property" means any personal property, any interest in personal property, or any right, including, but not limited to, bank accounts, debts, corporate stocks, patents, or copyrights. Personal property and any beneficial interest in personal property are deemed to be located where the trustee of the property, the personal property, or the instrument evidencing the right is located.

(I) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as "racketeering activity" under the "Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, or 2923.17; division (F)(1)(a), (b), or (c) of section 1315.53; division (A)(1) or (2) of section 1707.042 [1707.04.2]; division (B), (C)(4), (D), (E), or (F) of section 1707.44; division (A)(1) or (2) of section 2923.20; division (J)(1) of section 4712.02; section 4719.02, 4719.05, or 4719.06; division (C), (D), or (E) of section 4719.07; section 4719.08; or division (A) of section 4719.09 of the Revised Code.

(b) Any violation of section 3769.11, 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, or any violation of section 2915.05 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been

a violation of section 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to that date.

(c) Any violation of section 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37 of the Revised Code, any violation of section 2925.11 of the Revised Code that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of section 2915.02 of the Revised Code that occurred prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, any violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996, or any violation of division (B) of section 2915.05 of the Revised Code as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds five hundred dollars, or any combination of violations described in division (I)(2)(c) of this section when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds five hundred dollars;

(d) Any violation of section 5743.112 [5743.11.2] of the Revised Code when the amount of unpaid tax exceeds one hundred dollars;

(e) Any violation or combination of violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds five hundred dollars;

(f) Any combination of violations described in division (I)(2)(c) of this section and violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds five hundred dollars.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism.

(J) "Real property" means any real property or any interest in real property, including, but not limited to, any lease of, or mortgage upon, real property. Real property and any beneficial interest in it is deemed to be located where the real property is located.

(K) "Trustee" means any of the following:

(1) Any person acting as trustee under a trust in which the trustee holds title to personal or real property;

(2) Any person who holds title to personal or real property for which any other person has a beneficial interest;

(3) Any successor trustee.

"Trustee" does not include an assignee or trustee for an insolvent debtor or an executor, administrator, administrator with the will annexed, testamentary trustee, guardian, or committee, appointed by, under the control of, or accountable to a court.

(L) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any federal or state law relating to the business of gambling activity or relating to the business of lending money at an usurious rate unless the creditor proves, by a preponderance of the evidence, that the usurious rate was not intentionally set and that it resulted from a good faith error by the creditor, notwithstanding the maintenance of procedures that were adopted by the creditor to avoid an error of that nature.

(M) "Animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts.

(N) "Animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus, amusement park, hunting preserve, or premises in which a horse or dog event is held.

(O) "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility.

(P) "Research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

HISTORY: 141 v H 5 (Eff 1-1-86); 141 v S 74 (Eff 9-3-86); 142 v H 708 (Eff 4-19-88); 142 v H 624 (Eff 3-17-89); 143 v H 347 (Eff 7-18-90); 144 v S 323 (Eff 4-16-93); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 333 (Eff 9-19-96); 146 v S 214, § 1 (Eff 12-5-96); 146 v S 214, § 3 (Eff 12-5-96); 146 v S 277 (Eff 3-31-97); 147 v H 565 (Eff 3-30-99); 149 v S 184 (Eff 5-15-2002); 151 v S 9, § 1, eff. 4-14-06; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

Not analogous to former RC § 2923.31 (RS § 6983-1; 92 v 122; GC § 13411; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2923.32 Engaging in pattern of corrupt activity; forfeiture.

(A)(1) No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt.

(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

A purchase of securities on the open market with intent to make an investment, without intent to control or participate in the control of the issuer, and without intent to assist another to do so is not a violation of this division, if the securities of the issuer held after the purchase by the purchaser, the members of the purchaser's immediate family, and the purchaser's or the immediate family members' accomplices in any pattern of corrupt activity or the collection of an unlawful debt do not aggregate one per cent of the outstanding securities of any one class of the issuer and do not confer, in law or in fact, the power to elect one or more directors of the issuer.

(B)(1) Whoever violates this section is guilty of engaging in a pattern of corrupt activity. Except as otherwise provided in this division, engaging in corrupt activity is a felony of the second degree. If at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under the law of this state that was committed prior to July 1, 1996, and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in this state on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under the law of this state, engaging in a pattern of corrupt activity is a felony of the first degree. Notwithstanding any other provision of law, a person may be convicted of violating the provisions of this section as well as of a conspiracy to violate one or more of those provisions under section 2923.01 of the Revised Code.

(2) Notwithstanding the financial sanctions authorized by section 2929.18 of the Revised Code, the court may do all of the following with respect to any person who derives pecuniary value or causes property damage, personal injury other than pain and suffering, or other loss through or by the violation of this section:

(a) In lieu of the fine authorized by that section, impose a fine not exceeding the greater of three times the gross value gained or three times the gross loss caused

and order the clerk of the court to pay the fine into the state treasury to the credit of the corrupt activity investigation and prosecution fund, which is hereby created;

(b) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by section 2929.18 of the Revised Code, order the person to pay court costs;

(c) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by section 2929.18 of the Revised Code, order the person to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution the costs of investigation and prosecution that are reasonably incurred.

The court shall hold a hearing to determine the amount of fine, court costs, and other costs to be imposed under this division.

(3) In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation, including all of the following:

(a) Any position, office, appointment, tenure, commission, or employment contract of any kind acquired or maintained by the person in violation of this section, through which the person, in violation of this section, conducted or participated in the conduct of an enterprise, or that afforded the person a source of influence or control over an enterprise that the person exercised in violation of this section;

(b) Any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in division (B)(3)(a) of this section that accrued to the person in violation of this section during the period of the pattern of corrupt activity;

(c) Any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of this section;

(d) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of this section.

HISTORY: 141 v H 5 (Eff 1-1-86); 141 v S 74 (Eff 9-3-86); 142 v H 708 (Eff 4-19-88); 143 v H 215 (Eff 4-11-90); 143 v H 266 (Eff 9-6-90); 146 v S 2 (Eff 7-1-96); 147 v S 164 (Eff 1-15-98); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

Not analogous to former RC § 2923.32 (GC § 12674; 114 v 143; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 179.

§ 2923.33

Repealed, [151 v H 241, § 2 [141 v H 5 (Eff 1-1-86); 143 v H 266 (Eff 9-6-90); 148 v S 179, § 3. Eff 1-1-2002]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned motion and order to preserve reachability of property subject to forfeit.

§ 2923.34 Civil proceedings for relief from violation; civil penalty.

(A) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern of corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation of division (A)(1) or (2) of section 1707.042 [1707.04.2] or division (B), (C)(4), (D), (E), or (F) of section 1707.44 of the Revised Code, of 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2314, or any other offense involving fraud in the sale of securities.

(B) If the plaintiff in a civil action instituted pursuant to this section proves the violation by a preponderance of the evidence, the court, after making due provision for the rights of innocent persons, may grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated. The orders may include, but are not limited to, orders that:

(1) Require the divestiture of the defendant's interest in any enterprise or in any real property;

(2) Impose reasonable restrictions upon the future activities or investments of any defendant in the action, including, but not limited to, restrictions that prohibit the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of section 2923.32 of the Revised Code;

(3) Order the dissolution or reorganization of any enterprise;

(4) Order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any department or agency of the state;

(5) Order the dissolution of a corporation organized under the laws of this state, or the revocation of the authorization of a foreign corporation to conduct business within this state, upon a finding that the board of directors or an agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of section 2923.32 of the Revised Code, and that, for the prevention of future criminal conduct, the public interest requires the corporation to be dissolved or its license revoked.

(C) Relief pursuant to division (B)(3), (4), or (5) of this section shall not be granted in any civil proceeding instituted by an injured person unless the attorney general intervenes in the civil action pursuant to this division.

Upon the filing of a civil proceeding for relief under division (B)(3), (4), or (5) of this section by an allegedly injured person other than a prosecuting attorney, the allegedly injured person immediately shall notify the attorney general of the filing. The attorney general, upon timely application, may intervene in any civil proceeding for relief under division (B)(3), (4), or (5) if the attorney general certifies that, in the attorney general's opinion, the proceeding is of general public interest. In any proceeding brought by an injured person under division (B)(3), (4), or (5) of this section, the attorney general is

entitled to the same relief as if the attorney general instituted the proceeding.

(D) In a civil proceeding under division (B) of this section, the court may grant injunctive relief without a showing of special or irreparable injury.

Pending final determination of a civil proceeding initiated under this section, the court may issue a temporary restraining order or a preliminary injunction upon a showing of immediate danger or significant injury to the plaintiff, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an improvidently granted injunction.

(E) In a civil proceeding under division (A) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section, other than a violator of that section or a conspirator to violate that section, in addition to relief under division (B) of this section, shall have a cause of action for triple the actual damages the person sustained. To recover triple damages, the plaintiff shall prove the violation or conspiracy to violate that section and actual damages by clear and convincing evidence. Damages under this division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

(F) In a civil action in which the plaintiff prevails under division (B) or (E) of this section, the plaintiff shall recover reasonable attorney fees in the trial and appellate courts, and the court shall order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that reasonably are incurred and that are not ordered to be paid pursuant to division (B)(2) of section 2923.32 of the Revised Code or division (H) of this section.

(G) Upon application, based on the evidence presented in the case by the plaintiff, as the interests of justice may require, the trial court may grant a defendant who prevails in a civil action brought pursuant to this section all or part of the defendant's costs, including the costs of investigation and litigation reasonably incurred, and all or part of the defendant's reasonable attorney fees, unless the court finds that special circumstances, including the relative economic position of the parties, make an award unjust.

(H) If a person, other than an individual, is not convicted of a violation of section 2923.32 of the Revised Code, the prosecuting attorney may institute proceedings against the person to recover a civil penalty for conduct that the prosecuting attorney proves by clear and convincing evidence is in violation of section 2923.32 of the Revised Code. The civil penalty shall not exceed one hundred thousand dollars and shall be paid into the state treasury to the credit of the corrupt activity investigation and prosecution fund created in section 2923.32 of the Revised Code. If a civil penalty is ordered pursuant to this division, the court shall order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that are reasonably incurred and that are not ordered to be paid pursuant to this section.

(I) A final judgment, decree, or delinquency adjudication rendered against the defendant or the adjudicated delinquent child in a civil action under this section or in

a criminal or delinquency action or proceeding for a violation of section 2923.32 of the Revised Code shall estop the defendant or the adjudicated delinquent child in any subsequent civil proceeding or action brought by any person as to all matters as to which the judgment, decree, or adjudication would be an estoppel as between the parties to the civil, criminal, or delinquency proceeding or action.

(J) Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or action under this section may be commenced at any time within five years after the unlawful conduct terminates or the cause of action accrues or within any longer statutory period of limitations that may be applicable. If a criminal proceeding, delinquency proceeding, civil action, or other proceeding is brought or intervened in by the state to punish, prevent, or restrain any activity that is unlawful under section 2923.32 of the Revised Code, the running of the period of limitations prescribed by this division with respect to any civil action brought under this section by a person who is injured by a violation or threatened violation of section 2923.32 of the Revised Code, based in whole or in part upon any matter complained of in the state prosecution, action, or proceeding, shall be suspended during the pendency of the state prosecution, action, or proceeding and for two years following its termination.

(K) Personal service of any process in a proceeding under this section may be made upon any person outside this state if the person was involved in any conduct constituting a violation of section 2923.32 of the Revised Code in this state. The person is deemed by the person's conduct in violation of section 2923.32 of the Revised Code to have submitted to the jurisdiction of the courts of this state for the purposes of this section.

(L) The application of any civil remedy under this section shall not preclude the application of any criminal remedy or criminal forfeiture under section 2923.32 of the Revised Code or any other provision of law, or the application of any delinquency disposition under Chapter 2152. of the Revised Code or any other provision of law.

(M)(1) Any person who prevails in a civil action pursuant to this section has a right to any property, or the proceeds of any property, criminally forfeited to the state pursuant to section 2981.04 of the Revised Code or against which any fine under section 2923.32 of the Revised Code or civil penalty under division (H) of this section may be imposed.

The right of any person who prevails in a civil action pursuant to this section, other than a prosecuting attorney performing official duties under that section, to forfeited property, property against which fines and civil penalties may be imposed, and the proceeds of that property is superior to any right of the state, a municipal corporation, or a county to the property or the proceeds of the property, if the civil action is brought within one hundred eighty days after the entry of a sentence of forfeiture or a fine pursuant to sections 2923.32 and 2981.04 of the Revised Code or the entry of a civil penalty pursuant to division (H) of this section.

The right is limited to the total value of the treble damages, civil penalties, attorney's fees, and costs awarded to the prevailing party in an action pursuant to this section, less any restitution received by the person.

(2) If the aggregate amount of claims of persons who have prevailed in a civil action pursuant to this section against any one defendant is greater than the total value

of the treble fines, civil penalties, and forfeited property paid by the person against whom the actions were brought, all of the persons who brought their actions within one hundred eighty days after the entry of a sentence or disposition of forfeiture or a fine pursuant to section 2923.32 of the Revised Code or the entry of a civil penalty pursuant to division (H) of this section, first shall receive a pro rata share of the total amount of the fines, civil penalties, and forfeited property. After the persons who brought their actions within the specified one-hundred-eighty-day period have satisfied their claims out of the fines, civil penalties, and forfeited property, all other persons who prevailed in civil actions pursuant to this section shall receive a pro rata share of the total amount of the fines, civil penalties, and forfeited property that remains in the custody of the law enforcement agency or in the corrupt activity investigation and prosecution fund.

(N) As used in this section, "law enforcement agency" includes, but is not limited to, the state board of pharmacy.

HISTORY: 141 v H 5 (Eff 1-1-86); 141 v H 428 (Eff 12-23-86); 143 v H 266 (Eff 9-6-90); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

Not analogous to former RC § 2923.34 (GC § 12674-2; 114 v 143, § 3; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 5 of SB 179.

§ 2923.35

Repealed, 151 v H 241, § 2 [141 v H 5 (Eff 1-1-86); 141 v S 74 (Eff 9-3-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); 144 v S 174 (Eff 7-31-92); 145 v H 152 (Eff 7-1-93); 146 v H 1 (Eff 1-1-96); 146 v H 670 (Eff 12-2-96); 147 v S 164. Eff 1-15-98; 150 v H 95, § 1, eff. 6-26-03; 151 v H 66, § 101.01, eff. 9-29-05]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned disposition of forfeited property, fine or civil penalty.

§ 2923.36 Filing of corrupt activity lien notice; lis pendens.

(A) Upon the institution of any criminal proceeding charging a violation of section 2923.32 of the Revised Code, the filing of any complaint, indictment, or information in juvenile court alleging a violation of that section as a delinquent act, or the institution of any civil proceeding under section 2923.34 or 2981.05 of the Revised Code, the state, at any time during the pendency of the proceeding, may file a corrupt activity lien notice with the county recorder of any county in which property subject to forfeiture may be located. No fee shall be required for filing the notice. The recorder immediately shall record the notice pursuant to section 317.08 of the Revised Code.

(B) A corrupt activity lien notice shall be signed by the prosecuting attorney who files the lien. The notice shall set forth all of the following information:

(1) The name of the person against whom the proceeding has been brought. The prosecuting attorney may specify in the notice any aliases, names, or fictitious names under which the person may be known. The

prosecuting attorney also may specify any corporation, partnership, or other entity in which the person has an interest subject to forfeiture under Chapter 2981. of the Revised Code and shall describe in the notice the person's interest in the corporation, partnership, or other entity.

(2) If known to the prosecuting attorney, the present residence and business addresses of the person or names set forth in the notice;

(3) A statement that a criminal or delinquency proceeding for a violation of section 2923.32 of the Revised Code or a civil proceeding under section 2923.34 or 2981.05 of the Revised Code has been brought against the person named in the notice, the name of the county in which the proceeding has been brought, and the case number of the proceeding;

(4) A statement that the notice is being filed pursuant to this section;

(5) The name and address of the prosecuting attorney filing the notice;

(6) A description of the real or personal property subject to the notice and of the interest in that property of the person named in the notice, to the extent the property and the interest of the person in it reasonably is known at the time the proceeding is instituted or at the time the notice is filed.

(C) A corrupt activity lien notice shall apply only to one person and, to the extent applicable, any aliases, fictitious names, or other names, including names of corporations, partnerships, or other entities, to the extent permitted in this section. A separate corrupt activity lien notice is required to be filed for any other person.

(D) Within seven days after the filing of each corrupt activity lien notice, the prosecuting attorney who files the notice shall furnish to the person named in the notice by certified mail, return receipt requested, to the last known business or residential address of the person, a copy of the recorded notice with a notation on it of any county in which the notice has been recorded. The failure of the prosecuting attorney to furnish a copy of the notice under this section shall not invalidate or otherwise affect the corrupt activity lien notice when the prosecuting attorney did not know and could not reasonably ascertain the address of the person entitled to notice.

After receipt of a copy of the notice under this division, the person named in the notice may petition the court to authorize the person to post a surety bond in lieu of the lien or to otherwise modify the lien as the interests of justice may require. The bond shall be in an amount equal to the value of the property reasonably known to be subject to the notice and conditioned on the payment of any judgment and costs ordered in an action pursuant to Chapter 2981. of the Revised Code up to the value of the bond.

(E) From the date of filing of a corrupt activity lien notice, the notice creates a lien in favor of the state on any personal or real property or any beneficial interest in the property located in the county in which the notice is filed that then or subsequently is owned by the person named in the notice or under any of the names set forth in the notice.

The lien created in favor of the state is superior and prior to the interest of any other person in the personal or real property or beneficial interest in the property, if the interest is acquired subsequent to the filing of the notice.

(F)(1) Notwithstanding any law or rule to the contrary, in conjunction with any civil proceeding brought pursuant to section 2981.05 of the Revised Code, the prose-

cuting attorney may file in any county, without prior court order, a lis pendens pursuant to sections 2703.26 and 2703.27 of the Revised Code. In such a case, any person acquiring an interest in the subject property or beneficial interest in the property, if the property interest is acquired subsequent to the filing of the lis pendens, shall take the property or interest subject to the civil proceeding and any subsequent judgment.

(2) If a corrupt activity lien notice has been filed, the prosecuting attorney may name as a defendant in the lis pendens, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in the property subsequent to the filing of the notice. If a judgment of forfeiture is entered in the criminal or delinquency proceeding pursuant to section 2981.04 of the Revised Code in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

(G) Upon a final judgment of forfeiture in favor of the state pursuant to Chapter 2981. of the Revised Code, title of the state to the forfeited property shall do either of the following:

(1) In the case of real property, or a beneficial interest in it, relate back to the date of filing of the corrupt activity lien notice in the county where the property or interest is located. If no corrupt activity lien notice was filed, title of the state relates back to the date of the filing of any lis pendens under division (F) of this section in the records of the county recorder of the county in which the real property or beneficial interest is located. If no corrupt activity lien notice or lis pendens was filed, title of the state relates back to the date of the recording of the final judgment of forfeiture in the records of the county recorder of the county in which the real property or beneficial interest is located.

(2) In the case of personal property or a beneficial interest in it, relate back to the date on which the property or interest was seized by the state, or the date of filing of a corrupt activity lien notice in the county in which the property or beneficial interest is located. If the property was not seized and no corrupt activity lien notice was filed, title of the state relates back to the date of the recording of the final judgment of forfeiture in the county in which the personal property or beneficial interest is located.

(H) If personal or real property, or a beneficial interest in it, that is subject to forfeiture pursuant to section 2923.32 of the Revised Code is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of either a corrupt activity lien notice, or a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code, whichever is earlier, the state may bring an action in any court of common pleas against the person named in the corrupt activity lien notice or the defendant in the criminal, delinquency, or civil proceeding to recover the value of the property or interest. The court shall enter final judgment against the person named in the notice or the defendant for an amount equal to the value of the property or interest together with investigative costs and attorney's fees incurred by the state in the action. If a civil proceeding is pending, an action pursuant to this section shall be filed in the court in which the proceeding is pending.

(I) If personal or real property, or a beneficial interest in it, that is subject to forfeiture pursuant to Chapter

2981. of the Revised Code is alienated or otherwise transferred or disposed of after either the filing of a corrupt activity lien notice, or the filing of a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code, whichever is earlier, the transfer or disposal is fraudulent as to the state and the state shall have all the rights granted a creditor under Chapter 1336. of the Revised Code.

(J) No trustee, who acquires actual knowledge that a corrupt activity lien notice, a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code has been filed against any person for whom the trustee holds legal or record title to personal or real property, shall recklessly fail to furnish promptly to the prosecuting attorney all of the following:

(1) The name and address of the person, as known to the trustee;

(2) The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the property;

(3) If requested by the prosecuting attorney, a copy of the trust agreement or other instrument under which the trustee holds title to the property.

Any trustee who fails to comply with this division is guilty of failure to provide corrupt activity lien information, a misdemeanor of the first degree.

(K) If a trustee transfers title to personal or real property after a corrupt activity lien notice is filed against the property, the lien is filed in the county in which the property is located, and the lien names a person who holds a beneficial interest in the property, the trustee, if the trustee has actual notice of the notice, shall be liable to the state for the greater of the following:

(1) The proceeds received directly by the person named in the notice as a result of the transfer;

(2) The proceeds received by the trustee as a result of the transfer and distributed to the person named in the notice;

(3) The fair market value of the interest of the person named in the notice in the property transferred.

However, if the trustee transfers property for at least its fair market value and holds the proceeds that otherwise would be paid or distributed to the beneficiary, or at the direction of the beneficiary or the beneficiary's designee, the liability of the trustee shall not exceed the amount of the proceeds held by the trustee.

(L) The filing of a corrupt activity lien notice does not constitute a lien on the record title to personal or real property owned by the trustee, except to the extent the trustee is named in the notice.

The prosecuting attorney for the county may bring a civil action in any court of common pleas to recover from the trustee the amounts set forth in division (H) of this section. The county may recover investigative costs and attorney's fees incurred by the prosecuting attorney.

(M)(1) This section does not apply to any transfer by a trustee under a court order, unless the order is entered in an action between the trustee and the beneficiary.

(2) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a corrupt activity lien notice or otherwise is a defendant in a civil proceeding brought pursuant to section 2923.34 or 2981.05 of the Revised Code, this section does not apply to either of the following:

(a) Any transfer by a trustee required under the terms of any trust agreement, if the agreement is a matter of public record before the filing of any corrupt activity lien notice;

(b) Any transfer by a trustee to all of the persons who own a beneficial interest in the trust.

(N) The filing of a corrupt activity lien notice does not affect the use to which personal or real property, or a beneficial interest in it, that is owned by the person named in the notice may be put or the right of the person to receive any proceeds resulting from the use and ownership, but not the sale, of the property, until a judgment of forfeiture is entered.

(O) The term of a corrupt activity lien notice is five years from the date the notice is filed, unless a renewal notice has been filed by the prosecuting attorney of the county in which the property or interest is located. The term of any renewal of a corrupt activity lien notice granted by the court is five years from the date of its filing. A corrupt activity lien notice may be renewed any number of times while a criminal or civil proceeding under section 2923.34, 2981.04, or 2981.05 of the Revised Code, or an appeal from either type of proceeding, is pending.

(P) The prosecuting attorney who files the corrupt activity lien notice may terminate, in whole or part, any corrupt activity lien notice or release any personal or real property or beneficial interest in the property upon any terms that the prosecuting attorney determines are appropriate. Any termination or release shall be filed by the prosecuting attorney with each county recorder with whom the notice was filed. No fee shall be imposed for the filing.

(Q)(1) If no civil proceeding has been brought by the prosecuting attorney pursuant to section 2923.34 of the Revised Code against the person named in the corrupt activity lien notice, the acquittal in a criminal or delinquency proceeding for a violation of section 2923.32 of the Revised Code of the person named in the notice or the dismissal of a criminal or delinquency proceeding for such a violation against the person named in the notice terminates the notice. In such a case, the filing of the notice has no effect.

(2) If a civil proceeding has been brought pursuant to section 2923.34 or 2981.05 of the Revised Code with respect to any property that is the subject of a corrupt activity lien notice and if the criminal or delinquency proceeding brought against the person named in the notice for a violation of section 2923.32 of the Revised Code has been dismissed or the person named in the notice has been acquitted in the criminal or delinquency proceeding for such a violation, the notice shall continue for the duration of the civil proceeding and any appeals from the civil proceeding, except that it shall not continue any longer than the term of the notice as determined pursuant to division (O) of this section.

(3) If no civil proceeding brought pursuant to section 2981.05 of the Revised Code then is pending against the person named in a corrupt activity lien notice, any person so named may bring an action against the prosecuting attorney who filed the notice, in the county where it was filed, seeking a release of the property subject to the notice or termination of the notice. In such a case, the court of common pleas promptly shall set a date for hearing, which shall be not less than five nor more than ten days after the action is filed. The order and a copy of the complaint shall be served on the prosecuting attorney

within three days after the action is filed. At the hearing, the court shall take evidence as to whether any personal or real property, or beneficial interest in it, that is owned by the person bringing the action is covered by the notice or otherwise is subject to forfeiture. If the person bringing the action shows by a preponderance of the evidence that the notice does not apply to the person or that any personal or real property, or beneficial interest in it, that is owned by the person is not subject to forfeiture, the court shall enter a judgment terminating the notice or releasing the personal or real property or beneficial interest from the notice.

At a hearing, the court may release from the notice any property or beneficial interest upon the posting of security, by the person against whom the notice was filed, in an amount equal to the value of the property or beneficial interest owned by the person.

(4) The court promptly shall enter an order terminating a corrupt activity lien notice or releasing any personal or real property or beneficial interest in the property, if a sale of the property or beneficial interest is pending and the filing of the notice prevents the sale. However, the proceeds of the sale shall be deposited with the clerk of the court, subject to the further order of the court.

(R) Notwithstanding any provision of this section, any person who has perfected a security interest in personal or real property or a beneficial interest in the property for the payment of an enforceable debt or other similar obligation prior to the filing of a corrupt activity lien notice or a lis pendens in reference to the property or interest may foreclose on the property or interest as otherwise provided by law. The foreclosure, insofar as practical, shall be made so that it otherwise will not interfere with a forfeiture under Chapter 2981. of the Revised Code.

HISTORY: 141 v H 5 (Eff 1-1-86); 143 v H 190 (Eff 9-25-89); 143 v H 266 (Eff 9-6-90); 143 v H 506 (Eff 9-28-90); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 5 of SB 179.

The provisions of § 11 of SB 179 (148 v —) read, in part, as follows:

SECTION 11. * * * Section 2923.36 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 266 and Sub. H.B. 506 of the 118th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 349, Am. S.B. 9, Am. Sub. S.B. 22, and Am. Sub. S.B. 107 of the 123rd General Assembly, with the new language of none of the acts shown in capital letters. Section 2929.12 of the Revised Code is presented in this act as a composite of the section as amended by both Am. S.B. 9 and Am. Sub. S.B. 107 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

[CRIMINAL GANGS]

§ 2923.41 Definitions.

As used in sections 2923.41 to 2923.44 of the Revised Code:

(A) "Criminal gang" means an ongoing formal or informal organization, association, or group of three or more persons to which all of the following apply:

(1) It has as one of its primary activities the commission of one or more of the offenses listed in division (B) of this section.

(2) It has a common name or one or more common, identifying signs, symbols, or colors.

(3) The persons in the organization, association, or group individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(B)(1) "Pattern of criminal gang activity" means, subject to division (B)(2) of this section, that persons in the criminal gang have committed, attempted to commit, conspired to commit, been complicitors in the commission of, or solicited, coerced, or intimidated another to commit, attempt to commit, conspire to commit, or be in complicity in the commission of two or more of any of the following offenses:

(a) A felony or an act committed by a juvenile that would be a felony if committed by an adult;

(b) An offense of violence or an act committed by a juvenile that would be an offense of violence if committed by an adult;

(c) A violation of section 2907.04, 2909.06, 2911.211 [2911.21.1], 2917.04, 2919.23, or 2919.24 of the Revised Code, section 2921.04 or 2923.16 of the Revised Code, section 2925.03 of the Revised Code if the offense is trafficking in marihuana, or section 2927.12 of the Revised Code.

(2) There is a "pattern of criminal gang activity" if all of the following apply with respect to the offenses that are listed in division (B)(1)(a), (b), or (c) of this section and that persons in the criminal gang committed, attempted to commit, conspired to commit, were in complicity in committing, or solicited, coerced, or intimidated another to commit, attempt to commit, conspire to commit, or be in complicity in committing:

(a) At least one of the two or more offenses is a felony.

(b) At least one of those two or more offenses occurs on or after January 1, 1999.

(c) The last of those two or more offenses occurs within five years after at least one of those offenses.

(d) The two or more offenses are committed on separate occasions or by two or more persons.

(C) "Criminal conduct" means the commission of, an attempt to commit, a conspiracy to commit, complicity in the commission of, or solicitation, coercion, or intimidation of another to commit, attempt to commit, conspire to commit, or be in complicity in the commission of an offense listed in division (B)(1)(a), (b), or (c) of this section or an act that is committed by a juvenile and that would be an offense, an attempt to commit an offense, a conspiracy to commit an offense, complicity in the commission of, or solicitation, coercion, or intimidation of another to commit, attempt to commit, conspire to commit, or be in complicity in the commission of an offense listed in division (B)(1)(a), (b), or (c) of this section if committed by an adult.

(D) "Juvenile" means a person who is under eighteen years of age.

(E) "Law enforcement agency" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(F) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

HISTORY: 147 v H 2. Eff 1-1-99; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. **Not analogous to former RC § 2923.41 (125 v S 28 (211); 134 v H 344), repealed 134 v H 511, § 2, eff 1-1-74.**

The effective date is set by section 4 of HB 2.

The provisions of § 3 of HB 2 (147 v —) read as follows:

SECTION 3. (A) The General Assembly finds that it is the right of every individual, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this act to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of grievances, and to participate in the electoral process.

(B) The General Assembly finds, however, that the state of Ohio is facing a mounting crisis caused by criminal gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(C) It is the intent of the General Assembly to eradicate the terror created by criminal gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, and instrumentalities of criminal gang activity.

§ 2923.42 Participating in criminal gang.

(A) No person who actively participates in a criminal gang, with knowledge that the criminal gang engages in or has engaged in a pattern of criminal gang activity, shall purposely promote, further, or assist any criminal conduct, as defined in division (C) of section 2923.41 of the Revised Code, or shall purposely commit or engage in any act that constitutes criminal conduct, as defined in division (C) of section 2923.41 of the Revised Code.

(B) Whoever violates this section is guilty of participating in a criminal gang, a felony of the second degree.

(C)(1) Notwithstanding any contrary provision of any section of the Revised Code, the clerk of the court shall pay any fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (C)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the fines so paid in accordance with the written internal control policy adopted by the recipient agency under division (C)(2) of this section to subsidize the agency's law enforcement efforts that pertain to criminal gangs.

(2)(a) Prior to receiving any fine moneys under division (C)(1) of this section or division (B) of section 2923.44 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the

receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under division (C)(2)(a) of this section is a public record open for inspection under section 149.43 of the Revised Code, and the agency that adopted the policy shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (C)(1) of this section or division (B) of section 2923.44 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (C)(2)(a) of this section for that calendar year and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send the president of the senate and the speaker of the house of representatives a written notice that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in division (C)(2)(b) of this section that cover the previous calendar year and indicates that the reports were received under division (C)(2)(b) of this section;

(ii) Indicates that the reports are open for inspection under section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all reports to the president of the senate or the speaker of the house upon request.

(D) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections.

HISTORY: 147 v H 2. Eff 1-1-99; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. **Not analogous to former RC § 2923.42 (128 v 623; 129 v 376; 129 v 582 (748)), repealed 134 v H 511, § 2, eff 1-1-74.**

The effective date is set by section 4 of HB 2.

See provisions, § 3 of HB 2 (147 v —), following RC § 2923.41.

§ 2923.43 Criminal gang premises constitute nuisance.

Any building, premises, or real estate, including vacant land, that is used or occupied by a criminal gang on more than two occasions within a one-year period to engage in a pattern of criminal gang activity constitutes a nuisance subject to abatement pursuant to sections 3767.01 to 3767.11 of the Revised Code.

HISTORY: 147 v H 2. Eff 1-1-99.

Not analogous to former RC § 2923.43 (132 v H 332), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 2.

See provisions, § 3 of HB 2 (147 v —), following RC § 2923.41.

§ 2923.44 Fines.

(A) If a person is convicted of or pleads guilty to a violation of section 2923.42 of the Revised Code, or a juvenile is found by a juvenile court to be a delinquent child for an act that is a violation of section 2923.42 of the Revised Code, and derives profits or other proceeds from the offense or act, the court that imposes sentence or an order of disposition upon the offender or delinquent child, in lieu of any fine that the court is otherwise authorized or required to impose, may impose upon the offender or delinquent child a fine of not more than twice the gross profits or other proceeds so derived.

(B) Notwithstanding any contrary provision of the Revised Code, the clerk of the court shall pay all fines imposed pursuant to this section to the county, municipal corporation, township, park district created pursuant to section 511.18 or 1545.01 of the Revised Code, or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy pursuant to division (C)(2) of section 2923.42 of the Revised Code that addresses the use of the fine moneys that it receives under this section and division (C)(1) of section 2923.42 of the Revised Code. The law enforcement agencies shall use the fines imposed and paid pursuant to this section to subsidize their efforts pertaining to criminal gangs, in accordance with the written internal control policy adopted by the recipient agency pursuant to division (C)(2) of section 2923.42 of the Revised Code.

HISTORY: 147 v H 2 (Eff 1-1-99); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 5 of SB 179.

§ 2923.45

Repealed, 151 v H 241, § 2 [147 v H 2 (Eff 1-1-99); 148 v S 179, § 3. Eff 1-1-2002]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned property subject to civil forfeiture and seizure.

§ 2923.46

Repealed, 151 v H 241, § 2 [147 v H 2. Eff 1-1-99; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 530, § 101.01, eff. 3-30-06]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned options of head of law enforcement agency as to seized property; disposition; application of general forfeiture provision.

§ 2923.47

Repealed, 151 v H 241, § 2 [147 v H 2. Eff 1-1-99]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned motion for return of seized property.

CHAPTER 2925: DRUG OFFENSES

Section

2925.01 Definitions.

[CORRUPTING; TRAFFICKING]

2925.02 Corrupting another with drugs.

2925.03 Trafficking in drugs.

[DRUG ABUSE]

2925.04 Illegal manufacture of drugs or cultivation of marijuana.

[2925.04.1] 2925.041 Illegal assembly or possession of chemicals for the manufacture of drugs.

2925.05 Funding of drug or marijuana trafficking.

2925.06 Illegal administration or distribution of anabolic steroids.

2925.09 Offenses involving unapproved drugs; dangerous drug offenses involving livestock.

2925.11 Possession of drugs.

2925.12 Possessing drug abuse instruments.

2925.13 Permitting drug abuse.

2925.14 Drug paraphernalia offenses.

[DRUG THEFT]

2925.22 Deception to obtain a dangerous drug.

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§ 2925.01 Definitions.

As used in this chapter:

(A) "Administer," "controlled substance," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.

(B) "Drug dependent person" and "drug of abuse" have the same meanings as in section 3719.011 [3719.01.1] of the Revised Code.

(C) "Drug," "dangerous drug," "licensed health professional authorized to prescribe drugs," and "prescription" have the same meanings as in section 4729.01 of the Revised Code.

(D) "Bulk amount" of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of marihuana, cocaine, L. S. D., heroin, and hashish and except as provided in division (D) (2) or (5) of this section, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a schedule I stimulant or depressant;

(d) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws, as defined in section 3719.01 of the Revised Code, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws.

(2) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III opiate or opium derivative;

(4) An amount equal to or exceeding two hundred fifty milliliters or two hundred fifty grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance;

(5) An amount equal to or exceeding two hundred solid dosage units, sixteen grams, or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid.

(E) "Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(F) "Cultivate" includes planting, watering, fertilizing, or tilling.

(G) "Drug abuse offense" means any of the following:

(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of section 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code;

(2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (G) (1) of this section;

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element;

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under division (G) (1), (2), or (3) of this section.

(H) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(b) Any aerosol propellant;

- (c) Any fluorocarbon refrigerant;
- (d) Any anesthetic gas.
- (2) Gamma Butyrolactone;
- (3) 1,4 Butanediol.

(J) "Manufacture" means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

- (1) "The National Formulary";
- (2) "The United States Pharmacopeia," prepared by authority of the United States Pharmacopeial Convention, Inc.;
- (3) Other standard references that are approved by the state board of pharmacy.

(N) "Juvenile" means a person under eighteen years of age.

(O) "Counterfeit controlled substance" means any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(Q) "School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

(R) "School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(S) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.

(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that complies with the criteria set forth in Rule V, section 6 of the Rules for the Government of the Bar of Ohio.

(V) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in divisions (W)(1) to (36) of this section and that qualifies a person as a professionally licensed person.

(W) "Professionally licensed person" means any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Chapter 3719. of the Revised Code;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Chapter 4701. of the Revised Code and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Chapter 4703. of the Revised Code;

(4) A person who is registered as a landscape architect under Chapter 4703. of the Revised Code or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under Chapter 4707. of the Revised Code;

(6) A person who has been issued a certificate of registration as a registered barber under Chapter 4709. of the Revised Code;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Chapter 4710. of the Revised Code;

(8) A person who has been issued a cosmetologist's license, manicurist's license, esthetician's license, managing cosmetologist's license, managing manicurist's license, managing esthetician's license, cosmetology instructor's

license, manicurist instructor's license, esthetician instructor's license, or tanning facility permit under Chapter 4713. of the Revised Code;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Chapter 4717. of the Revised Code;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;

(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;

(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;

(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Chapter 4731. of the Revised Code;

(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;

(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;

(20) A person who has been issued a license to practice chiropractic under Chapter 4734. of the Revised Code;

(21) A person licensed to act as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code;

(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;

(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;

(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;

(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;

(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;

(30) A person licensed to practice as a speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;

(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;

(32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under Chapter 4757. of the Revised Code;

(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;

(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code;

(36) A person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

(X) "Cocaine" means any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(3) A salt, compound, derivative, or preparation of a substance identified in division (X)(1) or (2) of this section that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

(Y) "L.S.D." means lysergic acid diethylamide.

(Z) "Hashish" means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

(AA) "Marihuana" has the same meaning as in section 3719.01 of the Revised Code, except that it does not include hashish.

(BB) An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(CC) "Presumption for a prison term" or "presumption that a prison term shall be imposed" means a presumption, as described in division (D) of section 2929.13 of the Revised Code, that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.

(DD) "Major drug offender" has the same meaning as in section 2929.01 of the Revised Code.

(EE) "Minor drug possession offense" means either of the following:

(1) A violation of section 2925.11 of the Revised Code as it existed prior to July 1, 1996;

(2) A violation of section 2925.11 of the Revised Code as it exists on and after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.

(FF) "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.

(GG) "Crack cocaine" means a compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use.

(HH) "Adulterate" means to cause a drug to be adulterated as described in section 3715.63 of the Revised Code.

(II) "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(JJ) "Methamphetamine" means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.

HISTORY: 136 v H 300 (Eff 7-1-76); 136 v S 414 (Eff 9-22-76); 137 v H 565 (Eff 11-1-78); 138 v H 900 (Eff 7-1-80); 138 v S 378 (Eff 3-23-81); 139 v H 535 (Eff 8-20-82); 139 v S 199 (Eff 7-1-83); 141 v H 281 (Eff 7-18-85); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v H 322 (Eff 3-2-92); 145 v H 156 (Eff 5-19-93); 146 v S 143, § 1 (Eff 3-5-96); 146 v S 2 (Eff 7-1-96); 146 v S 143, § 5 (Eff 7-1-96); 146 v H 125 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 223 (Eff 3-18-97); 147 v S 66 (Eff 7-22-98); 147 v S 117 (Eff 8-5-98); 147 v H 606 (Eff 3-9-99); 147 v S 200 (Eff 3-30-99); 148 v H 18 (Eff 10-20-99); 148 v H 202 (Eff 2-9-2000); 149 v H 7 (Eff 8-7-2001); 149 v H 273 (Eff 7-23-2002); 149 v H 415 (4-7-2003); 149 v H 364, § 1, Eff 4-8-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v S 209, § 1, eff. 5-6-05; 151 v S 53, § 1, eff. 5-17-06.

The provisions of § 5, H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Section 2925.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 364 and Am. Sub. H.B. 415 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act. * * *

The effective date is set by section 4 of S.B. 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of this act shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.

Publisher's Note:

The amendments made by HB 415 (149 v —) and HB 364, § 1 (149 v —) have been combined. See provisions of RC § 1.52.

[CORRUPTING; TRAFFICKING]

§ 2925.02 Corrupting another with drugs.

(A) No person shall knowingly do any of the following:

(1) By force, threat, or deception, administer to another or induce or cause another to use a controlled substance;

(2) By any means, administer or furnish to another or induce or cause another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent;

(3) By any means, administer or furnish to another or induce or cause another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become drug dependent;

(4) By any means, do any of the following:

(a) Furnish or administer a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the age of the juvenile or is reckless in that regard;

(b) Induce or cause a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the age of the juvenile or is reckless in that regard;

(c) Induce or cause a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, when the offender knows the age of the juvenile or is reckless in that regard;

(d) Use a juvenile, whether or not the offender knows the age of the juvenile, to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

(B) Division (A)(1), (3), or (4) of this section does not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code.

(C) Whoever violates this section is guilty of corrupting another with drugs. The penalty for the offense shall be determined as follows:

(1) Except as otherwise provided in this division, if the drug involved is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, corrupting another with drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the drug involved is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(2) Except as otherwise provided in this division, if the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, corrupting another with drugs is a felony of the second degree, and there is a presumption for a prison term for the offense. If the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) Except as otherwise provided in this division, if the drug involved is marihuana, corrupting another with drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the drug involved is marihuana and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section or the clerk of that court shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, any mandatory fine imposed pursuant to division (D)(1)(a) of this section and any fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with any violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the forfeited bail shall be paid by the clerk of the court pursuant to division (D)(1)(b) of this section as if it were a fine imposed for a violation of this section.

(2) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension. Upon the filing of the motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of

the Revised Code, the court, in lieu of the prison term that otherwise is authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of section 2929.14 of the Revised Code and may impose an additional prison term under division (D)(3)(b) of that section.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241. Eff 5-17-2000; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.03 Trafficking in drugs.

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, trafficking in marihuana is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile,

trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, trafficking in cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than one hundred grams of cocaine that is not

crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, trafficking in cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit

doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing

heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a

felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, trafficking in hashish is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or

exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

(3) If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant

to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2)(a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (F)(1) of this section or division (B) of section 2925.42 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (F)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in this division that cover the previous calendar year and indicates that the reports were received under this division;

(ii) Indicates that the reports are open for inspection under section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(G) When required under division (D)(2) of this section or any other provision of this chapter, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section or any other specified provision of this chapter. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(H)(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible alcohol and drug addiction programs for the support of which the fine money is to be used. No alcohol and drug addiction program shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the program is specified in the judgment that imposes the fine. No alcohol and drug addiction program shall be specified in the judgment unless the program is an eligible alcohol and drug addiction program and, except as otherwise provided in division (H)(2) of this section, unless the program is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible alcohol and drug addiction program is located in any of those counties, the judgment may specify an eligible alcohol and drug addiction program that is located anywhere within this state.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible alcohol and drug addiction program specified pursuant to division (H)(2) of this section in the judgment. The eligible alcohol and drug addiction program that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under section 3793.06

of the Revised Code or in the application for a license under section 3793.11 of the Revised Code filed with the department of alcohol and drug addiction services by the alcohol and drug addiction program specified in the judgment.

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Alcohol and drug addiction program" and "alcohol and drug addiction services" have the same meanings as in section 3793.01 of the Revised Code.

(b) "Eligible alcohol and drug addiction program" means an alcohol and drug addiction program that is certified under section 3793.06 of the Revised Code or licensed under section 3793.11 of the Revised Code by the department of alcohol and drug addiction services.

HISTORY: 136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v S 174 (Eff 7-31-92); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 147 v S 164 (Eff 1-15-98); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241 (Eff 5-17-2000); 148 v H 528, Eff 2-13-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

The provisions of § 8 of S.B. 123 read as follows:

SECTION 8. Section 2925.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. H.B. 528 and Am. Sub. S.B. 107 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

[DRUG ABUSE]

§ 2925.04 Illegal manufacture of drugs or cultivation of marihuana.

(A) No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance.

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of section 2925.03 of the Revised Code to the extent and under the circumstances described in those divisions.

(C)(1) Whoever commits a violation of division (A) of this section that involves any drug other than marihuana is guilty of illegal manufacture of drugs, and whoever commits a violation of division (A) of this section that involves marihuana is guilty of illegal cultivation of marihuana.

(2) Except as otherwise provided in this division, if the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, and if the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation of division (A) of this section is methamphetamine, the penalty for the violation shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, if the drug involved in the violation is methamphetamine, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.041 [2925.04.1] of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(b) If the drug involved in the violation is methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than four years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.041 [2925.04.1] of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than five years.

(4) If the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule III, IV, or V, illegal manufacture of drugs is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

(5) If the drug involved in the violation is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(b) If the amount of marihuana involved equals or exceeds one hundred grams but is less than two hundred grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(c) If the amount of marihuana involved equals or exceeds two hundred grams but is less than one thousand grams, illegal cultivation of marihuana is a felony of the fifth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of marihuana involved equals or exceeds one thousand grams but is less than five thousand grams, illegal cultivation of marihuana is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of marihuana involved equals or exceeds five thousand grams but is less than twenty thousand grams, illegal cultivation of marihuana is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

(f) Except as otherwise provided in this division, if the amount of marihuana involved equals or exceeds twenty thousand grams, illegal cultivation of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal cultivation of marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.

(2) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(3) If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of section 2929.14 of the Revised Code and may impose an additional prison term under division (D)(3)(b) of that section.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge under this section for a fifth degree felony violation of illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use.

Notwithstanding any contrary provision of division (F) of this section, if, in accordance with section 2901.05 of the Revised Code, a person who is charged with a violation of illegal cultivation of marihuana that is a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the person may be prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of illegal cultivation of marihuana.

(G) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so

arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 149 v H 7, Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04; 150 v S 58, § 1, eff. 8-11-04; 151 v S 53, § 1, eff. 5-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

[§ 2925.04.1] § 2925.041 Illegal assembly or possession of chemicals for the manufacture of drugs.

(A) No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code.

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in schedule I or II. The assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in schedule I or II, with the intent to manufacture a controlled substance in either schedule, is sufficient to violate this section.

(C) Whoever violates this section is guilty of illegal assembly or possession of chemicals for the manufacture of drugs. Except as otherwise provided in this division, illegal assembly or possession of chemicals for the manufacture of drugs is a felony of the third degree, and, except as otherwise provided in division (C)(1) or (2) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal assembly or possession of chemicals for the manufacture of drugs is a felony of the second degree, and, except as otherwise provided in division (C)(1) or (2) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the chemical or chemicals assembled or possessed in violation of division (A) of this section may be used to manufacture methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(1) If the violation of division (A) of this section is a felony of the third degree under division (C) of this section and the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation of division (A) of this section is a felony of the third degree under division (C) of this section, if the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.04 of the Revised Code, the court shall

impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(2) If the violation of division (A) of this section is a felony of the second degree under division (C) of this section and the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation of division (A) of this section is a felony of the second degree under division (C) of this section, if the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.04 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(D) In addition to any prison term authorized by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section under division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code. If a person charged with a violation of this section posts bail and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.

(2) The court shall revoke or suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is revoked in accordance with that division, the offender may request termination of, and the court may terminate, the revocation in accordance with that division.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court shall comply with section 2925.38 of the Revised Code.

HISTORY: 149 v H 7, Eff 8-7-2001; 150 v S 58, § 1, eff. 8-11-04; 151 v S 53, § 1, eff. 5-17-06.

§ 2925.05 Funding of drug or marihuana trafficking.

(A) No person shall knowingly provide money or other items of value to another person with the purpose that the recipient of the money or items of value use them to

obtain any controlled substance for the purpose of violating section 2925.04 of the Revised Code or for the purpose of selling or offering to sell the controlled substance in the following amount:

(1) If the drug to be sold or offered for sale is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, or schedule III, IV, or V, an amount of the drug that equals or exceeds the bulk amount of the drug;

(2) If the drug to be sold or offered for sale is marihuana or a compound, mixture, preparation, or substance other than hashish containing marihuana, an amount of the marihuana that equals or exceeds two hundred grams;

(3) If the drug to be sold or offered for sale is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the cocaine that equals or exceeds five grams if the cocaine is not crack cocaine or equals or exceeds one gram if the cocaine is crack cocaine;

(4) If the drug to be sold or offered for sale is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the L.S.D. that equals or exceeds ten unit doses if the L.S.D. is in a solid form or equals or exceeds one gram if the L.S.D. is in a liquid concentrate, liquid extract, or liquid distillate form;

(5) If the drug to be sold or offered for sale is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the heroin that equals or exceeds ten unit doses or equals or exceeds one gram;

(6) If the drug to be sold or offered for sale is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the hashish that equals or exceeds ten grams if the hashish is in a solid form or equals or exceeds two grams if the hashish is in a liquid concentrate, liquid extract, or liquid distillate form.

(B) This section does not apply to any person listed in division (B) (1), (2), or (3) of section 2925.03 of the Revised Code to the extent and under the circumstances described in those divisions.

(C)(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, whoever violates division (A) of this section is guilty of aggravated funding of drug trafficking, a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of funding of drug trafficking, a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana, whoever violates division (A) of this section is guilty of funding of marihuana trafficking, a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised

Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall impose the mandatory fine specified for the offense under division (B) (1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine in accordance with division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section, posts bail, and forfeits the bail, the forfeited bail shall be paid as if the forfeited bail were a fine imposed for a violation of this section.

(2) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(3) If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (D) (3) (a) of section 2929.14 of the Revised Code and may impose an additional prison term under division (D) (3) (b) of that section.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.06 Illegal administration or distribution of anabolic steroids.

(A) No person shall knowingly administer to a human being, or prescribe or dispense for administration to a human being, any anabolic steroid not approved by the United States food and drug administration for administration to human beings.

(B) This section does not apply to any person listed in division (B) (1), (2), or (3) of section 2925.03 of the Revised Code to the extent and under the circumstances described in those divisions.

(C) Whoever violates division (A) of this section is guilty of illegal administration or distribution of anabolic

steroids, a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(2) If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) If a person commits any act that constitutes a violation of division (A) of this section and that also constitutes a violation of any other provision of the Revised Code, the prosecutor, as defined in section 2935.01 of the Revised Code, using customary prosecutorial discretion, may prosecute the person for a violation of the appropriate provision of the Revised Code.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.09 Offenses involving unapproved drugs; dangerous drug offenses involving livestock.

(A) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States food and drug administration, or the United States department of agriculture, unless one of the following applies:

(1) The United States food and drug administration has approved an application for investigational use in accordance with the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the drug is used only for the approved investigational use;

(2) The United States department of agriculture has approved an application for investigational use in accordance with the federal "Virus-Serum-Toxin Act," 37 Stat. 832 (1913), 21 U.S.C.A. 151, as amended, and the drug is used only for the approved investigational use;

(3) A licensed health professional authorized to prescribe drugs, other than a veterinarian, prescribes or combines two or more drugs as a single product for medical purposes;

(4) A pharmacist, pursuant to a prescription, compounds and dispenses two or more drugs as a single product for medical purposes.

(B)(1) As used in this division, "dangerous drug," "prescription," "sale at retail," "wholesale distributor of dangerous drugs," and "terminal distributor of dangerous

drugs," have the same meanings as in section 4729.01 of the Revised Code.

(2) Except as provided in division (B)(3) of this section, no person shall administer, dispense, distribute, manufacture, possess, sell, or use any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian by prescription or other written order and the drug is used in accordance with the veterinarian's order or direction.

(3) Division (B)(2) of this section does not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, possesses for sale, or sells, at retail, a drug in accordance with Chapters 3719., 4729., or 4741. of the Revised Code.

(C) Whoever violates division (A) or (B)(2) of this section is guilty of a felony of the fifth degree on a first offense and of a felony of the fourth degree on each subsequent offense.

HISTORY: RC § 2925.04, 146 v H 202 (Eff 6-14-95); RC § 2925.09, 146 v S 269 (Eff 7-1-96); 147 v S 66. Eff 7-22-98.

Publisher's Note:

Two sections numbered RC § 2925.04 were enacted in the 121st General Assembly in HB 202 and SB 2. The HB 202 section was renumbered to RC § 2925.09 by SB 269.

§ 2925.11 Possession of drugs.

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. § 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of

section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender under a community control sanction, as defined in section 2929.01 of the Revised Code, that requires the offender to perform supervised community service work pursuant to division (B) of section 2951.02 of the Revised Code.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates divi-

sion (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds twenty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds five grams but is less than twenty-five grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, possession of cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds twenty-five grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, possession of cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or

exceeds twenty-five grams but is less than one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(h), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed

for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid

extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it

were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with section 2901.05 of the Revised Code, an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

HISTORY: 138 v S 184, § 5 (Eff 6-20-84); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v H 298 (Eff 7-26-91); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v H 249 (Eff 7-17-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 2 (Eff 6-20-97); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241, Eff 5-17-2000; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

The effective date is set by section 4 of H.B. 490.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

Analogous to former RC § 2925.11 (136 v H 300; 138 v S 184), repealed 138 v S 184, § 4, eff 6-20-84.

§ 2925.12 Possessing drug abuse instruments.

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters

3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, a violation of this section is a misdemeanor of the first degree.

(D) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v H 241. Eff 5-17-2000; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.13 Permitting drug abuse.

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, as defined in division (A) of section 4501.01 of the Revised Code, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person who is the owner, lessee, or occupant, or who has custody, control, or supervision, of premises or real estate, including vacant land, shall knowingly permit the premises or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C)(1) Whoever violates this section is guilty of permitting drug abuse.

(2) Except as provided in division (C) (3) of this section, permitting drug abuse is a misdemeanor of the first degree.

(3) Permitting drug abuse is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender, if the felony drug abuse offense in question is a violation of section 2925.02 or 2925.03 of the Revised Code.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall

pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(F) Any premises or real estate that is permitted to be used in violation of division (B) of this section constitutes a nuisance subject to abatement pursuant to Chapter 3767. of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 107. Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.14 Drug paraphernalia offenses.

(A) As used in this section, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;

(6) A scale or balance for weighing or measuring a controlled substance;

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(11) A container or device for storing or concealing a controlled substance;

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(13) An object, instrument, or device for ingesting,

inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use;

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;

(3) The proximity of the equipment, product, or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product, or material;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom the owner or person in control of the equipment, product, or material knows intends to use the object to facilitate a violation of any provision of this chapter. A finding that the owner, or anyone in control, of the equipment, product, or material, is not guilty of a violation of any other provision of this chapter does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;

(12) Expert testimony concerning the use of the equipment, product, or material.

(C)(1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if the person knows that the purpose of the advertisement is to promote the illegal sale in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by section 3719.172 [3719.17.2] of the Revised Code.

(E) Notwithstanding Chapter 2981. of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (B) of section 2981.12 of the Revised Code.

(F)(1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

HISTORY: 143 v H 182 (Eff 11-2-89); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v H 241 (Eff 5-17-2000); 149 v H 7. Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v S 53, § 1, eff. 5-17-06; 151 v S 154, § 1, eff. 5-17-06; 151 v H 241, § 1, eff. 7-1-07.

The provisions of § 3(B) of 151 v H 241 read as follows:

SECTION 3. * * * (B) Section 2925.14 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 53 and Sub. S.B. 154 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

Analogous in part to former RC § 2925.14 (138 v S 378; 142 v H 790), repealed, 143 v H 182, § 2, eff 11-2-89.

Comment, Legislative Service Commission

Section 2925.14 of the Revised Code is amended by Sub. S.B. 154 and Am. Sub. S.B. 53 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[DRUG THEFT]

§ 2925.22 Deception to obtain a dangerous drug.

(A) No person, by deception, as defined in section 2913.01 of the Revised Code, shall procure the administration of, a prescription for, or the dispensing of, a dangerous drug or shall possess an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.

(B) Whoever violates this section is guilty of deception to obtain a dangerous drug. The penalty for the offense shall be determined as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, deception to obtain drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(2) If the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, deception to obtain a dangerous drug is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(C) In addition to any prison term authorized or required by division (B) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(D) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 143 v H 615 (Eff 3-27-91); 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v S 269, Eff 7-1-96; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.23 Illegal processing of drug documents.

(A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719, or 4729, of the Revised Code.

(B) No person shall intentionally make, utter, or sell, or knowingly possess any of the following that is a false or forged:

- (1) Prescription;
- (2) Uncompleted preprinted prescription blank used for writing a prescription;
- (3) Official written order;
- (4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;
- (5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(C) No person, by theft as defined in section 2913.02 of the Revised Code, shall acquire any of the following:

- (1) A prescription;
- (2) An uncompleted preprinted prescription blank used for writing a prescription;
- (3) An official written order;
- (4) A blank official written order;
- (5) A license or blank license for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

(E) Divisions (A) and (D) of this section do not apply to licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. of the Revised Code.

(F) Whoever violates this section is guilty of illegal processing of drug documents. If the offender violates division (B)(2), (4), or (5) or division (C)(2), (4), (5), or (6) of this section, illegal processing of drug documents is a felony of the fifth degree. If the offender violates division (A), division (B)(1) or (3), division (C)(1) or (3), or division (D) of this section, the penalty for illegal processing of drug documents shall be determined as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, illegal processing of drug documents is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(2) If the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, illegal processing of drug documents is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(G) In addition to any prison term authorized or required by division (F) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to any violation of divisions (A) to (D) of this section shall do both of the following:

(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation

of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(H) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 144 v S 110 (Eff 5-19-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241 (Eff 5-17-2000); 149 v H 327, Eff 7-8-2002; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.24 Tampering with drugs.

(A) No person shall knowingly adulterate or alter any dangerous drug or substitute any dangerous drug with another substance.

(B) No person shall knowingly adulterate or alter any package or receptacle containing any dangerous drug or substitute any package or receptacle containing any dangerous drug with another package or receptacle.

(C) Divisions (A) and (B) of this section do not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, nurses, and other persons, when the conduct of the manufacturer, practitioner, pharmacist, owner of a pharmacy, nurse, or other person is in accordance with Chapters 3719., 4715., 4723., 4729., 4731., and 4741. of the Revised Code.

(D) It is an affirmative defense to a charge under this section alleging that a person altered a dangerous drug that the dangerous drug the person allegedly altered was lawfully prescribed for the person's personal use and that the person did not sell or transfer or intend to sell or transfer the dangerous drug to another person.

(E) Whoever violates this section is guilty of tampering with drugs, a felony of the third degree. If the violation results in physical harm to any person, tampering with drugs is a felony of the second degree.

HISTORY: 148 v H 202, Eff 2-9-2000.

[HARMFUL INTOXICANTS]

§ 2925.31 Abusing harmful intoxicants.

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony of the fifth degree.

(C) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license

or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court IMMEDIATELY shall comply with section 2925.38 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v H 162, Eff 1-1-97; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.32 Trafficking in harmful intoxicants; improperly dispensing or distributing nitrous oxide.

(A) Divisions (A) (1) and (2) of this section do not apply to the dispensing or distributing of nitrous oxide.

(1) No person shall knowingly dispense or distribute a harmful intoxicant to a person age eighteen or older if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of section 2925.31 of the Revised Code.

(2) No person shall knowingly dispense or distribute a harmful intoxicant to a person under age eighteen if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of section 2925.31 of the Revised Code. Division (A) (2) of this section does not prohibit either of the following:

(a) Dispensing or distributing a harmful intoxicant to a person under age eighteen if a written order from the juvenile's parent or guardian is provided to the dispenser or distributor;

(b) Dispensing or distributing gasoline or diesel fuel to a person under age eighteen if the dispenser or distributor does not know or have reason to believe the product will be used in violation of section 2925.31 of the Revised Code. Division (A) (2) (a) of this section does not require a person to obtain a written order from the parent or guardian of a person under age eighteen in order to distribute or dispense gasoline or diesel fuel to the person.

(B)(1) No person shall knowingly dispense or distribute nitrous oxide to a person age twenty-one or older if the person who dispenses or distributes it knows or has reason to believe the nitrous oxide will be used in violation of section 2925.31 of the Revised Code.

(2) Except for lawful medical, dental, or clinical purposes, no person shall knowingly dispense or distribute nitrous oxide to a person under age twenty-one.

(3) No person, at the time a cartridge of nitrous oxide is sold to another person, shall sell a device that allows the purchaser to inhale nitrous oxide from cartridges or to hold nitrous oxide released from cartridges for purposes of inhalation. The sale of any such device constitutes a rebuttable presumption that the person knew or had reason to believe that the purchaser intended to abuse the nitrous oxide.

(4) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

(a) The record-keeping requirements established under division (F) of this section;

(b) The labeling and transaction identification requirements established under division (G) of this section.

(C) This section does not apply to products used in making, fabricating, assembling, transporting, or constructing a product or structure by manual labor or machinery for sale or lease to another person, or to the mining, refining, or processing of natural deposits.

(D)(1) Whoever violates division (A) (1) or (2) or division (B) (1), (2), or (3) of this section is guilty of trafficking in harmful intoxicants, a felony of the fifth degree. If the offender previously has been convicted of a drug abuse offense, trafficking in harmful intoxicants is a felony of the fourth degree. In addition to any other sanction imposed upon an offender for trafficking in harmful intoxicants, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for trafficking in harmful intoxicants, the court immediately shall comply with section 2925.38 of the Revised Code.

(2) Whoever violates division (B) (4) (a) or (b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(E) It is an affirmative defense to a charge of a violation of division (A) (2) or (B) (2) of this section that:

(1) An individual exhibited to the defendant or an officer or employee of the defendant, for purposes of establishing the individual's age, a driver's license or permit issued by this state, a commercial driver's license or permit issued by this state, an identification card issued pursuant to section 4507.50 of the Revised Code, for another document that purports to be a license, permit, or identification card described in this division;

(2) The document exhibited appeared to be a genuine, unaltered document, to pertain to the individual, and to establish the individual's age;

(3) The defendant or the officer or employee of the defendant otherwise did not have reasonable cause to believe that the individual was under the age represented.

(F) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distributing of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the state board of pharmacy or of other law enforcement agencies of this state or the United States that are authorized to investigate violations of Chapter 2925., 3719., or 4729. of the Revised Code or the federal drug abuse control laws.

The cards used to record each transaction shall inform the purchaser of the following:

(1) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(2) That inhalation of nitrous oxide can have dangerous health effects;

(3) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age twenty-one, punishable as a felony of the fifth degree.

(G)(1) Each cartridge of nitrous oxide dispensed or distributed in this state shall bear the following printed warning:

"Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age twenty-one. Do not inhale contents. Misuse can be dangerous to your health."

(2) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

HISTORY: 136 v S 414 (Eff 9-22-76); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v H 162 (Eff 1-1-97); 147 v H 122 (Eff 7-29-98); 148 v S 55 (Eff 10-26-99); 148 v H 331. Eff 10-10-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

In amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.13, 2923.16, 2953.32, and 4749.10 of the Revised Code and in enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1212 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

The inalienable and fundamental right of an individual to defend the individual's person and the members of the individual's family;

The fact that the right described in division (A) of this section predates the adoption of the United States Constitution, the adoption of the Ohio Constitution, and the enactment of all statutory laws by the General Assembly and may not be infringed by any enactment of the General Assembly.

† The word "for" appears in the enactment of division (E)(1) by HB 162 (146 v —).

§ 2925.33 Possessing nitrous oxide in motor vehicle.

(A) As used in this section, "motor vehicle," "street," and "highway" have the same meanings as in section 4511.01 of the Revised Code.

(B) Unless authorized under Chapter 3719., 4715., 4729., 4731., 4741., or 4765. of the Revised Code, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(1) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking;

(2) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(C) Whoever violates this section is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

HISTORY: 146 v H 162. Eff 1-1-97.

The effective date is set by section 3 of HB 162.

[DRUG SAMPLES]

§ 2925.36 Illegal dispensing of drug samples.

(A) No person shall knowingly furnish another a sample drug.

(B) Division (A) of this section does not apply to manufacturers, wholesalers, pharmacists, owners of phar-

macies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. of the Revised Code.

(C)(1) Whoever violates this section is guilty of illegal dispensing of drug samples.

(2) If the drug involved in the offense is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b) of this section, illegal dispensing of drug samples is a felony of the fifth degree, and, subject to division (E) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a felony of the fourth degree, and, subject to division (E) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V, or is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, illegal dispensing of drug samples is a misdemeanor of the second degree.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of section 2929.14 of the Revised Code and may impose an additional prison term under division (D)(3)(b) of that section.

(F) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in

accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); 144 v S 110 (Eff 5-19-92); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v H 241. Eff 5-17-2000; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.37 Offenses involving counterfeit controlled substances.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) No person shall knowingly make, sell, offer to sell, or deliver any substance that the person knows is a counterfeit controlled substance.

(C) No person shall make, possess, sell, offer to sell, or deliver any punch, die, plate, stone, or other device knowing or having reason to know that it will be used to print or reproduce a trademark, trade name, or other identifying mark upon a counterfeit controlled substance.

(D) No person shall sell, offer to sell, give, or deliver any counterfeit controlled substance to a juvenile.

(E) No person shall directly or indirectly represent a counterfeit controlled substance as a controlled substance by describing its effects as the physical or psychological effects associated with use of a controlled substance.

(F) No person shall directly or indirectly falsely represent or advertise a counterfeit controlled substance as a controlled substance. As used in this division, "advertise" means engaging in "advertisement," as defined in section 3715.01 of the Revised Code.

(G) Whoever violates division (A) of this section is guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(H) Whoever violates division (B) or (C) of this section is guilty of trafficking in counterfeit controlled substances. Except as otherwise provided in this division, trafficking in counterfeit controlled substances is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in counterfeit controlled substances is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(I) Whoever violates division (D) of this section is guilty of aggravated trafficking in counterfeit controlled substances. Except as otherwise provided in this division, aggravated trafficking in counterfeit controlled substances is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(J) Whoever violates division (E) of this section is guilty of promoting and encouraging drug abuse. Except as otherwise provided in this division, promoting and encouraging drug abuse is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the

vicinity of a school or in the vicinity of a juvenile, promoting and encouraging drug abuse is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(K) Whoever violates division (F) of this section is guilty of fraudulent drug advertising. Except as otherwise provided in this division, fraudulent drug advertising is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, fraudulent drug advertising is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(L) In addition to any prison term authorized or required by divisions (H) to (K) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (B), (C), (D), (E), or (F) of this section shall do both of the following:

(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(M) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

HISTORY: 139 v H 535 (Eff 8-20-82); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

§ 2925.38 Convictions to be reported to professional licensing authorities.

If a person who is convicted of or pleads guilty to a violation of section 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code is a professionally licensed person, in addition to any other sanctions imposed for the violation, the court, except as otherwise provided in this section, immediately shall transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license. If the professionally licensed person who is convicted of or pleads guilty to a violation of any section listed in this section is a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other

sanctions imposed for the violation, the court immediately shall transmit a certified copy of the judgment entry of conviction to the secretary of the board of commissioners on grievances and discipline of the supreme court and to either the disciplinary counsel or the president, secretary, and chairperson of each certified grievance committee.

HISTORY: 143 v S 258 (Eff 11-20-90); 146 v S 2 (Eff 7-1-96); 149 v H 7. Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2925.01.

[FORFEITURE OF PROPERTY RELATING TO FELONY DRUG ABUSE OFFENSE]

§ 2925.41

Repealed, 151 v H 241, § 2 [143 v S 258. Eff 11-20-90]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned definitions.

§ 2925.42 Fines.

(A) If a person is convicted of or pleads guilty to a felony drug abuse offense, or a juvenile is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and derives profits or other proceeds from the offense or act, the court that imposes sentence or an order of disposition upon the offender or delinquent child, in lieu of any fine that the court is otherwise authorized or required to impose, may impose upon the offender or delinquent child a fine of not more than twice the gross profits or other proceeds so derived.

(B) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, all fines imposed pursuant to this section shall be paid by the clerk of the court to the county, municipal corporation, township, park district, as created pursuant to section 511.18 or 1545.01 of the Revised Code, or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, no fine so imposed shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of section 2925.03 of the Revised Code that addresses the use of the fine moneys that it receives under this division and division (F)(1) of section 2925.03 of the Revised Code. The fines imposed and paid pursuant to this division shall be used by the law enforcement agencies to subsidize their efforts pertaining to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of section 2925.03 of the Revised Code.

(C) As used in this section:

(1) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(2) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

HISTORY: 143 v S 258 (Eff 11-20-90); 144 v S 174 (Eff 7-31-92); 146 v S 2 (Eff 7-1-96); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 5 of SB 179.

§ 2925.43

Repealed, 151 v H 241, § 2 [143 v S 258 (Eff 11-20-90); 148 v S 179, § 3. Eff 1-1-2002]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned civil forfeiture action prior to prosecution.

§ 2925.44

Repealed, 151 v H 241, § 2 [143 v S 258 (Eff 11-20-90); 144 v S 218 (Eff 10-11-91); 144 v S 174 (Eff 7-31-92); 146 v H 107 (Eff 6-30-95); 146 v H 1 (Eff 1-1-96); 147 v H 210 (Eff 6-30-97); 148 v H 163. Eff 6-30-99; 150 v H 95, § 1, eff. 6-26-03; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 530, § 101.01, eff. 3-30-06]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned rights of law enforcement agency seizing property; disposition of forfeited property.

§ 2925.45

Repealed, 151 v H 241, § 2 [143 v S 258. Eff 11-20-90]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned motion alleging seizure was unlawful; return of property.

[FEDERAL NARCOTIC LAWS]

§ 2925.50 Effect of federal prosecution.

If a violation of this chapter is a violation of the federal drug abuse control laws, as defined in section 3719.01 of the Revised Code, a conviction or acquittal under the federal drug abuse control laws for the same act is a bar to prosecution in this state.

HISTORY: 136 v H 300 (Eff 7-1-76); 147 v S 66. Eff 7-22-98.

[LABORATORY EVIDENCE]

§ 2925.51 Laboratory report as evidence; requirements; violation.

(A) In any criminal prosecution for a violation of this chapter or Chapter 3719. of the Revised Code, a laboratory report from the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the association of American universities or the north central association of colleges and secondary schools, primarily for the purpose of providing scientific services to law enforcement agencies and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and

stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima-facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of section 2925.041 [2925.04.1] of the Revised Code or a violation of this chapter or Chapter 3719. of the Revised Code that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, a laboratory report from the bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima-facie evidence of the content, identity, and weight of the substances.

Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer's regular duties, and giving an outline of the signer's education, training, and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima-facie evidence of the contents, identity, and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the prosecuting attorney within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of this chapter or of Chapter 3719. of the Revised Code is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances. The prosecuting attorney shall provide the accused's analyst with the

sample portion at least fourteen days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall, so inform the accused person or his attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the identity of the substance or substances subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or of Chapter 3719. of the Revised Code that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of section 2925.11 of the Revised Code, other than a minor misdemeanor violation, that involves marijuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the weight, volume, or number of unit doses of the substance subject to the measurement or weighing.

HISTORY: 136 v H 300 (Eff 7-1-76); 136 v S 541 (Eff 6-28-76); 137 v S 201 (Eff 11-16-77); 149 v H 7. Eff 8-7-2001.

[§ 2925.51.1] § 2925.511 Reimbursement of costs of drug tests confirming that substance contained controlled substance.

In addition to the financial sanctions authorized or required under sections 2929.18 and 2929.28 of the Revised Code and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is convicted of or pleads guilty to a drug abuse offense may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under section 2925.51 of the Revised Code or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance.

The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may

hold the hearing as part of the sentencing hearing for the offender.

HISTORY: 151 v H 163, § 1, eff. 10-12-06.

§ 2925.52 Motion for destruction of chemicals sufficient to produce methamphetamine.

(A) If a person is charged with a violation of section 2925.041 [2925.04.1] of the Revised Code or with any violation of this chapter or Chapter 3719. of the Revised Code that is based on the possession of chemicals sufficient to produce methamphetamine, the law enforcement agency that has custody of the chemicals may file a motion with the court in which the charges are pending requesting the court to order the chemicals destroyed in accordance with this division. If a law enforcement agency files a motion of that type with a court, the court may issue an order that requires the containers in which the chemicals are contained be photographed, orders the chemicals forfeited, and requires that the chemicals be destroyed.

(B) If the court issues an order under division (A) of this section, the court may include in the order a requirement that the chemicals be sampled prior to their destruction and that the samples be preserved.

HISTORY: 149 v H 7. Eff 8-7-2001; 151 v S 53, § 1, eff. 5-17-06.

[PSEUDOEPHEDRINE SALES]

§ 2925.55 Definitions; prohibitions concerning purchasing pseudoephedrine products.

(A) As used in sections 2925.55 to 2925.58 of the Revised Code:

(1) "Consumer product" means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

(2) "Terminal distributor of dangerous drugs" has the same meaning as in section 4729.01 of the Revised Code.

(3) "Pseudoephedrine" means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

(4) "Pseudoephedrine product" means a consumer product consisting of a single-ingredient preparation of pseudoephedrine in which pseudoephedrine is the active ingredient. "Pseudoephedrine product" does not include either of the following:

(a) A consumer product containing pseudoephedrine that is in a liquid, liquid capsule, or gel capsule form;

(b) A consumer product primarily intended for administration to children under twelve years of age, according to the label instructions, in solid dosage form, including chewable tablets, when individual dosage units do not exceed fifteen milligrams of pseudoephedrine.

(5) "Retailer" means a place of business that offers consumer products for sale to the general public.

(6) "Single-ingredient preparation" means a compound, mixture, preparation, or substance that contains a single active ingredient.

(B)(1) No individual shall knowingly purchase, receive, or otherwise acquire more than nine grams of any pseudoephedrine product within a period of thirty con-

secutive days, unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter 3719., 4715., 4723., 4729., 4731., or 4741. of the Revised Code.

(2) It is not a violation of division (B)(1) of this section for an individual to receive or accept more than nine grams of any pseudoephedrine product within a period of thirty consecutive days if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(C)(1) No individual under eighteen years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product, unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter 3719., 4715., 4723., 4729., 4731., or 4741. of the Revised Code.

(2) Division (C)(1) of this section does not apply to an individual under eighteen years of age who purchases, receives, or otherwise acquires a pseudoephedrine product from any of the following:

(a) A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product to that individual and whose conduct is in accordance with Chapter 3719., 4715., 4723., 4729., 4731., or 4741. of the Revised Code;

(b) A parent or guardian of that individual who provides the pseudoephedrine product to the individual;

(c) A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product to the individual;

(d) A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(D) No individual under eighteen years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product.

(E) No individual shall knowingly fail to comply with the requirements of division (C)(3) of section 3715.05 of the Revised Code.

(F) Whoever violates division (B)(1) of this section is guilty of unlawful purchase of a pseudoephedrine product, a misdemeanor of the first degree.

(G) Whoever violates division (C)(1) of this section is guilty of underage purchase of a pseudoephedrine product, a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult.

(H) Whoever violates division (D) of this section is guilty of using false information to purchase a pseudoephedrine product, a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult.

(I) Whoever violates division (E) of this section is guilty of improper purchase of a pseudoephedrine product, a misdemeanor of the fourth degree.

HISTORY: 151 v S 53, § 1, eff. 5-17-06.

§ 2925.56 Unlawful or improper sales of pseudoephedrine products.

(A)(1) Except as provided in division (A)(2) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual within a period of thirty consecutive days an amount of pseudoephedrine product that is greater than nine grams.

(2) Division (A)(1) of this section does not apply to any quantity of pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter 3719., 4715., 4723., 4729., 4731., or 4741. of the Revised Code.

It is not a violation of division (A)(1) of this section for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than nine grams of any pseudoephedrine product within a period of thirty consecutive days if the individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(B)(1) Except as provided in division (B)(2) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall sell, offer to sell, hold for sale, deliver, or otherwise provide a pseudoephedrine product to an individual who is under eighteen years of age.

(2) Division (B)(1) of this section does not apply to any of the following:

(a) A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under eighteen years of age and whose conduct is in accordance with Chapter 3719., 4715., 4723., 4729., 4731., or 4741. of the Revised Code;

(b) A parent or guardian of an individual under eighteen years of age who provides a pseudoephedrine product to the individual;

(c) A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under eighteen years of age;

(d) The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under eighteen years of age in

connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(C) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of division (C)(2) of section 3715.05 of the Revised Code.

(D) Whoever violates division (A)(1) of this section is guilty of unlawfully selling a pseudoephedrine product, a misdemeanor of the first degree.

(E) Whoever violates division (B)(1) of this section is guilty of unlawfully selling a pseudoephedrine product to a minor, a misdemeanor of the fourth degree.

(F) Whoever violates division (C) of this section is guilty of improper sale of a pseudoephedrine product, a misdemeanor of the second degree.

HISTORY: 151 v S 53, § 1, eff. 5-17-06.

§ 2925.57 Engaging in illegal pseudoephedrine product transaction scan.

(A) As used in this section and section 2925.58 of the Revised Code:

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product from the seller, agent, or employee.

(2) "Identification card" and "transaction scan device" have the same meanings as in section 2927.021 [2927.02.1] of the Revised Code.

(3) "Seller" means a retailer or terminal distributor of dangerous drugs.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product.

(B)(1) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product to the card holder.

(3) Division (B)(1) of this section does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(C) Rules adopted by the registrar of motor vehicles under division (C) of section 4301.61 of the Revised Code apply to the use of transaction scan devices for purposes of this section and section 2925.58 of the Revised Code.

(D)(1) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section except for purposes of section 2925.58 of the Revised Code.

(3) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (B)(1) of this section.

(4) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by section 2925.58 or another section of the Revised Code.

(E) Nothing in this section or section 2925.58 of the Revised Code relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of engaging in an illegal pseudoephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

HISTORY: 151 v S 53, § 1, eff. 5-17-06.

§ 2925.58 Affirmative defense where age of purchaser or other recipient of pseudoephedrine product is element of alleged violation.

(A) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of section 2925.56 of the Revised Code in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(1) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(3) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (A) of this section, the trier of fact in

the action for the alleged violation of section 2925.56 of the Revised Code shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of section 2925.56 of the Revised Code. For purposes of division (A)(3) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is eighteen years of age or older;

(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.

HISTORY: 151 v S 53, § 1, eff. 5-17-06.

CHAPTER 2927: MISCELLANEOUS OFFENSES

Section

- 2927.01 Abuse of a corpse.
- 2927.02 Illegal distribution of cigarettes or other tobacco products.
- [2927.02.1] 2927.021 Engaging in illegal tobacco product transaction scan.
- [2927.02.2] 2927.022 Transaction scan as affirmative defense to cigarette or tobacco product charge.
- [2927.02.3] 2927.023 Shipping cigarettes to anyone other than authorized recipient of tobacco products; containers and wrappings.
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- 2927.24 Contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance; spreading false report.
- 2927.27 Illegal bail bond agent practices.

§ 2927.01 Abuse of a corpse.

(A) No person, except as authorized by law, shall treat a human corpse in a way that the person knows would outrage reasonable family sensibilities.

(B) No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities.

(C) Whoever violates division (A) of this section is guilty of abuse of a corpse, a misdemeanor of the second degree. Whoever violates division (B) of this section is

guilty of gross abuse of a corpse, a felony of the fifth degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 741 (Eff 10-9-78); 146 v S 2, Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2927.02 Illegal distribution of cigarettes or other tobacco products.

(A) As used in this section and section 2927.021 [2927.02.1] of the Revised Code:

(1) "Child" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code.

(2) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

(3) "Distribute" means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.

(4) "Proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under sections 4507.50 to 4507.52 of the Revised Code that shows that a person is eighteen years of age or older.

(5) "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

(6) "Vending machine" has the same meaning as "coin machine" in section 2913.01 of the Revised Code.

(B) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, and no other person shall do any of the following:

(1) Give, sell, or otherwise distribute cigarettes, other tobacco products, or papers used to roll cigarettes to any child;

(2) Give away, sell, or distribute cigarettes, other tobacco products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, or papers used to roll cigarettes to a person under eighteen years of age is prohibited by law;

(3) Knowingly furnish any false information regarding the name, age, or other identification of any child with purpose to obtain cigarettes, other tobacco products, or papers used to roll cigarettes for that child;

(4) Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

(5) Sell cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer.

(C) No person shall sell or offer to sell cigarettes or other tobacco products by or from a vending machine, except in the following locations:

(1) An area within a factory, business, office, or other place not open to the general public;

(2) An area to which children are not generally permitted access;

(3) Any other place not identified in division (C)(1) or (2) of this section, upon all of the following conditions:

(a) The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

(b) The vending machine is inaccessible to the public when the place is closed.

(D) The following are affirmative defenses to a charge under division (B)(1) of this section:

(1) The child was accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(2) The person who gave, sold, or distributed cigarettes, other tobacco products, or papers used to roll cigarettes to a child under division (B)(1) of this section is a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(E) It is not a violation of division (B)(1) or (2) of this section for a person to give or otherwise distribute to a child cigarettes, other tobacco products, or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:

(1) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.

(2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

(3) The child is participating in the research protocol at the facility or location specified in the research protocol.

(F)(1) Whoever violates division (B)(1), (2), (4), or (5) or (C) of this section is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (B)(1), (2), (4), or (5) or (C) of this section, illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

(2) Whoever violates division (B)(3) of this section is guilty of permitting children to use cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (B)(3) of this section, permitting children to use cigarettes or other tobacco products is a misdemeanor of the third degree.

(G) Any cigarettes, other tobacco products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of this section and that are used, possessed, purchased, or received by a child in violation of section 2151.87 of the Revised Code are subject to seizure and forfeiture as contraband under Chapter 2981. of the Revised Code.

HISTORY: 140 v H 152 (Eff 9-26-84); 144 v S 40 (Eff 10-23-91); 148 v S 218 (Eff 3-15-2001); 149 v H 393 (Eff 7-5-2002); 149 v S 242. Eff 9-19-2002; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

The effective date is set by section 21 of SB 242.

The provisions of § 3 of SB 218 (148 v —) read as follows:

SECTION 3. Except for the provisions set forth in division (C) of section 2927.02 of the Revised Code, nothing in this act shall be construed as limiting or affecting the powers of townships or municipal corporations to regulate the purchase, use, or sale of tobacco.

[§ 2927.02.1] § 2927.021 Engaging in illegal tobacco product transaction scan.

(A) As used in this section and section 2927.022 [2927.02.2] of the Revised Code:

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes or other tobacco products from the seller, agent, or employee.

(2) "Identification card" means an identification card issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) "Seller" means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the prohibitions of section 2927.02 of the Revised Code.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes or other tobacco products.

(5) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B)(1) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes or other tobacco products.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes or other tobacco products to the card holder.

(3) Division (B)(1) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the person presenting the document.

(C) Rules adopted by the registrar of motor vehicles under division (C) of section 4301.61 of the Revised Code apply to the use of transaction scan devices for purposes

of this section and section 2927.022 [2927.02.2] of the Revised Code.

(D)(1) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of section 2927.022 [2927.02.2] of the Revised Code.

(3) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (B)(1) of this section.

(4) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by section 2927.022 [2927.02.2] or another section of the Revised Code.

(E) Nothing in this section or section 2927.022 [2927.02.2] of the Revised Code relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes or other tobacco products.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of engaging in an illegal tobacco product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

HISTORY: 148 v S 200. Eff 9-21-2000.

[§ 2927.02.2] § 2927.022 Transaction scan as affirmative defense to cigarette or tobacco product charge.

(A) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of section 2927.02 of the Revised Code in which the age of the purchaser or other recipient of cigarettes or other tobacco products is an element of the alleged violation, if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(1) A card holder attempting to purchase or receive cigarettes or other tobacco products presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(3) The cigarettes or other tobacco products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (A) of this section, the trier of fact in the action for the alleged violation of section 2927.02 of the Revised Code shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of section 2927.02 of the Revised Code. For purposes of division (A)(3) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes or other tobacco products is eighteen years of age or older;

(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.

HISTORY: 148 v S 200. Eff 9-21-2000.

[§ 2927.02.3] § 2927.023 Shipping cigarettes to anyone other than authorized recipient of tobacco products; containers and wrappings.

(A) As used in this section "authorized recipient of tobacco products" means a person who is:

(1) Licensed as a cigarette wholesale dealer under section 5743.15 of the Revised Code;

(2) Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;

(3) An export warehouse proprietor as defined in section 5702 of the Internal Revenue Code;

(4) An operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;

(5) An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;

(6) A department, agency, instrumentality, or political subdivision of the federal government or of this state;

(7) A person having a consent for consumer shipment issued by the tax commissioner under section 5743.71 of the Revised Code.

The purpose of this section is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in section 1346.01 of the Revised Code.

(B)(1) No person shall cause to be shipped any cigarettes to any person in this state other than an authorized recipient of tobacco products.

(2) No common carrier, contract carrier, or other person shall knowingly transport cigarettes to any person

in this state that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the common carrier, contract carrier, or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

(C) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this state in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes."

(D) A court shall impose a fine of up to one thousand dollars for each violation of division (B)(1), (B)(2), or (C) of this section.

HISTORY: 151 v H 66, § 101.01, eff. 6-30-05; 152 v H 119, § 101.01, eff. 6-30-07.

The effective date is set by § 815.03 of 152 v H 119.

The effective date is set by § 612.21 of 151 v H 66.

§ 2927.03 Interference with fair housing rights.

(A) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with, any of the following:

(1) Any person because of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, national origin, disability as defined in that section, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, or occupation of any housing accommodations, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations;

(2) Any person because that person is or has been doing, or in order to intimidate that person or any other person or any class of persons from doing, either of the following:

(a) Participating, without discrimination on account of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, national origin, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section;

(b) Affording another person or class of persons opportunity or protection so to participate.

(3) Any person because that person is or has been, or in order to discourage that person or any other person from, lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, national origin, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.

HISTORY: 142 v H 5 (Eff 9-28-87); 144 v H 321 (Eff 6-30-92); 146 v S 2 (Eff 7-1-96); 148 v H 264, Eff 3-17-2000.

§ 2927.11 Desecration.

(A) No person, without privilege to do so, shall purposely deface, damage, pollute, or otherwise physically mistreat any of the following:

(1) The flag of the United States or of this state;

(2) Any public monument;

(3) Any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing, or site of great historical or archaeological interest;

(4) A place of worship, its furnishings, or religious artifacts or sacred texts within the place of worship or within the grounds upon which the place of worship is located;

(5) A work of art or museum piece;

(6) Any other object of reverence or sacred devotion.

(B) Whoever violates this section is guilty of desecration. A violation of division (A)(1), (2), (3), (5), or (6) of this section is a misdemeanor of the second degree. Except as otherwise provided in this division, a violation of division (A)(4) of this section is a felony of the fifth degree that is punishable by a fine of up to two thousand five hundred dollars in addition to the penalties specified for a felony of the fifth degree in sections 2929.13 to 2929.18 of the Revised Code. If the value of the property or the amount of physical harm involved in a violation of division (A)(4) of this section is five thousand dollars or more but less than one hundred thousand dollars, a violation of that division is a felony of the fourth degree. If the value of the property or the amount of physical harm involved in a violation of division (A)(4) of this section is one hundred thousand dollars or more, a violation of that division is a felony of the third degree.

(C) As used in this section, "cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 418 (Eff 8-24-76); 137 v H 741 (Eff 10-9-78); 141 v S 316 (Eff 3-19-87); 147 v H 429 (Eff 9-30-98); 148 v S 51, Eff 9-20-99.

§ 2927.12 Ethnic intimidation.

(A) No person shall violate section 2903.21, 2903.22, 2909.06, or 2909.07, or division (A)(3), (4), or (5) of section 2917.21 of the Revised Code by reason of the race, color, religion, or national origin of another person or group of persons.

(B) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.

HISTORY: 141 v S 316, Eff 3-19-87.

§ 2927.13 Selling or donating contaminated blood.

(A) No person, with knowledge that the person is a carrier of a virus that causes acquired immune deficiency syndrome, shall sell or donate the person's blood, plasma, or a product of the person's blood, if the person knows or should know the blood, plasma, or product of the person's blood is being accepted for the purpose of transfusion to another individual.

(B) Whoever violates this section is guilty of selling or donating contaminated blood, a felony of the fourth degree.

HISTORY: 142 v H 571 (Eff 3-17-89); 146 v S 2, Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2927.21 Duty to report escape of certain animals.

(A) The owner or keeper of any member of a species of the animal kingdom that escapes from the owner's or keeper's custody or control and that is not indigenous to this state or presents a risk of serious physical harm to persons or property, or both, shall, within one hour after the owner or keeper discovers or reasonably should have discovered the escape, report it to:

(1) A law enforcement officer of the municipal corporation or township and the sheriff of the county where the escape occurred; and

(2) The clerk of the municipal legislative authority or the fiscal officer of the township where the escape occurred.

(B) If the office of the clerk of a municipal legislative authority or township fiscal officer is closed to the public at the time a report is required by division (A) of this section, it is sufficient compliance with division A)(2) of this section if the owner or keeper makes the report within one hour after the office is next open to the public.

(C) Whoever violates this section is guilty of a misdemeanor of the first degree.

HISTORY: 141 v H 32, Eff 9-11-85; 151 v S 107, § 1, eff. 12-20-05.

§ 2927.24 Contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance; spreading false report.

(A) As used in this section:

(1) "Poison" has the same meaning as in section 3719.01 of the Revised Code.

(2) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(3) "Hazardous chemical, biological, or radioactive substance" means any of the following:

(a) Any toxic or poisonous chemical, the precursor of any toxic or poisonous chemical, or any toxin;

(b) Any disease organism or biological agent;

(c) Any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

(4) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, capable of causing death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism, deterioration of food, water, equipment, supplies, or material of any kind, or deleterious alteration of the environment.

(5) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of reproduction, including, but not limited to, any poisonous substance or biological product that may be engineered through biotechnology or produced by a living organism and any poisonous isomer or biological

product, homolog, or derivative of any substance or product of that nature.

(B) Except as provided in division (D) of this section, no person shall do any of the following:

(1) Knowingly mingle a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, or knowingly place a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person. For purposes of this division, a person does not know or have reason to know that water may be ingested or used by another person if it is disposed of as waste into a household drain including the drain of a toilet, sink, tub, or floor.

(2) Knowingly release into the air, knowingly leave in any public place, or knowingly expose one or more persons to any hazardous chemical, biological, or radioactive substance with the intent to cause, or create a risk of, death or serious physical harm to any person.

(C) No person shall do any of the following:

(1) Inform another person that a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or substance would be a violation of division B)(1) of this section, and the person knows both that the information is false and that the information likely will be disseminated to the public.

(2) Inform another person that a hazardous chemical, biological, or radioactive substance has been or will be released into the air or left in a public place, or that one or more persons has been or will be exposed to a hazardous chemical, biological, or radioactive substance, if the release, leaving, or exposure of the hazardous chemical, biological, or radioactive substance would be a violation of division B)(2) of this section, and the person knows both that the information is false and that the information likely will be disseminated to the general public.

(D)(1) A person may mingle a drug with a food or drink for the purpose of causing the drug to be ingested or used in the quantity described by its labeling or prescription.

(2) A person may place a poison or other harmful substance in a spring, well, reservoir, or public water supply in such quantity as is necessary to treat the spring, well, reservoir, or water supply to make it safe for human consumption and use.

(3) The provisions of division (B) of this section shall not be applied in a manner that conflicts with any other state or federal law or rule relating to substances permitted to be applied to or present in any food, raw or processed, any milk or milk product, any meat or meat product, any type of crop, water, or alcoholic or nonalcoholic beverage.

(E)(1) Whoever violates division B)(1) or (2) of this section is guilty of contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance. Except as otherwise provided in this division, contaminating a

substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance is a felony of the first degree. If the offense involved an amount of poison, the hazardous chemical, biological, or radioactive substance, or the other harmful substance sufficient to cause death if ingested or used by a person regarding a violation of division (B)(1) of this section or sufficient to cause death to persons who are exposed to it regarding a violation of division (B)(2) of this section or if the offense resulted in serious physical harm to another person, whoever violates division (B)(1) or (2) of this section shall be imprisoned for life with parole eligibility after serving fifteen years of imprisonment.

(2) Whoever violates division (C)(1) or (2) of this section is guilty of spreading a false report of contamination, a felony of the fourth degree.

(F) Divisions (C)(1) and (2) of this section do not limit or affect the application of sections 2917.31 or 2917.32 of the Revised Code. Any act that is a violation of both division (C)(1) or (2) of this section and of section 2917.31 or 2917.32 of the Revised Code may be prosecuted under this section, section 2917.31 or 2917.32 of the Revised Code, or both this section and section 2917.31 or 2917.32 of the Revised Code.

HISTORY: 145 v H 280 (Eff 6-29-94); 146 v S 2 (Eff 7-1-96); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 149 v S 184. Eff 5-15-2002.

§ 2927.27 Illegal bail bond agent practices.

(A) No person, other than a law enforcement officer, shall apprehend, detain, or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

(1) The person is any of the following:

(a) Qualified, licensed, and appointed as a surety bail bond agent under sections 3905.83 to 3905.95 of the Revised Code;

(b) Licensed as a surety bail bond agent by the state where the bond was written;

(c) Licensed as a private investigator under Chapter 4749. of the Revised Code;

(d) Licensed as a private investigator by the state where the bond was written;

(e) An off-duty peace officer, as defined in section 2921.51 of the Revised Code.

(2) The person, prior to apprehending, detaining, or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained, or arrested.

For purposes of division (A)(2) of this section, "surety" has the same meaning as in section 3905.83 of the Revised Code.

(3) The person, prior to apprehending, detaining, or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form of identification or other information requested by the law enforcement agency.

(B) No person shall represent the person's self to be a bail enforcement agent or bounty hunter, or claim any similar title, in this state.

(C)(1) Whoever violates this section is guilty of illegal bail bond agent practices.

(2) A violation of division (A) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, a felony of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section, a felony of the third degree.

HISTORY: 148 v H 730. Eff 10-9-2001.

The effective date is set by section 3 of HB 730.

CHAPTER 2929: PENALTIES AND SENTENCING

Section

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[IN GENERAL]

§ 2929.01 Definitions.

Effective until 1-1-08.

As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Bad time" means the time by which the parole board administratively extends an offender's stated prison term or terms pursuant to section 2967.11 of the Revised Code because the parole board finds by clear and convincing evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for the commission of that act.

(C) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(D) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(F) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(G) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(H) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(I) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(J) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(K) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(L) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(M) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the

offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(N) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(O) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(P) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(Q) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(R) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(S) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(T) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(U) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2929.24 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(V) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(W) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do

business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(X) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses of two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana¹ that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(Y) "Mandatory prison term" means any of the following:

(1) Subject to division (Y)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (14) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 [2929.14.2] of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code..

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code, pursuant to division (B)(1)(a), (b), or (c) of section 2971.03 of the Revised Code for the offense of rape committed on or after the effective date of this amendment in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, pursuant to division (B)(2)(a) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418 [2941.14.18] of the Revised Code, pursuant to division (B)(2)(b) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1419 [2941.14.19] of the Revised Code, or pursuant to division (B)(2)(c) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1420 [2941.14.20] of the Re-

vised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Z) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(AA) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(BB) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(CC) "Prison term" includes any of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code;

(3) A term in prison extended by bad time imposed pursuant to section 2967.11 of the Revised Code or imposed for a violation of post-release control pursuant to section 2967.28 of the Revised Code.

(DD) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (DD)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (DD)(1)(a) or (b) of this section.

(EE) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(FF) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(GG) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142 [2929.14.2], or 2971.03 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 [2967.19.3] of the Revised Code.

(HH) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(II) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(JJ) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(KK) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(LL) "Habitual sex offender," "sexually oriented offense," "sexual predator," "registration-exempt sexually oriented offense," "child-victim oriented offense," "habitual child-victim offender," and "child-victim predator" have the same meanings as in section 2950.01 of the Revised Code.

(MM) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(NN) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(OO) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(PP) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(QQ) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(RR) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(SS) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(TT) "Body armor" has the same meaning as in section 2941.1411 [2941.14.11] of the Revised Code.

(UU) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(VV) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (VV)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or

otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (VV)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division (VV)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (VV)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (VV)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (VV)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(WW) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(XX) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(YY) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(ZZ) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated

homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327, Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07.

§ 2929.01 Definitions.

Effective 1-1-08.

As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Bad time" means the time by which the parole board administratively extends an offender's stated prison term or terms pursuant to section 2967.11 of the Revised Code because the parole board finds by clear and convincing evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for the commission of that act.

(C) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(D) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(F) "Community control sanction" means a sanction that is not a prison term and that is described in section

2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(G) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(H) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(I) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(J) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(K) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(L) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(M) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(N) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(O) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(P) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(Q) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(R) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(S) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(T) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(U) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2929.24 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(V) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(W) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(X) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(Y) "Mandatory prison term" means any of the following:

(1) Subject to division (Y)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (14) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 [2929.14.2] of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code..

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Z) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(AA) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(BB) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(CC) "Prison term" includes any of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code;

(3) A term in prison extended by bad time imposed pursuant to section 2967.11 of the Revised Code or imposed for a violation of post-release control pursuant to section 2967.28 of the Revised Code.

(DD) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (DD)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (DD)(1)(a) or (b) of this section.

(EE) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(FF) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(GG) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142 [2929.14.2], or 2971.03 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 [2967.19.3] of the Revised Code.

(HH) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(II) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(JJ) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(KK) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(LL) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in section 2950.01 of the Revised Code.

(MM) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(NN) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(OO) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(PP) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(QQ) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(RR) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(SS) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(TT) "Body armor" has the same meaning as in section 2941.1411 [2941.14.11] of the Revised Code.

(UU) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(VV) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (VV)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (VV)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division (VV)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (VV)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (VV)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (VV)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and

that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(WW) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(XX) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(YY) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(ZZ) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327, Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 6 of 152 v S 10 read as follows:

SECTION 6. * * * Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 461 and Am. Sub. S.B. 260 of the 126th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 5(B) of 151 v H 461 read as follows:

SECTION 5. (B) Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. H.B. 162 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3(B) of 151 v S 260 read as follows:

SECTION 3. * * * (B) Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. H.B. 162 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of

simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:

SECTION 3. * * * Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The effective date is set by section 4 of H.B. 490.

Not analogous to former RC § 2929.01 (134 v H 511; 136 v H 300; 137 v H 565; 139 v S 199; 140 v S 210; 142 v H 261; 145 v H 571; 145 v S 186, repealed 146 v S 2, § 2, eff 7-1-96.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of this act shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.

See provisions, § 4 of HB 327 (149 v —) following RC § 2919.25.

See provisions, § 11 of SB 179 (148 v —) following RC § 2923.36.

Comment, Legislative Service Commission

Section 2929.01 of the Revised Code is amended by Am. Sub. S.B. 260 and Am. Sub. H.B. 461 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment, and each act affirms harmonization between Am. Sub. H.B. 162 and Am. Sub. H.B. 95.

Section 2929.01 of the Revised Code is amended by Am. Sub. H.B. 162 and Am. Sub. H.B. 95 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[PENALTIES FOR MURDER]

§ 2929.02 Penalties for aggravated murder or murder.

Effective until 1-1-08.

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022 [2929.02.2], 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B) Whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life, except that, if the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included

in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code. In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section 2903.01 or 2903.02 of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 151 v H 461, § 1, eff. 4-4-07.

§ 2929.02 Penalties for aggravated murder or murder.

Effective 1-1-08.

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022 [2929.02.2], 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B)(1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(3) If a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator

specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section 2903.01 or 2903.02 of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

See provisions, § 4 of HB 180 (146 v —), following RC § 2921.34.

[§ 2929.02.1] § 2929.021 Notice to supreme court of indictment charging aggravated murder; plea.

(A) If an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the clerk of the court in which the indictment is filed, within fifteen days after the day on which it is filed, shall file a notice with the supreme court indicating that the indictment was filed. The notice shall be in the form prescribed by the clerk of the supreme court and shall contain, for each charge of aggravated murder with a specification, at least the following information pertaining to the charge:

(1) The name of the person charged in the indictment or count in the indictment with aggravated murder with a specification;

(2) The docket number or numbers of the case or cases arising out of the charge, if available;

(3) The court in which the case or cases will be heard;

(4) The date on which the indictment was filed.

(B) If the indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the defendant pleads guilty or no contest to any offense in the case or if the indictment or any count in the indictment is dismissed, the clerk of the court in which the plea is entered or the indictment or

count is dismissed shall file a notice with the supreme court indicating what action was taken in the case. The notice shall be filed within fifteen days after the plea is entered or the indictment or count is dismissed, shall be in the form prescribed by the clerk of the supreme court, and shall contain at least the following information:

(1) The name of the person who entered the guilty or no contest plea or who is named in the indictment or count that is dismissed;

(2) The docket numbers of the cases in which the guilty or no contest plea is entered or in which the indictment or count is dismissed;

(3) The sentence imposed on the offender in each case.

HISTORY: 139 v S 1. Eff 10-19-81.

[§ 2929.02.2] § 2929.022 Determination of aggravating circumstances of prior conviction.

Effective until 1-1-08.

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, the defendant may elect to have the panel of three judges, if he waives trial by jury, or the trial judge, if he is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of section 2929.03 of the Revised Code.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, and on any other specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence accord-

ing to division (E) of section 2929.03 of the Revised Code;

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

HISTORY: 139 v S 1, Eff 10-19-81.

[§ 2929.02.2] § 2929.022 Determination of aggravating circumstances of prior conviction.

Effective 1-1-08.

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, the defendant may elect to have the panel of three judges, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of section 2929.03 of the Revised Code.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, and on any other specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code in a single trial as in any other criminal case

in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence according to division (E) of section 2929.03 of the Revised Code.

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior

conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B)(2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than thirteen years of age and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

HISTORY: 139 v S 1. Eff 10-19-81; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2929.02.3] § 2929.023 Defendant may raise matter of age.

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of his age at the time of the alleged commission of the offense and may present evidence at trial that he was not eighteen years of age or older at the time of the alleged commission of the offense. The burdens of raising the matter of age, and of going forward with the evidence relating to the matter of age, are upon the defendant. After a defendant has raised the matter of age at trial, the prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

HISTORY: 139 v S 1. Eff 10-19-81.

[§ 2929.02.4] § 2929.024 Investigation services and experts for indigent.

If the court determines that the defendant is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of a defendant charged with aggravated murder at trial or at the sentencing hearing, the court shall authorize the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made as provided in this section.

HISTORY: 139 v S 1. Eff 10-19-81.

§ 2929.03 Imposing sentence for aggravated murder.

Effective until 1-1-08.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

- (a) Life imprisonment without parole;
- (b) Life imprisonment with parole eligibility after serving twenty years of imprisonment;
- (c) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (d) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 [2929.02.3] of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code, the trial court shall impose sentence on the offender as follows:

- (a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:
 - (i) Life imprisonment without parole;
 - (ii) Life imprisonment with parole eligibility after serving twenty years of imprisonment;
 - (iii) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
 - (iv) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i) or (ii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circum-

stances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is a sentence of life imprisonment without parole imposed under division (D)(2)(b) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall

proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

- (i) Life imprisonment without parole;
- (ii) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (iii) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

- (a) Life imprisonment without parole;
- (b) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (c) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment under division (D) of this

section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 180. Eff 1-1-97; 150 v H 184, § 1, eff. 3-23-05.

§ 2929.03 Imposing sentence for aggravated murder.

Effective 1-1-08.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

- (a) Life imprisonment without parole;
- (b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;
- (c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without

parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 [2929.02.3] of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

- (i) Life imprisonment without parole;
- (ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;
- (iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a

defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted

of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(iv) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (D)(3)(a)(i) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the

Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(c) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(d) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (E)(2)(a) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was

found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 180. Eff 1-1-97; 150 v H 184, § 1, eff. 3-23-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of H.B. 184 (150 v —) read as follows:
SECTION 3. Section 2929.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 180 and Am. Sub. S.B. 269 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 3 of HB 180.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

The provisions of §§ 3, 4 of SB 269 read as follows:

SECTION 3. That Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly be amended to read as follows:

"Sec. 5. The provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, notwithstanding division (B) of section 1.58 of the Revised Code, to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposes a term of imprisonment for an offense that was committed prior to that date.

The provisions of the Revised Code in existence on and after July 1, 1996, apply to a person who commits an offense on or after that date."

SECTION 4. That existing Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly is hereby repealed.

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the

offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 147 v S 32 (Eff 8-6-97); 147 v H 151 (Eff 9-16-97); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002.

The provisions of § 3 of SB 193 (147 v —) read as follows:

SECTION 3. Section 2929.04 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 151 and Am. S.B. 32 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 2929.05 Appellate review of death sentence.

(A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to section 2929.022 [2929.02.2] or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen years of age at the time of the commission of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division

unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.

HISTORY: 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 147 v S 107. Eff 7-29-98.

§ 2929.06 Resentencing after sentence of death or life imprisonment without parole is set aside, nullified, or vacated.

Effective until 1-1-08.

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of section 2929.05 of the Revised Code, or is set aside, nullified, or vacated because a court has determined that the offender is mentally retarded under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment that is determined as specified in this division. The sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death or a sentence of life imprisonment. If, pursuant to that procedure, the court determines that it will impose a sentence of life imprisonment, the sentences of life imprisonment that are available at the hearing, and from which the court

shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 [2929.02.1] or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th General Assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after the effective date of that act, including offenders who, on the effective date of that act, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of the effective date of that act, have not yet been resentenced.

HISTORY: 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 258 (Eff 10-16-96); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 150 v H 184, § 1, eff. 3-23-05.

§ 2929.06 Resentencing after sentence of death or life imprisonment without parole is set aside, nullified, or vacated.

Effective 1-1-08.

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of section 2929.05 of the Revised Code, or is set aside, nullified, or vacated because a court has determined that the offender is mentally retarded under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the

offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time

the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 [2929.02.1] or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

HISTORY: 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 258 (Eff 10-16-96); 146 v H 180 (Eff 1-1-97); 147 v S 107. Eff 7-29-98; 150 v H 184, § 1, eff. 3-23-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of SB 107 (147 v —) read as follows:

SECTION 3. Section 2929.06 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 269, Sub. S.B. 258, and Am. Sub. H.B. 180 of the 121st General Assembly, with the new language of none of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

See provisions, §§ 3, 4 of SB 269 (146 v —) following RC § 2929.03.

[PENALTIES FOR FELONY]

§ 2929.11 Purposes of felony sentencing; discrimination prohibited.

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

HISTORY: 146 v S 2. Eff 7-1-96.

Not analogous to former RC § 2929.11 (134 v H 511; 137 v S 119; 139 v S 199; 140 v S 210; 140 v H 265; 140 v S 4; 141 v H 284; 143 v H 51; 143 v S 258), repealed 146 v S 2, § 2, eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2929.12 Seriousness and recidivism factors.

(A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or

more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

- (1) The victim induced or facilitated the offense.
- (2) In committing the offense, the offender acted under strong provocation.
- (3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.
- (4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

- (1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 [2929.14.1] of the Revised Code.

- (2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

- (3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

- (4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

- (5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

- (1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.
- (2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.
- (3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.
- (4) The offense was committed under circumstances not likely to recur.
- (5) The offender shows genuine remorse for the offense.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327, Eff 7-8-2002.

Analogous to former RC § 2929.12 (134 v H 511; 137 v S 119; 138 v S 384; 139 v S 199; 143 v S 258; 145 v S 186), repealed 146 v S 2, § 2, eff 7-1-96..

See provisions, § 11 of SB 179 (148 v —) following RC § 2923.36.

§ 2929.13 Guidance by degree of felony; monitoring of sexual predators by global positioning device.

Effective until 1-1-08.

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also may impose a financial sanction pursuant to section 2929.18 of the Revised Code but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the mandatory term of local incarceration or the mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable:

- (1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

- (2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.

(B)(1) Except as provided in division (B)(2), (E), (F), or (G) of this section, in sentencing an offender for a

felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender caused physical harm to a person.

(b) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(c) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(d) The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(e) The offender committed the offense for hire or as part of an organized criminal activity.

(f) The offense is a sex offense that is a fourth or fifth degree felony violation of section 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2907.34 of the Revised Code.

(g) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

(h) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

(i) The offender committed the offense while in possession of a firearm.

(2)(a) If the court makes a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

(C) Except as provided in division (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for

which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program;

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142 [2929.14.2], or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 [2967.19.1] of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code for any of the following offenses:

(1) Aggravated murder when death is not imposed or murder;

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;

(3) Gross sexual imposition or sexual battery, if the victim is under thirteen years of age and if any of the following applies:

(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was under thirteen years of age;

(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

(c) Regarding sexual battery, either of the following applies:

(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under thirteen years of age.

(ii) The offense was committed on or after August 3, 2006.

(4) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previ-

ously was convicted of or pleaded guilty to any of the following offenses:

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

(10) Corrupt activity in violation of section 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction.

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (D)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 [2941.14.15] of the Revised Code, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (D)(6) of section 2929.14 of the Revised Code.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not

been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19.3], or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19.3], or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 [5120.03.3] of the Revised Code that is privately operated and managed by a contractor pursuant

to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code if either of the following applies:

(1) The offense was a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender was adjudicated a sexually violent predator.

(2) The offense was a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment.

(3) The offense was attempted rape committed on or after the effective date of this amendment, and the offender also was convicted of or pleaded guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(4) The judge imposing sentence for the sexually oriented offense determines pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator.

(I) If an offender is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense or for a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration and, if required under division (A)(2) of section 2950.03 of the Revised Code, shall perform the duties specified in that section.

(J)(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted

would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section, "drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(L) At the time of sentencing an offender who is a sexual predator for any sexually oriented offense, if the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

HISTORY: 146 v S2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 293 (Eff 3-17-98); 147 v H 122 (Eff 7-29-98); 148 v S 142 (Eff 2-3-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07.

§ 2929.13 Guidance by degree of felony; monitoring of sexually oriented offenders by global positioning device.

Effective 1-1-08.

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also may impose a financial sanction pursuant to section 2929.18 of the Revised Code but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the mandatory term of local incarceration or the mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable:

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

(2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.

(B)(1) Except as provided in division (B)(2), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender caused physical harm to a person.

(b) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(c) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(d) The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(e) The offender committed the offense for hire or as part of an organized criminal activity.

(f) The offense is a sex offense that is a fourth or fifth degree felony violation of section 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2907.34 of the Revised Code.

(g) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

(h) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

(i) The offender committed the offense while in possession of a firearm.

(2)(a) If the court makes a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a community control sanction or combination

of community control sanctions is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

(C) Except as provided in division (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree, or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06,

2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142 [2929.14.2], or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 [2967.19.1] of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

(1) Aggravated murder when death is not imposed or murder;

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;

(3) Gross sexual imposition or sexual battery, if the victim is less than thirteen years of age and if any of the following applies:

(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was less than thirteen years of age;

(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

(c) Regarding sexual battery, either of the following applies:

(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(ii) The offense was committed on or after August 3, 2006.

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, or 2903.13 of the Revised Code if the section requires the imposition of a prison term;

(5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05,

2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

(10) Corrupt activity in violation of section 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction.

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (D)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 [2941.14,15] of the Revised Code, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (D)(6) of section 2929.14 of the Revised Code;

(15) Kidnapping, in the circumstances specified in section 2971.03 of the Revised Code and when no other provision of division (F) of this section applies.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 [2941.14,13] of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19,3], or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14,13] of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193 [2967.19,3], or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be

sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 [5120.03.3] of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 [5120.03.3] of the Revised Code other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a felony committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(I) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section, or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

(J)(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse

offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section, "drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(L) At the time of sentencing an offender for any sexually oriented offense, if the offender is a tier III sex offender/child-victim offender relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

HISTORY: 146 v S2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 293 (Eff 3-17-98); 147 v H 122 (Eff 7-29-98); 148 v S 142 (Eff 2-3-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 6 of 152 v S 10 read as follows:

SECTION 6. * * * Section 2929.13 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 461, Am. Sub. S.B. 260, and Sub. S.B. 281 of the 126th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:

SECTION 3. * * * Sections 2929.01, 2929.13 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

Not analogous to former RC § 2929.13 (139 v S 199), repealed 146 v S 2, § 2, eff 7-1-96.

The provisions of § 7 of S.B. 5 (150 v —) read as follows:

SECTION 7. (A) * * * Section 2929.13 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by both Am. Sub. H.B. 327 and Sub. H.B. 485 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

(B) * * * Section 2929.13 of the Revised Code, effective January 1, 2004, is presented in Section 3 of this act as a composite of the

section as amended by Am. Sub. H.B. 327, Sub. H.B. 485, and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 3 of this act.

The provisions of § 3 of HB 485 (149 v —) read as follows:

SECTION 3. Section 2929.13 of the Revised Code is presented in this act as a composite of the section as amended by Am. H.B. 528, Am. Sub. S.B. 22, Am. Sub. S.B. 107, Am. S.B. 142, and Am. Sub. S.B. 222 of the 123rd General Assembly. Sections 2950.01, 2950.04, and 2950.09 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 393 and Am. Sub. S.B. 175 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the section as presented in this act.

The provisions of § 3 of SB 222 (148 v —) read, in part, as follows:

SECTION 3. * * * Section 2929.13 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 22, Am. Sub. S.B. 107 and Am. S.B. 142 of the 123rd General Assembly, with the new language of none of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Comment, Legislative Service Commission

Section 2929.13 of the Revised Code is amended by Sub. S.B. 281, Am. Sub. S.B. 260, and Am. Sub. H.B. 461 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2929.14 Basic prison terms.

Effective until 1-1-08.

(A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (G), or (L) of this section and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) For a felony of the third degree, the prison term shall be one, two, three, four, or five years.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (G), or (L) of this section, in

section 2907.02 or 2907.05 of the Revised Code, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

(C) Except as provided in division (G) or (L) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141 [2941.14.1], 2941.144 [2941.14.4], or 2941.145 [2941.14.5] of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 [2941.14.4] of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 [2941.14.5] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 [2941.14.1] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 [2923.16.1] of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type

described in section 2941.146 [2941.14.6] of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 [2923.16.1] of the Revised Code or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 [2941.14.11] of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 [2923.12.3] of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 [2941.14.12] of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer as defined in section 2941.1412 [2941.14.12] of the Revised Code, the

court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

(2)(a) If division (D)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 [2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149

[2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (DD)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (D)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161 [3719.16.1], 4729.37, or 4729.61, division (C) or (D) of section 3719.172 [3719.17.2], division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marijuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender

completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967, or 5120, of the Revised Code.

(b) The court imposing a prison term on an offender under division (D)(3)(a) of this section may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under division (D)(3)(a) of this section and, if applicable, divisions (D)(1) and (2) of this section, makes both of the findings set forth in divisions (D)(2)(a)(iv) and (v) of this section.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 [2941.14.14] of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court

shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 [2941.14.15] of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 [2941.14.15] of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

(E)(1)(a) Subject to division (E)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (D)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the

Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 [2923.13.1] of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 [2921.33.1] of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 [2929.14.2] of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (D)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (D)(5) of this section consecutively to and prior to the

mandatory prison term imposed pursuant to division (D)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 [2929.14.2] of the Revised Code.

(6) When consecutive prison terms are imposed pursuant to division (E)(1), (2), (3), (4), or (5) of this section, the term to be served is the aggregate of all of the terms so imposed.

(F)(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (F)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(G) If a person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender is adjudicated a sexually violent predator, if a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code, or if a person is convicted of or pleads guilty to attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, the court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment.

(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 [2929.14.2] of the Revised Code, or section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 [5120.16.3] of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 [2941.14.2] of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(J) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 [2941.14.3] of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(K) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or for placement in an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for

placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(L) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A) (1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 [2929.14.2] of the Revised Code.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-5-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07.

† Section 3, H.B. 12, Acts 2004, purported to amend the version of RC § 2929.14 as amended by S.B. 123 (149 v —), which took effect on January 1, 2004. However, H.B. 12, Acts 2004 was approved January 8, 2004, and became effective April 8, 2004.

§ 2929.14 Basic prison terms.

Effective 1-1-08.

(A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (G), or (L) of this section and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) For a felony of the third degree, the prison term shall be one, two, three, four, or five years.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (G), or (L) of this section, in section 2907.02 or 2907.05 of the Revised Code, or in

Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

(C) Except as provided in division (G) or (L) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141 [2941.14.1], 2941.144 [2941.14.4], or 2941.145 [2941.14.5] of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 [2941.14.4] of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 [2941.14.5] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 [2941.14.1] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 [2923.16.1] of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in section 2941.146 [2941.14.6] of the Revised

Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 [2923.16.1] of the Revised Code or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 [2941.14.11] of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 [2923.12.3] of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 [2941.14.12] of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer as defined in section 2941.1412 [2941.14.12] of the Revised Code, the court, after imposing a prison term on the offender for

the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

(2)(a) If division (D)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 [2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149

[2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (DD)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (D)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161 [3719.16.1], 4729.37, or 4729.61, division (C) or (D) of section 3719.172 [3719.17.2], division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender

completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967, or 5120, of the Revised Code.

(b) The court imposing a prison term on an offender under division (D)(3)(a) of this section may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under division (D)(3)(a) of this section and, if applicable, divisions (D)(1) and (2) of this section, makes both of the findings set forth in divisions (D)(2)(a)(iv) and (v) of this section.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 [2941.14.14] of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court

shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 [2941.14.15] of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 [2941.14.15] of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

(E)(1)(a) Subject to division (E)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (D)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the

Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 [2923.13.1] of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 [2921.33.1] of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 [2929.14.2] of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (D)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (D)(5) of this section consecutively to and prior to the

mandatory prison term imposed pursuant to division (D)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 [2929.14.2] of the Revised Code.

(6) When consecutive prison terms are imposed pursuant to division (E)(1), (2), (3), (4), or (5) of this section, the term to be served is the aggregate of all of the terms so imposed.

(F)(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (F)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(G) The court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

(1) A person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code.

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418

[2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after the effective date of this amendment, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after the effective date of this amendment, and division (A)(2)(b)(ii) of section 2929.022 [2929.02.2], division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after the effective date of this amendment, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 [2929.14.2] of the Revised Code, or section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 [5120.16.3] of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 [2941.14.2] of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(J) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 [2941.14.3] of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(K) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or for placement in an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender

in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(L) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A) (1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 [2929.14.2] of the Revised Code.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

† Section 3, H.B. 12, Acts 2004, purported to amend the version of RC § 2929.14 as amended by S.B. 123 (149 v —), which took effect on January 1, 2004. However, H.B. 12, Acts 2004 was approved January 8, 2004, and became effective April 8, 2004.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 6 of 152 v S 10 read as follows:

SECTION 6. * * * Section 2929.14 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 461, Am. Sub. S.B. 260, and Sub. S.B. 281 all of the 126th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

See provisions of § 5 of 151 v H 137 following RC § 2929.191.

The effective date is set by § 7 of 151 v H 137.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:

SECTION 3. * * * Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 10, H.B. 12 (150 v —), read as follows:

SECTION 10. If any provision of sections 1547.69, 2911.21, 2913.02, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2929.14, 2953.32, and 4749.10 of the Revised Code, as amended by this act, any provision of sections 109.69, 109.731, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, and 2923.1213 of the Revised Code, as enacted by this act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable.

The provisions of § 11, H.B. 12 (150 v —), read as follows:

SECTION 11. (B) Section 2929.14 of the Revised Code, effective on January 1, 2004, is presented in Section 3 of this act as a composite of the section as amended by Sub. H.B. 130, Am. Sub. H.B. 327, Sub. H.B. 485, and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in Section 3 of this act.

Not analogous to former RC § 2929.14 (139 v S 199; 145 v S 186), repealed 146 v S 2, § 2, 7-1-96.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of this act shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.

Comment, Legislative Service Commission

Section 2929.14 of the Revised Code is amended by Sub. S.B. 281, Am. Sub. S.B. 260, and Am. Sub. H.B. 461 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[§ 2929.14.1] § 2929.141 New felony committed by person on release.

(A) As used in this section, "person on release" means a "releasee" or "parolee," both as defined in section 2967.01 of the Revised Code.

(B) A person on release who by committing a felony violates any condition of parole, any post-release control sanction, or any conditions described in division (A) of section 2967.131 [2967.13.1] of the Revised Code that are imposed upon the person may be prosecuted for the new felony. Upon the person's conviction of or plea of guilty to the new felony, the court shall impose sentence for the new felony, the court may terminate the term of post-release control if the person is a releasee and the court may do either or both of the following for a person who is either a releasee or parolee regardless of whether the

sentencing court or another court of this state imposed the original prison term for which the person is on parole or is serving a term of post-release control:

(1) In addition to any prison term for the new felony, impose a prison term for the violation. If the person is a releasee, the maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the releasee has spent under post-release control for the earlier felony. In all cases, any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the parole board or adult parole authority as a post-release control sanction. In all cases, a prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. If the person is a releasee, a prison term imposed for the violation, and a prison term imposed for the new felony, shall not count as, or be credited toward, the remaining period of post-release control imposed for the earlier felony.

(2) Impose a sanction under sections 2929.15 to 2929.18 of the Revised Code for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.

HISTORY: 149 v H 327. Eff 7-8-2002.

§ 2929.14.2]=sn1 2929.142 Mandatory prison term for aggravated vehicular homicide where offender has previous OVI-type convictions

Notwithstanding the definite prison term specified in division (A) of section 2929.14 of the Revised Code for a felony of the first degree, if an offender is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code, the court shall impose upon the offender a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if any of the following apply:

(A) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(B) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(C) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(D) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.06 of the Revised Code.

(E) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.08 of the Revised Code.

(F) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 2903.04 of the Revised Code in circumstances in which division (D) of that section applied regarding the violations.

(G) The offender previously has been convicted of or pleaded guilty to three or more violations of any combi-

nation of the offenses listed in division (A), (B), (C), (D), (E), or (F) of this section.

(H) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of section 4511.19 of the Revised Code.

HISTORY: 151 v H 461. Eff 4-4-07.

§ 2929.15 Community control sanctions.

(A)(1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code. If the court is sentencing an offender for a fourth degree felony OVI offense under division (C)(1) of section 2929.13 of the Revised Code, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under section 2929.17 of the Revised Code, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2)(a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, the court shall place the offender under the general control and super-

vision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under section 2301.27 of the Revised Code, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(B) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the

state without the permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section, may impose a more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code, or may impose a prison term on the offender pursuant to section 2929.14 of the Revised Code. The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(3) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D)(1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under section 341.26, 753.33, or 5120.63 of the Revised Code.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to section 341.26, 753.33, or 5120.63 of the Revised Code shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to section 5120.63 of the Revised Code. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse

shall pay the fee for the drug test if the department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349, Eff 9-22-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

The provisions of § 8 of S.B. 123 read as follows:

SECTION 8. Section 2929.15 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 349, Am. Sub. S.B. 22, and Am. Sub. S.B. 107 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

Not analogous to former RC § 2929.15, amended and renumbered RC § 2929.22.3 in 146 v S 2, eff. 7-1-96, repealed 9-6-2002.

Comment, Legislative Service Commission

Sections 2929.15 and 2929.19 of the Revised Code are amended by this act [Am. Sub. H.B. 349] and also by Am. Sub. S.B. 22 and Am. Sub. S.B. 107 of the 123rd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2929.16 Residential sanctions.

(A) Except as provided in this division, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions under this section. The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a community residential sanction or combination of community residential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense. Community residential sanctions include, but are not limited to, the following:

(1) A term of up to six months at a community-based correctional facility that serves the county;

(2) Except as otherwise provided in division (A)(3) of this section and subject to division (D) of this section, a term of up to six months in a jail;

(3) If the offender is convicted of a fourth degree felony OVI offense and is sentenced under division (G)(1) of section 2929.13 of the Revised Code, subject to division (D) of this section, a term of up to one year in a

jail less the mandatory term of local incarceration of sixty or one hundred twenty consecutive days of imprisonment imposed pursuant to that division;

(4) A term in a halfway house;

(5) A term in an alternative residential facility.

(B) The court that assigns any offender convicted of a felony to a residential sanction under this section may authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, or receive treatment. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release.

(C) If the court assigns an offender to a county jail that is not a minimum security misdemeanor jail in a county that has established a county jail industry program pursuant to section 5147.30 of the Revised Code, the court shall specify, as part of the sentence, whether the sheriff of that county may consider the offender for participation in the county jail industry program. During the offender's term in the county jail, the court shall retain jurisdiction to modify its specification upon a reassessment of the offender's qualifications for participation in the program.

(D) If a court sentences an offender to a term in jail under division (A)(2) or (3) of this section and if the sentence is imposed for a felony of the fourth or fifth degree that is not an offense of violence, the court may specify that it prefers that the offender serve the term in a minimum security jail established under section 341.34 or 753.21 of the Revised Code. If the court includes a specification of that type in the sentence and if the administrator of the appropriate minimum security jail or the designee of that administrator classifies the offender in accordance with section 341.34 or 753.21 of the Revised Code as a minimal security risk, the offender shall serve the term in the minimum security jail established under section 341.34 or 753.21 of the Revised Code. Absent a specification of that type and a finding of that type, the offender shall serve the term in a jail other than a minimum security jail established under section 341.34 or 753.21 of the Revised Code.

(E) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 450 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 72 (Eff 3-18-97); 147 v S 111 (Eff 3-17-98); 148 v S 22, Eff 5-17-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 4 of S.B. 123.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

Analogous in part to former RC § 2929.16 (143 v H 51), repealed 146 v S 2, § 2, eff 7-1-96.

§ 2929.17 Nonresidential sanctions.

Except as provided in this section, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of nonresidential sanctions authorized under this section. If the court imposes one or more nonresidential sanctions authorized under this section, the court shall impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender shall abide by the law and shall not leave the state without the permission of the court or the offender's probation officer.

The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a nonresidential sanction or combination of nonresidential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense. Nonresidential sanctions include, but are not limited to, the following:

- (A) A term of day reporting;
- (B) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;
- (C) A term of community service of up to five hundred hours pursuant to division (B) of section 2951.02 of the Revised Code or, if the court determines that the offender is financially incapable of fulfilling a financial sanction described in section 2929.18 of the Revised Code, a term of community service as an alternative to a financial sanction;
- (D) A term in a drug treatment program with a level of security for the offender as determined necessary by the court;
- (E) A term of intensive probation supervision;
- (F) A term of basic probation supervision;
- (G) A term of monitored time;
- (H) A term of drug and alcohol use monitoring, including random drug testing;
- (I) A curfew term;
- (J) A requirement that the offender obtain employment;
- (K) A requirement that the offender obtain education or training;
- (L) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;

(M) A license violation report;

(N) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children, a requirement that the offender obtain counseling. This division does not limit the court in requiring the offender to obtain counseling for any offense or in any circumstance not specified in this division.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349, Eff 9-22-2000; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 4 of HB 490.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

Not analogous to former RC § 2929.17, amended and renumbered RC § 2929.24 in 146 v S 2, eff 7-1-96.

The provisions of § 3 of HB 349 (148 v —) read as follows:

SECTION 3. Sections 2929.01 and 2929.17 of the Revised Code are presented in this act as composites of the sections as amended by both Am. S.B. 9 and Am. Sub. S.B. 107 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. Section 2951.02 of the Revised Code is presented in this act as a composite of the section as amended by H.B. 471, Am. S.B. 9, and Am. Sub. S.B. 107 of the 123rd General Assembly, with the new language of none of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 2929.18 Financial sanctions; restitution.

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

- (1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not

exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

(a) For a felony of the first degree, not more than twenty thousand dollars;

(b) For a felony of the second degree, not more than fifteen thousand dollars;

(c) For a felony of the third degree, not more than ten thousand dollars;

(d) For a felony of the fourth degree, not more than five thousand dollars;

(e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in section 2949.111 of the Revised Code.

(5)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under section 2951.021 of the Revised Code;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14, 2929.142 [2929.14.2], or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement.

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or

2947.19 of the Revised Code and section 2929.37 of the Revised Code, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to section 2929.71 of the Revised Code.

(B)(1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of section 2925.03 of the Revised Code.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of section 2925.03 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of section 2925.03 of the Revised Code prescribed under those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section 2925.03 of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court shall not impose a fine under division (B)(6) of this section.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under section 2929.14, 2929.142 [2929.14.2], or 2929.16 of the Revised Code to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The

department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to sections 2929.14, 2929.142 [2929.14.2], and 2929.16 of the Revised Code.

(2) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(3) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(4) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to this section is an order in favor of the victim of the

offender's criminal act that can be collected through execution as described in division (D)(1) of this section or through an order as described in division (D)(2) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

(1) Obtain execution of the judgment or order through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;

(ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;

(iii) A creditor's suit under section 2333.01 of the Revised Code.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(2) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under section 2929.32 of the Revised Code may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or section 2929.32 of the Revised Code that have not been paid.

(H) No financial sanction imposed under this section or section 2929.32 of the Revised Code shall preclude a victim from bringing a civil action against the offender.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 490 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 147 v H 122 (Eff 7-29-98); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1,

eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 461, § 1, eff. 4-4-07; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. The effective date is set by section 4 of HB 490.

The provisions of § 5 of HB 490 (149 v —) read as follows:

SECTION 5. Section 2929.18 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 123 and Sub. H.B. 170 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the specified composite is the resulting version of the specified sections in effect prior to the effective date of the section as presented in this act.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

The provisions of § 4 of HB 170 (149 v —) read as follows:

SECTION 4. Section 2929.18 of the Revised Code is presented in this act as a composite of the section as amended by Am. H.B. 528, Am. Sub. S.B. 22, and Am. Sub. S.B. 107 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Comment, Legislative Service Commission

Section 2929.18 of the Revised Code is amended by Sub. H.B. 241 and Am. Sub. H.B. 461 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2929.19 Sentencing hearing.

Effective until 1-1-08.

(A)(1) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to section 2953.07 or 2953.08 of the Revised Code. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(2) Except as otherwise provided in this division, before imposing sentence on an offender who is being sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and who is in any category of offender described in division (B)(1)(a)(i), (ii), or (iii) of section 2950.09 of the Revised Code, the court shall conduct a hearing in accordance with division (B) of section 2950.09 of the Revised Code to determine whether the offender is a sexual predator. The court shall not conduct a hearing under that division if the offender is being sentenced for a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender was adjudicated a sexually violent predator, if

the offender is being sentenced under section 2971.03 of the Revised Code for a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment, if the offender is sentenced to a term of life without parole under division (B) of section 2907.02 of the Revised Code, or if the offender is being sentenced for attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code. Before imposing sentence on an offender who is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense, the court also shall comply with division (E) of section 2950.09 of the Revised Code.

Before imposing sentence on or after July 31, 2003, on an offender who is being sentenced for a child-victim oriented offense, regardless of when the offense was committed, the court shall conduct a hearing in accordance with division (B) of section 2950.091 [2950.09.1] of the Revised Code to determine whether the offender is a child-victim predator. Before imposing sentence on an offender who is being sentenced for a child-victim oriented offense, the court also shall comply with division (E) of section 2950.091 [2950.09.1] of the Revised Code.

(B)(1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 [2947.05.1] of the Revised Code.

(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of section 2929.14 of the Revised Code, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and any factors listed in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code that it found to apply relative to the offender.

(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and the basis of the findings it made under divisions (D)(1) and (2) of section 2929.13 of the Revised Code.

(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences:

(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term;

(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term.

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term;

(b) Notify the offender that, as part of the sentence, the parole board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of this section and failed to notify the offender pursuant to division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section

2967.131 [2967.13.1] of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4) If the offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense, if the offender is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that the offender committed on or after January 1, 1997, and the court imposing the sentence has determined pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator, if the offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense and the court imposing the sentence has determined pursuant to division (B) of section 2950.091 [2950.09.1] of the Revised Code that the offender is a child-victim predator, if the offender is being sentenced for an aggravated sexually oriented offense as defined in section 2950.01 of the Revised Code, if the offender is being sentenced under section 2971.03 of the Revised Code for a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment, if the offender is sentenced to a term of life without parole under division (B) of section 2907.02 of the Revised Code, or if the offender is being sentenced for attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, the court shall include in the offender's sentence a statement that the offender has been adjudicated a sexual predator, has been adjudicated a child victim predator, or has been convicted of or pleaded guilty to an aggravated sexually oriented offense, whichever is applicable, and

shall comply with the requirements of section 2950.03 of the Revised Code. Additionally, in the circumstances described in division (G) of section 2929.14 of the Revised Code, the court shall impose sentence on the offender as described in that division.

(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.

(6) Before imposing a financial sanction under section 2929.18 of the Revised Code or a fine under section 2929.32 of the Revised Code, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(7) If the sentencing court sentences the offender to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a local detention facility, as defined in section 2929.36 of the Revised Code, and if the local detention facility is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(7)(a)(i) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(7)(a)(ii) of this section.

(C)(1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose additional sanctions as specified in sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of section 2929.13 of the Revised Code.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the court shall impose the mandatory prison term in accordance with

that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose an additional prison term as specified in section 2929.14 of the Revised Code. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (K) of section 2929.14 of the Revised Code, may recommend placement of the offender in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07.

§ 2929.19 Sentencing hearing.

Effective 1-1-08.

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to section 2953.07 or 2953.08 of the Revised Code. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B)(1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 [2947.05.1] of the Revised Code.

(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of section 2929.14 of the Revised Code, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that

is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and any factors listed in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code that it found to apply relative to the offender.

(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and the basis of the findings it made under divisions (D)(1) and (2) of section 2929.13 of the Revised Code.

(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences;

(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term;

(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of section 2929.14 of the Revised Code or section 2929.142 [2929.14.2] of the Revised Code, its reasons for imposing the maximum prison term.

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term;

(b) Notify the offender that, as part of the sentence, the parole board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of this section and failed to notify the offender pursuant to

division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4)(a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of section 2950.03 of the Revised Code if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after

January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under section 2971.03 of the Revised Code for a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of section 2907.02 of the Revised Code.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code for an offense described in those divisions committed on or after the effective date of this amendment.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (G) of section 2929.14 of the Revised Code, the court shall impose sentence on the offender as described in that division.

(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.

(6) Before imposing a financial sanction under section 2929.18 of the Revised Code or a fine under section 2929.32 of the Revised Code, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(7) If the sentencing court sentences the offender to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a local detention facility, as defined in section 2929.36 of the Revised Code, and if the local detention facility is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(7)(a)(i) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certifi-

cate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(7)(a)(ii) of this section.

(C)(1) If the offender is being sentenced for a fourth degree felony OVI offense under division (C)(1) of section 2929.13 of the Revised Code, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose additional sanctions as specified in sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of section 2929.13 of the Revised Code.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (C)(2) of section 2929.13 of the Revised Code, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose an additional prison term as specified in section 2929.14 of the Revised Code. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (K) of section 2929.14 of the Revised Code, may recommend placement of the offender in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 6 of 152 v S 10 read as follows:

SECTION 6. * * * Section 2929.19 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 461 and Am. Sub. S.B. 260 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

See provisions of § 5 of 151 v H 137 following RC § 2929.191.

The effective date is set by § 7 of 151 v H 137.

The effective date is set by section 4 of H.B. 490.

The provisions of § 5 of HB 490 (149 v —) read as follows:

SECTION 5. Section 2929.19 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 170, Sub. H.B. 485, and Am. Sub. S.B. 123, all of the 124th

General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the specified composite is the resulting version of the specified sections in effect prior to the effective date of the section as presented in this act.

The provisions of § 7 of S.B. 5 (150 v —) read as follows:

SECTION 7. (A) Section 2929.19 of the Revised Code, effective until January 1, 2004, is presented in Section 1 of this act as a composite of the section as amended by both Sub. H.B. 170 and Sub. H.B. 485 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

The provisions of § 4 of HB 485 (149 v —) read as follows:

SECTION 4. Section 2929.19 of the Revised Code is amended by this act and also by Am. Sub. H.B. 327 of the 124th General Assembly, effective July 8, 2002. The amendments of Am. Sub. H.B. 327 are included in this act to confirm the intention to retain them but are not intended to be effective until July 8, 2002.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

Comment, Legislative Service Commission

Section 2929.19 of the Revised Code is amended by Am. Sub. S.B. 260 and Am. Sub. H.B. 461 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Sections 2929.15 and 2929.19 of the Revised Code are amended by this act [Am. Sub. H.B. 349] and also by Am. Sub. S.B. 22 and Am. Sub. S.B. 107 of the 123rd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[§ 2929.19.1] § 2929.191 Correction to judgment of conviction concerning post-release control.

(A)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(1) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the

judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

(2) If a court prepares and issues a correction to a judgment of conviction as described in division (A)(1) of this section before the offender is released from imprisonment under the prison term the court imposed prior to the effective date of this section, the court shall place upon the journal of the court an entry *nunc pro tunc* to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry *nunc pro tunc* before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code or that the offender may be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(d) of that section.

(B)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of section 2929.19 of the Revised Code, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code the parole board may impose as part of the sentence a prison term of up to one-half of the stated prison term originally imposed upon the offender.

(2) If the court prepares and issues a correction to a judgment of conviction as described in division (B)(1) of this section before the offender is released from imprisonment under the term, the court shall place upon the journal of the court an entry *nunc pro tunc* to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends

a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry *nunc pro tunc* before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the judgment of conviction entered on the journal and had notified the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(C) On and after the effective date of this section, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of this section shall not issue the correction until after the court has conducted a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

HISTORY: 151 v H 137, § 1, eff. 7-11-06.

The provisions of § 5 of 151 v H 137 read as follows:

SECTION 5. (A) The General Assembly hereby declares that its purpose in amending sections 2929.14, 2929.19, and 2967.28 and enacting section 2929.191 of the Revised Code in Sections 1 and 2 of this act and in amending section 2929.14 of the Revised Code in Sections 3 and 4 of this act is to reaffirm that, under the amended sections as they existed prior to the effective date of this act: (1) by operation of law and without need for any prior notification or warning, every convicted offender sentenced to a prison term for a felony of the first or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person always is subject to a period of post-release control after the offender's release from imprisonment pursuant to and for the period of time described in division (B) of section 2967.28 of the Revised Code; (2) by operation of law, every convicted offender sentenced to a prison term for a felony of the third, fourth, or fifth degree that is not subject to the provision described in clause (1) of this sentence is subject to a period of post-release control after the offender's release from imprisonment pursuant to division (C) of section 2967.28 of the Revised Code if the parole board determines in accordance with specified criteria that post-release control is necessary; and (3) by operation of law and without need for any prior notification or warning, every convicted offender sentenced to a prison term and subjected to supervision under a period of post-release control after the offender's release from imprisonment always is subject to having the Parole Board impose in accordance with section 2967.28 of the Revised Code a prison term of up to one-half of the stated prison term originally imposed upon the offender if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code.

(B) The General Assembly hereby declares that it believes that the amendments made to sections 2929.14, 2929.19, and 2967.28

and the enactment of section 2929.191 of the Revised Code in Sections 1 and 2 of this act and the amendment made to section 2929.14 of the Revised Code in Sections 3 and 4 of this act are not substantive in nature and merely clarify that the amended sections operate as described in division (A) of this Section, that the convicted offenders described in clause (1) under division (A) of this Section always are subject by operation of law and without need for any prior notification or warning to a period of post-release control after their release from imprisonment as described in that division, that the convicted offenders described in clause (2) under division (A) of this Section are subject by operation of law to post-release control after their release from imprisonment if the Parole Board makes certain determinations, that the convicted offenders described in clause (3) under division (A) of this Section always are subject by operation of law to having the Parole Board impose a prison term if they violate their supervision or a condition of post-release control as described in that division, and that the amendments made to sections 2929.14, 2929.19, and 2967.28 and the enactment of section 2929.191 of the Revised Code in Sections 1 and 2 of this act and the amendment made to section 2929.14 of the Revised Code in Sections 3 and 4 of this act thus are remedial in nature. The General Assembly declares that it intends that the clarifying, remedial amendments made to sections 2929.14, 2929.19, and 2967.28 and the enactment of section 2929.191 of the Revised Code in Sections 1 and 2 of this act and the amendment made to section 2929.14 of the Revised Code in Sections 3 and 4 of this act apply to all convicted offenders described in division (A) of this Section, regardless of whether they were sentenced prior to, or are sentenced on or after, the effective date of this act.

The effective date is set by § 7 of 151 v H 137.

§ 2929.20 Judicial release.

(A) As used in this section, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

(1) The stated prison term does not include a mandatory prison term.

(2) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term.

(B) Upon the filing of a motion by the eligible offender or upon its own motion, a sentencing court may reduce the offender's stated prison term through a judicial release in accordance with this section. The court shall not reduce the stated prison term of an offender who is not an eligible offender. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time:

(1)(a) Except as otherwise provided in division (B)(1)(b) or (c) of this section, if the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender may file the motion not earlier than thirty days or later than ninety days after the offender is delivered to a state correctional institution.

(b) If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(c) If the stated prison term is more than five years and not more than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(2) Except as otherwise provided in division (B)(3) or (4) of this section, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.

(3) If the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(4) If the stated prison term is more than five years and not more than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(5) If the offender's stated prison term includes a mandatory prison term, the offender shall file the motion within the time authorized under division (B)(1), (2), (3), or (4) of this section for the nonmandatory portion of the prison term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the prison term.

(C) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (B) of this section or upon the sentencing court's own motion made within the appropriate time period specified in that division, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court may consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion filed by that eligible offender. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the date on which the motion is filed, provided that the court may delay the hearing for a period not to exceed one hundred eighty additional days. If the court holds a hearing on the motion, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) If a court schedules a hearing under division (C) of this section, the court shall notify the eligible offender of the hearing and shall notify the head of the state correctional institution in which the eligible offender is confined of the hearing prior to the hearing. The head of the state correctional institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department within twenty-four hours after receipt of the notice, shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense for which the stated prison term was imposed or the victim's representative, pursuant to section 2930.16 of the Revised Code, of the hearing.

(E) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender in question is confined shall send to the court a report on the

eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(F) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to the hearing and return the offender to the institution after the hearing.

(G) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written information relevant to the motion and shall afford the eligible offender, if present, and the eligible offender's attorney an opportunity to present oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to section 2947.051 [2947.05.1] of the Revised Code, and any report made under division (E) of this section. The court may consider any written statement of any person submitted to the court pursuant to division (J) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(H)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense contained in Chapter 2925, or 3719, of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(I) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible

offender, shall place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the department of probation serving the court, and shall reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of the community control sanction shall be no longer than five years. The court, in its discretion, may reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. If the court made any findings pursuant to division (H)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

Prior to being released pursuant to a judicial release granted under this section, the eligible offender shall serve any extension of sentence that was imposed under section 2967.11 of the Revised Code.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction of the judicial release, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code.

(J) In addition to and independent of the right of a victim to make a statement pursuant to section 2930.14, 2930.17, or 2946.051 [2946.05.1] of the Revised Code and any right of a person to present written information or make a statement pursuant to division (G) of this section, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v H 151 (Eff 9-16-97); 148 v S 107 (Eff 3-23-2000); 149 v H 327. Eff 7-8-2002; 151 v H 15, § 1, eff. 11-23-05.

[PENALTIES FOR MISDEMEANOR]

§ 2929.21 Overriding purposes of misdemeanor sentencing; discrimination prohibited.

(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(B) A sentence imposed for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to

division (A) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

(D) Divisions (A) and (B) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to Traffic Rule 13 and shall not apply to any violation of any provision of the Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (A) to (C) of this section do not affect any penalties established by a municipal corporation for a violation of its ordinances.

HISTORY: 149 v H 490 §§ 1, 2, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04.

The effective date is set by section 4 of H.B. 490.

This section formerly concerned penalties for misdemeanors. See now R.C. § 2929.24.

Publisher's Note:

Former R.C. § 2929.21 was repealed and new version enacted by H.B. 490, Acts 2002, effective January 1, 2004.

Former R.C. § 2929.21 was amended by S.B. 5 of Acts 2003, but because of the repeal of the prior version by H.B. 490 of Acts 2002, effective January 1, 2004, the amendment is not set out.

§ 2929.22 Considerations in imposing sentence for misdemeanor.

(A) Unless a mandatory jail term is required to be imposed by division (G) of section 1547.99, division (B) of section 4510.14, division (G) of section 4511.19 of the Revised Code, or any other provision of the Revised Code a court that imposes a sentence under this chapter upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of sections 2929.23 to 2929.28 of the Revised Code, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under sections 2929.24 to 2929.28 of the Revised Code. The court shall not impose a sentence that imposes an unnecessary burden on local government resources.

(B)(1) In determining the appropriate sentence for a misdemeanor, the court shall consider all of the following factors:

(a) The nature and circumstances of the offense or offenses;

(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

(c) Whether the circumstances regarding the offender

and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;

(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;

(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B)(1)(b) and (c) of this section.

(2) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under sections 2929.25, 2929.26, 2929.27, and 2929.28 of the Revised Code. A court may impose the longest jail term authorized under section 2929.24 of the Revised Code only upon offenders who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime.

(D)(1) A sentencing court shall consider any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. This division does not create any rights to notice other than those rights authorized by Chapter 2930. of the Revised Code.

(2) At the time of sentencing for a misdemeanor or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

HISTORY: 149 v H 490, §§ 1, 2, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

Analogous to former RC § 2929.22 (134 v H 511 (Eff 1-1-74); 137 v S 119 (Eff 8-30-78); 143 v S 258 (Eff 11-20-90); 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v S 9. Eff 3-8-2000), repealed, 149 v H 490, § 2, eff 1-1-04.

Publisher's Note:

This section was repealed and reenacted by H.B. 490, Acts 2002, effective January 1, 2004. Section 1 enacted the present version and Section 2 repealed the former version.

[§ 2929.22.1] § 2929.221 Amended and renumbered RC § 2929.34 in 149 v H 490. Eff 1-1-04.

§ 2929.23 Sentencing for sexually oriented misdemeanor committed on or after January 1, 1997.

Effective until 1-1-08.

(A) If an offender is being sentenced for a sexually oriented offense that is a misdemeanor committed on or

after January 1, 1997, and if the judge imposing sentence for the sexually oriented offense determines pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator, the judge shall include in the offender's sentence a statement that the offender has been adjudicated a sexual predator, shall comply with the requirements of section 2950.03 of the Revised Code, and shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(B) Before imposing sentence on an offender who is being sentenced for a sexually oriented offense that is a misdemeanor, that was committed on or after January 1, 1997, and that is not a registration-exempt sexually oriented offense, the judge shall conduct a hearing in accordance with division (B) of section 2950.09 of the Revised Code to determine whether the offender is a sexual predator. Before imposing sentence on an offender who is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense, the court also shall comply with division (E) of section 2950.09 of the Revised Code.

Before imposing sentence on or after the effective date of this amendment on an offender who is being sentenced for a child-victim oriented offense that is a misdemeanor, regardless of when the offense was committed, the judge shall conduct a hearing in accordance with division (B) of section 2950.091 [2950.09.1] of the Revised Code to determine whether the offender is a child-victim predator. Before imposing sentence on an offender who is being sentenced for a child-victim oriented offense, the court also shall comply with division (E) of section 2950.091 [2950.09.1] of the Revised Code.

(C) If an offender is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense or for a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration and, if required under division (A)(2) of section 2950.03 of the Revised Code, shall perform the duties specified in that section.

HISTORY: 149 v H 490, §§ 1, 2, (eff. 1-1-04); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04.

§ 2929.23 Sentencing for sexually oriented offense or child-victim misdemeanor offense committed on or after January 1, 1997.

Effective 1-1-08.

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in division (D)(1) to (3) of section 2901.07 of the Revised Code, the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of section 2950.03 of the Revised Code, and shall require the offender to submit to a DNA

specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

HISTORY: 149 v H 490, §§ 1, 2, (eff. 1-1-04); 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

This section formerly concerned penalties for misdemeanors.

The effective date is set by section 5 of 150 v S 5.

See provisions of § 5 of S.B. 123 (149 v —) following RC § 2929.01.

Publisher's Note:

Former R.C. § 2929.23 was repealed and new version enacted by H.B. 490, Acts 2002, effective January 1, 2004. The provisions concerning electronic monitoring and house arrest were moved to RC §§ 2929.01, 2929.17, and 2929.27.

§ 2929.24 Definite jail terms for misdemeanor; eligibility for county jail industry program; reimbursement sanction; costs of confinement.

(A) Except as provided in section 2929.22 or 2929.23 of the Revised Code and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

- (1) For a misdemeanor of the first degree, not more than one hundred eighty days;
- (2) For a misdemeanor of the second degree, not more than ninety days;
- (3) For a misdemeanor of the third degree, not more than sixty days;
- (4) For a misdemeanor of the fourth degree, not more than thirty days.

(B) A court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (B) of section 2929.26 of the Revised Code.

(C) If a court sentences an offender to a jail term under this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to section 5147.30 of the Revised Code, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(D) If a person is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to section 2929.28 of the Revised Code a

reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(1) The court shall specify both of the following as part of the sentence:

(a) If the person is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the person is required to pay the bill in accordance with that section.

(b) If the person does not dispute the bill described in division (D)(1)(a) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the person as described in that section.

(2) The sentence automatically includes any certificate of judgment issued as described in division (D)(1)(b) of this section.

(E) If an offender who is convicted of or pleads guilty to a violation of division (B) of section 4511.19 of the Revised Code also is convicted of or also pleads guilty to a specification of the type described in section 2941.1416 [2941.14.16] of the Revised Code and if the court imposes a jail term on the offender for the underlying offense, the court shall impose upon the offender an additional definite jail term of not more than six months. The additional jail term shall not be reduced pursuant to any provision of the Revised Code. The offender shall serve the additional jail term consecutively to and prior to the jail term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense.

HISTORY: 149 v H 490, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

Publisher's Note:

Former RC § 2929.24 was renumbered to RC § 2929.42 and new version enacted by H.B. 490 of Acts 2002, effective January 1, 2004.

§ 2929.25 Community control sanctions.

(A)(1) Except as provided in sections 2929.22 and 2929.23 of the Revised Code or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28 of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.

(2) The duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.

(3) At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to division (A)(1)(a) of this section, the court shall state the duration of the community control sanctions imposed and shall notify the offender that if any of the conditions of the community control sanctions are violated the court may do any of the following:

(a) Impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit specified in division (A)(2) of this section;

(b) Impose a more restrictive community control sanction under section 2929.26, 2929.27, or 2929.28 of the Revised Code, but the court is not required to impose any particular sanction or sanctions;

(c) Impose a definite jail term from the range of jail terms authorized for the offense under section 2929.24 of the Revised Code.

(B)(1) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code, the court shall place the offender under the general control and supervision of the court or of a department of probation in the jurisdiction that serves the court for purposes of reporting to the court a violation of any of the conditions of the sanctions imposed. If the offender resides in another jurisdiction and a department of probation has been established to serve the municipal court or county court in that jurisdiction, the sentencing court may request the municipal court or the county court to receive the offender into the general control and supervision of that department of probation for purposes of reporting to the sentencing court a violation of any of the conditions of the sanctions imposed. The sentencing court retains jurisdiction over any offender whom it sentences for the duration of the sanction or sanctions imposed.

(2) The sentencing court shall require as a condition of any community control sanction that the offender abide by the law and not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender. The offender's compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender.

(C)(1) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code, and if the offender violates any of the conditions of the sanctions, the public or private person or entity that supervises or administers the program or activity that comprises the sanction shall report the violation directly to the sentencing court or to the department of probation or probation officer with general control and supervision over the offender. If the public or private person or entity reports the violation to the department of probation or probation officer, the department or officer shall report the violation to the sentencing court.

(2) If an offender violates any condition of a community control sanction, the sentencing court may impose upon the violator a longer time under the same community control sanction if the total time under all of the

community control sanctions imposed on the violator does not exceed the five-year limit specified in division (A)(2) of this section or may impose on the violator a more restrictive community control sanction or combination of community control sanctions, including a jail term. If the court imposes a jail term upon a violator pursuant to this division, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time that the violator is required to spend under the longer sanction or the more restrictive sanction by all or part of the time the violator successfully spent under the sanction that was initially imposed.

(D) Except as otherwise provided in this division, if an offender, for a significant period of time, fulfills the conditions of a community control sanction imposed pursuant to section 2929.26, 2929.27, or 2929.28 of the Revised Code in an exemplary manner, the court may reduce the period of time under the community control sanction or impose a less restrictive community control sanction. Fulfilling the conditions of a community control sanction does not relieve the offender of a duty to make restitution under section 2929.28 of the Revised Code.

HISTORY: 149 v H 490 § 1, Eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

Publisher's Note:

Former R.C. § 2929.25 was renumbered to R.C. § 2929.32 and new version enacted by H.B. 490, Acts 2002, effective January 1, 2004.

§ 2929.26 Community residential sanctions; testing and treatment for contagious diseases; use of halfway house.

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any community residential sanction or combination of community residential sanctions under this section. Community residential sanctions include, but are not limited to, the following:

(1) A term of up to one hundred eighty days in a halfway house or a term in a halfway house not to exceed the longest jail term available for the offense, whichever is shorter, if the political subdivision that would have responsibility for paying the costs of confining the offender in a jail has entered into a contract with the halfway house for use of the facility for misdemeanor offenders;

(2) A term of up to one hundred eighty days in an alternative residential facility or a term in an alternative residential facility not to exceed the longest jail term available for the offense, whichever is shorter. The court may specify the level of security in the alternative residential facility that is needed for the offender.

(B) The court that sentences an offender to a community residential sanction under this section may do either or both of the following:

(1) Permit the offender to serve the offender's sentence in intermittent confinement, overnight, on weekends or at any other time or times that will allow the

offender to continue at the offender's occupation or care for the offender's family;

(2) Authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, receive treatment, perform community service, or otherwise fulfill an obligation imposed by law or by the court. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release.

(C) The court may order that a reasonable portion of the income earned by the offender upon a release pursuant to division (B) of this section be applied to any financial sanction imposed under section 2929.28 of the Revised Code.

(D) No court shall sentence any person to a prison term for a misdemeanor or minor misdemeanor or to a jail term for a minor misdemeanor.

(E) If a court sentences a person who has been convicted of or pleaded guilty to a misdemeanor to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the halfway house, alternative residential facility, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including, but not limited to, hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction may cause a convicted offender in the halfway house, alternative residential facility, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including, but not limited to, hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.

(F) A political subdivision may enter into a contract with a halfway house for use of the halfway house to house misdemeanor offenders under a sanction imposed under division (A) (1) of this section.

HISTORY: 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

§ 2929.27 Nonresidential and other sanctions; community service.

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division. Nonresidential sanctions include, but are not limited to, the following:

(1) A term of day reporting;

(2) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;

(3) A term of community service of up to five hundred hours for a misdemeanor of the first degree or two

hundred hours for a misdemeanor of the second, third, or fourth degree;

(4) A term in a drug treatment program with a level of security for the offender as determined necessary by the court;

(5) A term of intensive probation supervision;

(6) A term of basic probation supervision;

(7) A term of monitored time;

(8) A term of drug and alcohol use monitoring, including random drug testing;

(9) A curfew term;

(10) A requirement that the offender obtain employment;

(11) A requirement that the offender obtain education or training;

(12) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;

(13) If authorized by law, suspension of the offender's privilege to operate a motor vehicle, immobilization or forfeiture of the offender's motor vehicle, a requirement that the offender obtain a valid motor vehicle operator's license, or any other related sanction;

(14) A requirement that the offender obtain counseling if the offense is a violation of section 2919.25 or a violation of section 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children. This division does not limit the court in requiring that the offender obtain counseling for any offense or in any circumstance not specified in this division.

(B) In addition to the sanctions authorized under division (A) of this section, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.

(C) The court imposing a sentence for a minor misdemeanor may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed thirty hours.

HISTORY: 149 v H 490, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 4 of H.B. 490.

§ 2929.28 Financial sanctions; court costs.

(A) In addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations

bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five per cent of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) A fine of the type described in divisions (A)(2)(a) and (b) of this section payable to the appropriate entity as required by law:

(a) A fine in the following amount:

(i) For a misdemeanor of the first degree, not more than one thousand dollars;

(ii) For a misdemeanor of the second degree, not more than seven hundred fifty dollars;

(iii) For a misdemeanor of the third degree, not more than five hundred dollars;

(iv) For a misdemeanor of the fourth degree, not more than two hundred fifty dollars;

(v) For a minor misdemeanor, not more than one hundred fifty dollars.

(b) A state fine or cost as defined in section 2949.111 [2949.11.1] of the Revised Code.

(3)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including, but not limited to, the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under section 2951.021 [2951.02.1] of the Revised Code;

(ii) All or part of the costs of confinement in a jail or other residential facility, including, but not limited to, a per diem fee for room and board, the costs of medical and

dental treatment, and the costs of repairing property damaged by the offender while confined.

(b) The amount of reimbursement ordered under division (A)(3)(a) of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that division. If the court does not order reimbursement under that division, confinement costs may be assessed pursuant to a repayment policy adopted under section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(B) If the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the financial sanction imposed pursuant to this section or court costs or is likely in the future to be able to pay the sanction or costs.

If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (C) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the county's general fund. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code.

(2) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in the municipal corporation's general fund. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code or in operating a

facility used to confine offenders pursuant to a sanction imposed under section 2929.26 of the Revised Code.

(3) The offender shall pay reimbursements imposed pursuant to division (A)(3) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.26 or 2929.27 of the Revised Code to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed under division (A) of this section is a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(i) of this section upon an offender is a judgment in favor of the entity administering the community control sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(ii) of this section upon an offender confined in a jail or other residential facility is a judgment in favor of the entity operating the jail or other residential facility, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) of this section is an order in favor of the victim of the offender's criminal act that can be collected through execution as described in division (D)(1) of this section or through an order as described in division (D)(2) of this section and the offender shall be considered for purposes of the collection as the judgment debtor.

Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

(1) Obtain execution of the judgment or order through any available procedure, including any of the procedures identified in divisions (D)(1)(a) to (e) of section 2929.18 of the Revised Code.

(2) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

(E) The civil remedies authorized under division (D) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.

(F) Each court imposing a financial sanction upon an offender under this section may designate the clerk of the court or another person to collect the financial sanction. The clerk, or another person authorized by law or the court to collect the financial sanction may do the following:

(1) Enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(2) Permit payment of all or any portion of the sanction in installments, by financial transaction device if the court is a county court or a municipal court operated by a county, by credit or debit card or by another electronic transfer if the court is a municipal court not operated by a county, or by any other reasonable method, in any time, and on any terms that court considers just, except that the maximum time permitted for payment shall not exceed five years. If the court is a county court

or a municipal court operated by a county, the acceptance of payments by any financial transaction device shall be governed by the policy adopted by the board of county commissioners of the county pursuant to section 301.28 of the Revised Code. If the court is a municipal court not operated by a county, the clerk may pay any fee associated with processing an electronic transfer out of public money or may charge the fee to the offender.

(3) To defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction.

(G) No financial sanction imposed under this section shall preclude a victim from bringing a civil action against the offender.

HISTORY: 149 v H 490 § 1, Eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04.

Publisher's Note:

Former RC § 2929.28 was amended and renumbered RC § 2929.71 by H.B. 490, effective January 1, 2004.

§ 2929.29 Amended and renumbered RC § 2929.43 in 149 v H 490. Eff 1-1-04.

[ORGANIZATIONAL PENALTIES]

§ 2929.31 Organizational penalties.

(A) Regardless of the penalties provided in sections 2929.02, 2929.14 to 2929.18, and 2929.24 to 2929.28 of the Revised Code, an organization convicted of an offense pursuant to section 2901.23 of the Revised Code shall be fined in accordance with this section. The court shall fix the fine as follows:

(1) For aggravated murder, not more than one hundred thousand dollars;

(2) For murder, not more than fifty thousand dollars;

(3) For a felony of the first degree, not more than twenty-five thousand dollars;

(4) For a felony of the second degree, not more than twenty thousand dollars;

(5) For a felony of the third degree, not more than fifteen thousand dollars;

(6) For a felony of the fourth degree, not more than ten thousand dollars;

(7) For a felony of the fifth degree, not more than seventy-five hundred dollars;

(8) For a misdemeanor of the first degree, not more than five thousand dollars;

(9) For a misdemeanor of the second degree, not more than four thousand dollars;

(10) For a misdemeanor of the third degree, not more than three thousand dollars;

(11) For a misdemeanor of the fourth degree, not more than two thousand dollars;

(12) For a minor misdemeanor, not more than one thousand dollars;

(13) For a felony not specifically classified, not more than ten thousand dollars;

(14) For a misdemeanor not specifically classified, not more than two thousand dollars;

(15) For a minor misdemeanor not specifically classified, not more than one thousand dollars.

(B) When an organization is convicted of an offense that is not specifically classified, and the section defining

the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then the penalty so provided shall be imposed in lieu of the penalty provided in this section.

(C) When an organization is convicted of an offense that is not specifically classified, and the penalty provided includes a higher fine than the fine that is provided in this section, then the penalty imposed shall be pursuant to the penalty provided for the violation of the section defining the offense.

(D) This section does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to section 2901.23 of the Revised Code, either in addition to or in lieu of a fine imposed pursuant to this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 146 v S 2, Eff 7-1-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

See provisions, § 5 of SB 2 (146 v —) as amended by § 3 of SB 269 (146 v —) following RC § 2929.03.

§ 2929.32 Additional fine for certain offenders; collection of fines; crime victims recovery fund.

(A)(1) Subject to division (A)(2) of this section, notwithstanding the fines prescribed in section 2929.02 of the Revised Code for a person who is convicted of or pleads guilty to aggravated murder or murder, the fines prescribed in section 2929.18 of the Revised Code for a person who is convicted of or pleads guilty to a felony, the fines prescribed in section 2929.28 of the Revised Code for a person who is convicted of or pleads guilty to a misdemeanor, the fines prescribed in section 2929.31 of the Revised Code for an organization that is convicted of or pleads guilty to an offense, and the fines prescribed in any other section of the Revised Code for a person who is convicted of or pleads guilty to an offense, a sentencing court may impose upon the offender a fine of not more than one million dollars if any of the following applies to the offense and the offender:

(a) There are three or more victims, as defined in section 2969.11 of the Revised Code, of the offense for which the offender is being sentenced.

(b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of the other offenses, there is a total of three or more victims, as defined in section 2969.11 of the Revised Code.

(c) The offense for which the offender is being sentenced is aggravated murder, murder, or a felony of the first degree that, if it had been committed prior to July 1, 1996, would have been an aggravated felony of the first degree.

(2) If the offense in question is a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the court shall impose upon the offender the mandatory fine described in division (B) of section 2929.18 of the Revised Code, and, in addition, may impose a fine under division (A) (1) of this section, provided that the total of the mandatory fine and the fine imposed under division (A)(1) of this section shall not exceed one million dollars. The mandatory fine shall be paid as described in division (D) of section 2929.18 of the Revised Code, and the fine

imposed under division (A) (1) of this section shall be deposited pursuant to division (B) of this section.

(B) If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine or collected pursuant to division (C)(1) of this section in satisfaction of the fine shall be deposited into the crime victims recovery fund created by division (D) of this section and shall be distributed as described in that division.

(C)(1) Subject to division (C)(2) of this section, notwithstanding any contrary provision of any section of the Revised Code, if a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section or pursuant to another section of the Revised Code, the fine shall be a judgment against the offender in favor of the state, and both of the following apply to that judgment:

(a) The state may collect the judgment by garnishing, attaching, or otherwise executing against any income, profits, or other real or personal property in which the offender has any right, title, or interest, including property acquired after the imposition of the fine, in the same manner as if the judgment had been rendered against the offender and in favor of the state in a civil action. If the fine is imposed pursuant to division (A)(1) of this section, the moneys collected as a result of the garnishment, attachment, or other execution shall be deposited and distributed as described in divisions (B) and (D) of this section. If the fine is not imposed pursuant to division (A)(1) of this section, the moneys collected as a result of the garnishment, attachment, or other execution shall be distributed as otherwise provided by law for the distribution of money paid in satisfaction of a fine.

(b) The provisions of Chapter 2329. of the Revised Code relative to the establishment of court judgments and decrees as liens and to the enforcement of those liens apply to the judgment.

(2) Division (C) (1) of this section does not apply to any financial sanction imposed pursuant to section 2929.18 of the Revised Code upon a person who is convicted of or pleads guilty to a felony.

(D) There is hereby created in the state treasury the crime victims recovery fund. If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine and all moneys collected in satisfaction of the fine pursuant to division (C)(1) of this section shall be deposited into the fund. The fund shall be administered and the moneys in it shall be distributed in accordance with sections 2969.11 to 2969.14 of the Revised Code.

HISTORY: 146 v S 91, eff. 11-15-95; 146 v S 269, eff. 7-1-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

Publisher's Note:

This section was formerly RC § 2929.25. It was renumbered by H.B. 490, Acts 2002, effective January 1, 2004.

§ 2929.34 Type of institution where term of imprisonment to be served.

(A) A person who is convicted of or pleads guilty to aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of life imprisonment or a prison term pursuant to that conviction shall serve that term in an institution under the

control of the department of rehabilitation and correction.

(B)(1) A person who is convicted of or pleads guilty to a felony other than aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of imprisonment or a prison term pursuant to that conviction shall serve that term as follows:

(a) Subject to divisions (B)(1)(b) and (B)(2) of this section, in an institution under the control of the department of rehabilitation and correction if the term is a prison term or as otherwise determined by the sentencing court pursuant to section 2929.16 of the Revised Code if the term is not a prison term;

(b) In a facility of a type described in division (C)(1) of section 2929.13 of the Revised Code, if the offender is sentenced pursuant to that division.

(C) A person who is convicted of or pleads guilty to one or more misdemeanors and who is sentenced to a jail term or term of imprisonment pursuant to the conviction or convictions shall serve that term in a county, multi-county, municipal, municipal-county, or multicounty-municipal jail or workhouse or, if the misdemeanor or misdemeanors are not offenses of violence, in a minimum security jail.

(D) Nothing in this section prohibits the commitment, referral, or sentencing of a person who is convicted of or pleads guilty to a felony to a community-based correctional facility.

HISTORY: 139 v S 199 (Eff 7-1-83); 139 v H 269 (Eff 7-1-83); 140 v S 210 (Eff 7-1-83); 142 v H 455 (Eff 7-20-87); 143 v S 258 (Eff 11-20-90); 145 v H 571 (Eff 10-6-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166, Eff 10-17-96; 149 v H 490, § 1, eff. 1-1-04; 151 v H 162, § 1, eff. 10-12-06.

The effective date is set by section 4 of HB 490.

See provisions, § 5 of SB 2 (146 v —) as amended by § 3 of SB 269 (146 v —) following RC § 2929.03.

The provisions of § 5 of HB 490 (149 v —) read as follows:

SECTION 5. Section 2929.221 (now 2929.34) of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 269 and Am. Sub. S.B. 166 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the specified composite is the resulting version of the specified sections in effect prior to the effective date of the section as presented in this act.

Publisher's Note:

This section was formerly RC § 2929.221. It was amended and renumbered by H.B. 490, Acts 2002, effective January 1, 2004.

[REIMBURSEMENT OF COSTS OF CONFINEMENT IN LOCAL DETENTION FACILITY]

§ 2929.35 Amended and renumbered RC § 2929.36 in 149 v H 490. Eff 1-1-04.

§ 2929.36 Definitions.

As used in sections 2929.36 to 2929.38 of the Revised Code:

(A) "Chief legal officer" includes a prosecuting attorney, village solicitor, city director of law, and attorney for

a district of a joint city and county workhouse or county workhouse.

(B) "Clerk of the appropriate court" or "appropriate court clerk" means whichever of the following applies:

(1) If the local detention facility in question is a multicounty correctional center, multicounty-municipal correctional center, district community-based correctional facility, or district workhouse, the clerk of the court of common pleas of the most populous county served by the local detention facility;

(2) If the local detention facility in question is a city workhouse, the clerk of the municipal court for that city;

(3) If neither (B)(1) nor (B)(2) of this section applies, the clerk of the court of common pleas of the county in which the local detention facility in question is located.

(C) "Homestead" has the same meaning as in division (A) of section 323.151 [323.15.1] of the Revised Code.

(D) "Inmate account" has the same meaning as in section 2969.21 of the Revised Code.

(E) "Local detention facility" means a multicounty correctional center, municipal-county correctional center, multicounty-municipal correctional center, community-based correctional facility, district community-based correctional facility, jail, county jail, municipal or county prison, station house, workhouse, city workhouse, county workhouse, joint city and county workhouse, and district workhouse.

HISTORY: 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Publisher's Note:

This section was formerly RC § 2929.35. It was renumbered by H.B. 490, Acts 2002, effective January 1, 2004.

§ 2929.37 Policy requiring prisoner to pay costs of confinement.

(A) A board of county commissioners, in an agreement with the sheriff, a legislative authority of a municipal corporation, a corrections commission, a facility governing board, or any other public or private entity that operates a local detention facility at which a prisoner who is convicted of an offense and who is confined in the facility under a sanction or term of imprisonment imposed under section 2929.16, sections 2929.21 to 2929.28, or any other provision of the Revised Code may adopt, pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code, a policy that requires the prisoner to pay all or part of the costs of confinement in that facility. If a board of county commissioners, legislative authority, corrections commission, facility governing board, or other entity adopts a policy for a facility pursuant to one of those sections, the person in charge of that facility shall appoint a reimbursement coordinator to administer the facility's policy.

The costs of confinement may include, but are not limited to, the costs of repairing property damaged by the prisoner while confined, a per diem fee for room and board, medical and dental treatment costs, the fee for a random drug test assessed under division (E) of section 341.26 and division (E) of section 753.33 of the Revised Code, and a one-time reception fee for the costs of processing the prisoner into the facility at the time of the prisoner's initial entry into the facility under the confinement in question, minus any fees deducted under section 2929.38 of the Revised Code. Any policy adopted under

this section shall be used when a court does not order reimbursement of confinement costs under section 2929.18 or 2929.28 of the Revised Code. The amount assessed under this section shall not exceed the total amount that the prisoner is able to pay.

(B)(1) Each prisoner covered by a repayment policy adopted as described in division (A) of this section shall receive at the end of the prisoner's confinement an itemized bill of the expenses to be reimbursed. The policy shall allow periodic payments on a schedule to be implemented upon a prisoner's release. The bill also shall state that payment shall be made to the person identified in the bill as the reimbursement coordinator and include a notice that specifies that the prisoner has thirty days in which to dispute the bill by filing a written objection with the reimbursement coordinator and that if the prisoner does not dispute the bill in that manner within that period, the prisoner is required to pay the bill and a certificate of judgment may be obtained against the prisoner for the amount of the unpaid expenses. The prisoner shall sign a copy of the bill, and the reimbursement coordinator shall retain that copy. If the prisoner disputes an item on the bill within thirty days after receiving the bill, the reimbursement coordinator may either concede the disputed item or proceed to a hearing under division (B) (2) of this section.

(2) If the prisoner disputes an item on an itemized bill presented to the prisoner under division (B) (1) of this section and the reimbursement coordinator does not concede the item, the reimbursement coordinator shall submit the bill to the court, and the court shall hold a hearing on the disputed items in the bill. At the end of the hearing, the court shall determine how much of the disputed expenses the prisoner shall reimburse the legislative authority or managing authority and shall issue a judgment in favor of the legislative authority or managing authority for any undisputed expenses and the amount of the disputed expenses for which the prisoner must reimburse the legislative authority or managing authority. The reimbursement coordinator shall not seek to enforce the judgment until at least ninety days after the court issues the judgment.

(C) If a prisoner does not dispute the itemized bill presented to the prisoner under division (B) of this section and does not pay the bill within ninety days, the reimbursement coordinator shall send by mail a notice to the prisoner requesting payment of the expenses as stated in the bill. If the prisoner does not respond to the notice by paying the expenses in full within thirty days of the date the notice was mailed, the reimbursement coordinator shall send by mail a second notice to the prisoner requesting payment of the expenses. If one hundred eighty days elapse from the date that the reimbursement coordinator provides the bill and if the prisoner has not paid the full amount of the expenses pursuant to the bill and the notices, the reimbursement coordinator may notify the clerk of the appropriate court of those facts, and the clerk may issue a certificate of judgment against the prisoner for the balance of the expenses remaining unpaid.

(D) The reimbursement coordinator may collect any amounts remaining unpaid on an itemized bill and any costs associated with the enforcement of the judgment and may enter into a contract with one or more public agencies or private vendors to collect any amounts remaining unpaid. For enforcing a judgment issued under this section, the reimbursement coordinator may assess

an additional poundage fee of two per cent of the amount remaining unpaid and may collect costs associated with the enforcement of the judgment.

(E) Neither the reimbursement coordinator nor the legislative authority or the managing authority shall enforce any judgment obtained under this section by means of execution against the prisoner's homestead. Any reimbursement received under this section shall be credited to the general fund of the treasury of the political subdivision that incurred the expense, to be used for general fund purposes.

HISTORY: 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 151 v H 162, § 1, eff. 10-12-06.

The effective date is set by section 4 of HB 490.

§ 2929.38 One-time reception fee; fees for medical treatment or service and random drug test.

(A) A board of commissioners of a county, in an agreement with the sheriff, a legislative authority of a municipal corporation, a corrections commission, a facility governing board, or any other public or private entity that operates a local detention facility described in division (A) of section 2929.37 of the Revised Code, may establish a policy that requires any prisoner who is confined in the facility as a result of pleading guilty to or having been convicted of an offense to pay a one-time reception fee for the costs of processing the prisoner into the facility at the time of the prisoner's initial entry into the facility under the confinement in question, to pay a reasonable fee for any medical or dental treatment or service requested by and provided to that prisoner, and to pay the fee for a random drug test assessed under division (E) of section 341.26, and division (E) of section 753.33 of the Revised Code. The fee for the medical treatment or service shall not exceed the actual cost of the treatment or service provided. No prisoner confined in the local detention facility shall be denied any necessary medical care because of inability to pay the fees.

(B) Upon assessment of a one-time reception fee as described in division (A) of this section, the provision of the requested medical treatment or service, or the assessment of a fee for a random drug test, payment of the required fee may be automatically deducted from the prisoner's inmate account in the business office of the local detention facility in which the prisoner is confined. If there is no money in the account, a deduction may be made at a later date during the prisoner's confinement if the money becomes available in the account. If, after release, the prisoner has an unpaid balance of those fees, the sheriff, legislative authority of the municipal corporation, corrections commission, facility governing board, or other entity that operates the local detention facility described in division (A) of section 2929.37 of the Revised Code may bill the prisoner for the payment of the unpaid fees. Fees received for medical or dental treatment or services shall be paid to the commissary fund or resident program fund of a community-based correctional facility, if one exists for the facility, or if no commissary fund or resident program fund exists, to the general fund of the treasury of the political subdivision that incurred the expenses, in the same proportion as those expenses were borne by the political subdivision. Fees received for medical treatment or services that are placed in the commissary fund or resident program fund under this division shall be used for the same purposes as

profits from the commissary fund or resident program fund, except that they shall not be used to pay any salary or benefits of any person who works in or is employed for the sole purpose of providing service to the commissary.

(C) Any fee paid by a person under this section shall be deducted from any medical or dental costs that the person is ordered to reimburse under a financial sanction imposed pursuant to section 2929.28 of the Revised Code or to repay under a policy adopted under section 2929.37 of the Revised Code.

(D) As used in this section, "inmate account" has the same meaning as in section 2969.21 of the Revised Code.

HISTORY: 149 v H 170. Eff 9-6-2002; 150 v H 95, § 1, eff. 9-26-03; 149 v H 490, § 1, eff. 1-1-04; 150 v H 95, § 3.13, eff. 1-1-04; 151 v H 162, § 1, eff. 10-12-06.

The effective date is set by section 3.13 of HB 95.

[MULTIPLE SENTENCES]

§ 2929.41 Multiple sentences.

(A) Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B) (3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B)(1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of section 2907.322, 2921.34, or 2923.131 of the Revised Code.

When consecutive sentences are imposed for misdemeanor under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months.

(2) If a court of this state imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the court of this state may order that the offender serve the prison term it imposes consecutively to any prison term imposed upon the offender by the court of another state or the United States.

(3) A jail term or sentence of imprisonment imposed for a misdemeanor violation of section 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section 2903.06, 2903.07, 2903.08, or 4511.19 of the Revised Code or a felony violation of section 2903.04 of the Revised Code involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively.

When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve

all terms imposed for a felony before serving any term imposed for a misdemeanor.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 202 (Eff 10-9-78); 139 v S 1 (Eff 10-19-81); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 142 v H 51 (Eff 3-17-89); 143 v S 258 (Eff 11-20-90); 144 v H 561 (Eff 4-9-93); 145 v H 571 (Eff 10-6-94); 146 v S 2 (Eff 7-1-96); 146 v H 154 (Eff 10-4-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22, Eff 5-17-2000; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 2929.01.

The provisions of § 8 of S.B. 123 read as follows:

SECTION 8. Section 2929.41 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 22 and Am. Sub. S.B. 107 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

See provisions, § 5 of SB 2 (146 v —) as amended by § 3 of SB 269 (146 v —) following RC § 2929.03.

§ 2929.42 Prosecutor to notify appropriate licensing board.

(A) The prosecutor in any case against any person licensed, certified, registered, or otherwise authorized to practice under Chapter 3719., 4715., 4723., 4729., 4730., 4731., 4734., or 4741. of the Revised Code shall notify the appropriate licensing board, on forms provided by the board, of any of the following regarding the person:

(1) A plea of guilty to, or a conviction of, a felony, or a court order dismissing a felony charge on technical or procedural grounds;

(2) A plea of guilty to, or a conviction of, a misdemeanor committed in the course of practice or in the course of business, or a court order dismissing such a misdemeanor charge on technical or procedural grounds;

(3) A plea of guilty to, or a conviction of, a misdemeanor involving moral turpitude, or a court order dismissing such a charge on technical or procedural grounds.

(B) The report required by division (A) of this section shall include the name and address of the person, the nature of the offense, and certified copies of court entries in the action.

HISTORY: R.C. § 2929.17, 143 v H 615, eff. 3-27-91; 146 v S 143, eff. 3-5-96; R.C. § 2929.24, 146 v S 2, eff. 7-1-96; 146 v S 143, § 5, eff. 7-1-96; 148 v H 506, eff 4-10-01; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

Publisher's Note:

This section was formerly RC § 2929.24. It was renumbered by H.B. 490, Acts 2002, effective Jan 1, 2004.

§ 2929.43 Procedure for accepting peace officer's guilty plea to felony or after conviction; negotiated misdemeanor pleas.

(A) As used in this section:

(1) "Peace officer" has the same meaning as in section 109.71 of the Revised Code.

(2) "Felony" has the same meaning as in section 109.511 [109.51.1] of the Revised Code.

(B)(1) Prior to accepting a plea of guilty to an indictment, information, or complaint charging a felony, the court shall determine whether the defendant is a peace officer. If the court determines that the defendant is a peace officer, it shall address the defendant personally and provide the following advisement to the defendant that shall be entered in the record of the court.

"You are hereby advised that conviction of the felony offense to which you are pleading guilty will result in the termination of your employment as a peace officer and in your decertification as a peace officer pursuant to the laws of Ohio."

Upon the request of the defendant, the court shall allow the defendant additional time to consider the appropriateness of the plea of guilty in light of the advisement described in division (B)(1) of this section.

The court shall not accept a plea of guilty of a defendant who is a peace officer unless, in addition to any other procedures required under the Rules of Criminal Procedure, the court determines that the defendant voluntarily and intelligently enters that plea after being given the advisement described in division (B)(1) of this section.

(2) After accepting under division (B)(1) of this section a plea of guilty to an indictment, information, or complaint charging a felony, the court shall provide to the clerk of the court of common pleas a written notice of the plea of guilty of the defendant peace officer, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the felony offense, and certified copies of court entries in the action. Upon receiving the written notice required by division (B)(2) of this section, the clerk of the court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(C)(1) Upon the conviction of a defendant, after trial, of a felony, the trial judge shall determine whether the defendant is a peace officer. If the judge determines that the defendant is a peace officer or if the defendant states on the record that the defendant is a peace officer, the judge shall provide to the clerk of the court of common pleas a written notice of the conviction of the defendant peace officer, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the conviction, the nature of the felony offense, and certified copies of court entries in the action. Upon receiving the written notice required by division (C)(1) of this section, the clerk of the court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(2) Upon the conclusion of the final appeal of a defendant who is a peace officer and who has been convicted of a felony, upon expiration of the time period within which that peace officer may appeal the conviction if no appeal is taken, or otherwise upon the final disposition of the criminal action against that peace officer, the trial judge shall provide to the clerk of the court of common pleas a written notice of the final disposition of

the action that shall include, as appropriate, notice of the final conviction of the peace officer of the felony, the acquittal of the peace officer of the felony, the conviction of the peace officer of a misdemeanor, or the dismissal of the felony charge against the peace officer. The judge also shall provide to the clerk of the court of common pleas certified copies of the court entries in the action. Upon receiving the written notice required by division (C)(2) of this section, the clerk of the court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(D) If pursuant to a negotiated plea agreement between a prosecuting attorney and a defendant who is a peace officer and who is charged with a felony, in which the defendant agrees to enter a plea of guilty to a misdemeanor and to surrender the certificate awarded to the defendant under section 109.77 of the Revised Code, the trial judge issues an order to the defendant to surrender that certificate, the trial judge shall provide to the clerk of the court a written notice of the order, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the misdemeanor to which the peace officer pleaded guilty, and certified copies of court entries in the action. Upon receiving the written notice required by this division, the clerk of the court shall transmit to the employer of the peace officer and to the executive director of the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

HISTORY: 146 v H 566, eff 10-16-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Publisher's Note:

This section was formerly RC § 2929.29. It was renumbered by H.B. 490, Acts 2002, effective January 1, 2004.

[MODIFICATION OF SENTENCE]

§ 2929.51 Repealed, 149 v H 490, § 2 [134 v H 511 (Eff 1-1-74); 138 v H 1000 (Eff 4-9-81); 138 v H 682 (Eff 4-9-81); 139 v H 1 (Eff 8-5-81); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 143 v H 317 (Eff 10-10-89); 143 v S 258 (Eff 11-20-90); 145 v H 152 (Eff 7-1-93); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 223. Eff 3-18-97]. Eff 1-1-04.

This section concerned modification of sentence.

[OFFENSES PRIOR TO JANUARY 1, 1974,
CERTAIN FELONIES PRIOR TO JULY 1,
1983]

§ 2929.61 Offense committed prior to January 1, 1974; third or fourth degree felony committed between that date and July 1, 1983.

(A) Persons charged with a capital offense committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed,

and, if convicted, shall be imprisoned for life, except that whenever the statute under which any such person is prosecuted provides for a lesser penalty under the circumstances of the particular case, such lesser penalty shall be imposed.

(B) Persons charged with an offense, other than a capital offense, committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after January 1, 1974, for an offense committed prior to January 1, 1974, shall be sentenced according to the penalty for commission of the substantially equivalent offense under Amended Substitute House Bill 511 of the 109th General Assembly. If the offense for which sentence is being imposed does not have a substantial equivalent under that act, or if that act provides a more severe penalty than that originally prescribed for the offense of which the person is convicted, then sentence shall be imposed under the law as it existed prior to January 1, 1974.

(C) Persons charged with an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after July 1, 1983, for an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be notified by the court sufficiently in advance of sentencing that they may choose to be sentenced pursuant to either the law in effect at the time of the commission of the offense or the law in effect at the time of sentencing. This notice shall be written and shall include the differences between and possible effects of the alternative sentence forms and the effect of the person's refusal to choose. The person to be sentenced shall then inform the court in writing of his choice, and shall be sentenced accordingly. Any person choosing to be sentenced pursuant to the law in effect at the time of the commission of an offense that is a felony of the third or fourth degree shall then be eligible for parole, and this person cannot at a later date have his sentence converted to a definite sentence. If the person refuses to choose between the two possible sentences, the person shall be sentenced pursuant to the law in effect at the time of the commission of the offense.

(D) Persons charged with an offense that was a felony of the first or second degree at the time it was committed, that was committed on or after January 1, 1974, and that was committed prior to July 1, 1983, shall be prosecuted for that offense and, if convicted, shall be sentenced under the law as it existed at the time the offense was committed.

HISTORY: 134 v H 511, § 3 (Eff 1-1-74); 136 v H 1 (Eff 6-13-75); 139 v S 199 (Eff 7-1-83); 139 v H 269 (Eff 7-1-83); 140 v S 210. Eff 7-1-83.

Revised Code § 2929.61 was formerly § 3 of 134 v H 511, eff 1-1-74.

The effective date is set by section 3 of SB 210.

[REIMBURSEMENT BY ARSONIST]

§ 2929.71 Arsonist to reimburse agencies for costs of investigation and prosecution.

(A) As used in this section:

(1) "Agency" means any law enforcement agency, other public agency, or public official involved in the

investigation or prosecution of the offender or in the investigation of the fire or explosion in an aggravated arson, arson, or criminal damaging or endangering case. An "agency" includes, but is not limited to, a sheriff's office, a municipal corporation, township, or township police district police department, the office of a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, the fire marshal's office, a municipal corporation, township, or township fire district fire department, the office of a fire prevention officer, and any state, county, or municipal corporation crime laboratory.

(2) "Assets" includes all forms of real or personal property.

(3) "Itemized statement" means the statement of costs described in division (B) of this section.

(4) "Offender" means the person who has been convicted of or pleaded guilty to committing, attempting to commit, or complicity in committing a violation of section 2909.02 or 2909.03 of the Revised Code, or, when the means used are fire or explosion, division (A) (2) of section 2909.06 of the Revised Code.

(5) "Costs" means the reasonable value of the time spent by an officer or employee of an agency on the aggravated arson, arson, or criminal damaging or endangering case, any moneys spent by the agency on that case, and the reasonable fair market value of resources used or expended by the agency on that case.

(B) Prior to the sentencing of an offender, the court shall enter an order that directs agencies that wish to be reimbursed by the offender for the costs they incurred in the investigation or prosecution of the offender or in the investigation of the fire or explosion involved in the case, to file with the court within a specified time an itemized statement of those costs. The order also shall require that a copy of the itemized statement be given to the offender or offender's attorney within the specified time. Only itemized statements so filed and given shall be considered at the hearing described in division (C) of this section.

(C) The court shall set a date for a hearing on all the itemized statements filed with it and given to the offender or the offender's attorney in accordance with division (B) of this section. The hearing shall be held prior to the sentencing of the offender, but may be held on the same day as the sentencing. Notice of the hearing date shall be given to the offender or the offender's attorney and to the agencies whose itemized statements are involved. At the hearing, each agency has the burden of establishing by a preponderance of the evidence that the costs set forth in its itemized statement were incurred in the investigation or prosecution of the offender or in the investigation of the fire or explosion involved in the case, and of establishing by a preponderance of the evidence that the offender has assets available for the reimbursement of all or a portion of the costs.

The offender may cross-examine all witnesses and examine all documentation presented by the agencies at the hearing, and the offender may present at the hearing witnesses and documentation the offender has obtained without a subpoena or a subpoena duces tecum or, in the case of documentation, that belongs to the offender. The offender also may issue subpoenas and subpoenas duces tecum for, and present and examine at the hearing, witnesses and documentation, subject to the following applying to the witnesses or documentation subpoenaed:

(1) The testimony of witnesses subpoenaed or documentation subpoenaed is material to the preparation or

presentation by the offender of the offender's defense to the claims of the agencies for a reimbursement of costs;

(2) If witnesses to be subpoenaed are personnel of an agency or documentation to be subpoenaed belongs to an agency, the personnel or documentation may be subpoenaed only if the agency involved has indicated, pursuant to this division, that it intends to present the personnel as witnesses or use the documentation at the hearing. The offender shall submit, in writing, a request to an agency as described in this division to ascertain whether the agency intends to present various personnel as witnesses or to use particular documentation. The request shall indicate that the offender is considering issuing subpoenas to personnel of the agency who are specifically named or identified by title or position, or for documentation of the agency that is specifically described or generally identified, and shall request the agency to indicate, in writing, whether it intends to present such personnel as witnesses or to use such documentation at the hearing. The agency shall promptly reply to the request of the offender. An agency is prohibited from presenting personnel as witnesses or from using documentation at the hearing if it indicates to the offender it does not intend to do so in response to a request of the offender under this division, or if it fails to reply or promptly reply to such a request.

(D) Following the hearing, the court shall determine which of the agencies established by a preponderance of the evidence that costs set forth in their itemized statements were incurred as described in division (C) of this section and that the offender has assets available for reimbursement purposes. The court also shall determine whether the offender has assets available to reimburse all such agencies, in whole or in part, for their established costs, and if it determines that the assets are available, it shall order the offender, as part of the offender's sentence, to reimburse the agencies from the offender's assets for all or a specified portion of their established costs.

HISTORY: 141 v H 284, eff. 3-6-86; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Publisher's Note:

This section was formerly RC § 2929.28. It was renumbered by H.B. 490, Acts 2002, effective January 1, 2004.

CHAPTER 2930: VICTIM'S RIGHTS

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§ 2930.01 Definitions.

As used in this chapter:

(A) "Crime" means any of the following:

(1) A felony;

(2) A violation of section 2903.05, 2903.06, 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, 2907.06, 2919.25, or 2921.04 of the Revised Code, a violation of section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or a violation of a substantially equivalent municipal ordinance;

(3) A violation of division (A) or (B) of section 4511.19, division (A) or (B) of section 1547.11, or division (A)(3) of section 4561.15 of the Revised Code or of a municipal ordinance substantially similar to any of those divisions that is the proximate cause of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident in which the victim receives injuries for which the victim receives medical treatment either at the scene of the accident by emergency medical services personnel or at a hospital, ambulatory care facility, physician's office, specialist's office, or other medical care facility.

(4) A motor vehicle accident to which both of the following apply:

(a) The motor vehicle accident is caused by a violation of a provision of the Revised Code that is a misdemeanor of the first degree or higher.

(b) As a result of the motor vehicle accident, the victim receives injuries for which the victim receives medical treatment either at the scene of the accident by emergency medical services personnel or at a hospital, ambulatory care facility, physician's office, specialist's office, or other medical care facility.

(B) "Custodial agency" means one of the following:

(1) The entity that has custody of a defendant or an alleged juvenile offender who is incarcerated for a crime, is under detention for the commission of a specified delinquent act, or who is detained after a finding of incompetence to stand trial or not guilty by reason of insanity relative to a crime, including any of the following:

(a) The department of rehabilitation and correction or the adult parole authority;

(b) A county sheriff;

(c) The entity that administers a jail, as defined in section 2929.01 of the Revised Code;

(d) The entity that administers a community-based correctional facility and program or a district community-based correctional facility and program;

(e) The department of mental health or other entity to which a defendant found incompetent to stand trial or not guilty by reason of insanity is committed.

(2) The entity that has custody of an alleged juvenile offender pursuant to an order of disposition of a juvenile court, including the department of youth services or a school, camp, institution, or other facility operated for the care of delinquent children.

(C) "Defendant" means a person who is alleged to be the perpetrator of a crime in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution and subsequent proceedings to which this chapter makes reference.

(D) "Member of the victim's family" means a spouse, child, stepchild, sibling, parent, stepparent, grandparent, or other relative of a victim but does not include a person who is charged with, convicted of, or adjudicated to be a delinquent child for the crime or specified delinquent act against the victim or another crime or specified delinquent act arising from the same conduct, criminal episode, or plan.

(E) "Prosecutor" means one of the following:

(1) With respect to a criminal case, it has the same meaning as in section 2935.01 of the Revised Code and also includes the attorney general and, when appropriate, the employees of any person listed in section 2935.01 of the Revised Code or of the attorney general.

(2) With respect to a delinquency proceeding, it includes any person listed in division (C) of section 2935.01 of the Revised Code or an employee of a person listed in that division who prosecutes a delinquency proceeding.

(F) "Public agency" means an office, agency, department, bureau, or other governmental entity of the state or of a political subdivision of the state.

(G) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(H) "Victim" means either of the following:

(1) A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

(2) A person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section, whichever is applicable.

(I) "Victim's representative" means a member of the victim's family or another person who pursuant to the authority of section 2930.02 of the Revised Code exercises the rights of a victim under this chapter.

(J) "Court" means a court of common pleas, juvenile court, municipal court, or county court.

(K) "Delinquency proceeding" means all proceedings in a juvenile court that are related to a case in which a

complaint has been filed alleging that a child is a delinquent child.

(L) "Case" means a delinquency proceeding and all related activity or a criminal prosecution and all related activity.

(M) The "defense" means the defense against criminal charges in a criminal prosecution or the defense against a delinquent child complaint in a delinquency proceeding.

(N) The "prosecution" means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

(O) "Specified delinquent act" means any of the following:

(1) An act committed by a child that if committed by an adult would be a felony;

(2) An act committed by a child that is a violation of a section listed in division (A)(1) or (2) of this section or is a violation of a substantially equivalent municipal ordinance;

(3) An act committed by a child that is described in division (A)(3) or (4) of this section.

(P)(1) "Alleged juvenile offender" means a child who is alleged to have committed a specified delinquent act in a police report or in a complaint in juvenile court that charges the commission of a specified delinquent act and that provides the basis for the delinquency proceeding and all subsequent proceedings to which this chapter makes reference.

(2) As used in divisions (O) and (P)(1) of this section, "child" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code.

(Q) "Motor vehicle accident" means any accident involving a motor vehicle.

(R) "Motor vehicle" has the same meaning as in section 4509.01 of the Revised Code.

(S) "Aircraft" has the same meaning as in section 4561.01 of the Revised Code.

(T) "Aquatic device" means any vessel, or any water skis, aquaplane, or similar device.

(U) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(V) "Vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident" means any accident involving a vehicle, streetcar, trackless trolley, aquatic device, or aircraft.

(W) "Vessel" has the same meaning as in section 1547.01 of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3 (Eff 11-22-99); 148 v S 107, Eff 3-23-2000; 151 v H 108, § 1, eff. 5-17-06.

§ 2930.02 Exercise of victim's rights by representative.

(A) If a victim is a minor or is incapacitated, incompetent, or deceased, or if the victim chooses to designate another person, a member of a victim's family or another person may exercise the rights of the victim under this chapter as the victim's representative.

If more than one person seeks to act as the victim's representative for a particular victim, the court in which the criminal prosecution or delinquency proceeding is held shall designate one of those persons as the victim's representative. If a victim does not want to have anyone act as the victim's representative, the court shall order

that only the victim may exercise the rights of a victim under this chapter.

(B) If pursuant to division (A) of this section a victim's representative is to exercise the rights of a victim, the victim or victim's representative shall notify the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, shall notify the court that the victim's representative is to act for the victim. When a victim or victim's representative has so notified the prosecutor or the court, all notice under this chapter shall be sent only to the victim's representative, all rights under this chapter shall be granted only to the victim's representative, and all references in this chapter to a victim shall be interpreted as being references to the victim's representative unless the victim informs the notifying authority that the victim also wishes to receive the notices or exercise the rights. If division (B) of section 2930.03 of the Revised Code requires a victim to make a request in order to receive any notice of a type described in this division and if a victim's representative is to exercise the rights of the victim, the victim's representative shall make the request.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3, Eff 11-22-99.

§ 2930.03 Means of giving notice to victim; notice of changes.

(A) A person or entity required or authorized under this chapter to give notice to a victim shall give the notice to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written.

(B) Except for receipt of the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code, a victim who wishes to receive any notice authorized by this chapter shall make a request for the notice to the prosecutor or the custodial agency that is to provide the notice, as specified in this chapter. If the victim does not make a request as described in this division, the prosecutor or custodial agency is not required to provide any notice described in this chapter other than the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code.

(C) A person or agency that is required to furnish notice under this chapter shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice under this chapter as described in division (B) of this section shall inform the person or agency of the name, address, or telephone number of the victim and of any change to that information.

(D) A person or agency that has furnished information to a victim in accordance with any requirement or authorization under this chapter shall notify the victim promptly of any significant changes to that information.

(E) Divisions (A) to (D) of this section do not apply regarding a notice that a prosecutor is required to provide under section 2930.061 [2930.06.1] of the Revised Code. A prosecutor required to provide notice under that section shall provide the notice as specified in that section.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2. Eff 7-1-96; 150 v S 178, § 1, eff. 1-30-04.

The effective date is set by section 6 of SB 2.

§ 2930.04 Information to be given to victim by investigating law enforcement agency.

(A) After its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime promptly shall give to the victim, in writing, all of the following information:

(1) An explanation of the victim's rights under this chapter;

(2) Information about medical, counseling, housing, emergency, and any other services that are available to a victim;

(3) Information about compensation for victims under the reparations program in sections 2743.51 to 2743.72 of the Revised Code and the name, street address, and telephone number of the agency to contact to apply for an award of reparations under those sections;

(4) Information about protection that is available to the victim, including protective orders issued by a court.

(B) As soon as practicable after its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime shall give to the victim all of the following information:

(1) The business telephone number of the law enforcement officer assigned to investigate the case;

(2) The office address and business telephone number of the prosecutor in the case;

(3) A statement that, if the victim is not notified of the arrest of the offender in the case within a reasonable period of time, the victim may contact the law enforcement agency to learn the status of the case.

(C) To the extent that the information required by this section is provided in the pamphlet prepared pursuant to section 109.42 of the Revised Code or in the information card or other material prepared pursuant to section 2743.71 of the Revised Code, the law enforcement agency may fulfill that portion of its obligations under this section by giving that pamphlet, information card, or other material to the victim.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

§ 2930.05 Notice of arrest of defendant or alleged juvenile offender; affidavit concerning violence or intimidation.

(A) Within a reasonable period of time after the arrest or detention of a defendant or an alleged juvenile offender for a crime or specified delinquent act, the law enforcement agency that investigates the crime or specified delinquent act shall give the victim of the crime or specified delinquent act notice of all of the following:

(1) The arrest or detention;

(2) The name of the defendant or alleged juvenile offender;

(3) Whether the defendant or alleged juvenile offender is eligible for pretrial release or for release from detention;

(4) The telephone number of the law enforcement agency;

(5) The victim's right to telephone the agency to ascertain whether the defendant or alleged juvenile offender has been released from custody or from detention.

(B) If a defendant or alleged juvenile offender has been released from custody on a bond or personal recognizance or has been released from detention and the prosecutor in the case has received the affidavit of a victim stating that the defendant or alleged juvenile offender, or someone acting at the defendant's or alleged juvenile offender's direction, has committed or threatened to commit one or more acts of violence or intimidation against the victim, the victim's family, or the victim's representative, the prosecutor may file a motion asking the court to reconsider the conditions of the bond or personal recognizance granted to the defendant or alleged juvenile offender or to consider returning the defendant or alleged juvenile offender to detention.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.06 Prosecutor to confer with victim and provide information; notice of court proceedings.

(A) The prosecutor in a case, to the extent practicable, shall confer with the victim in the case before pretrial diversion is granted to the defendant or alleged juvenile offender in the case, before amending or dismissing an indictment, information, or complaint against that defendant or alleged juvenile offender, before agreeing to a negotiated plea for that defendant or alleged juvenile offender, before a trial of that defendant by judge or jury, or before the juvenile court conducts an adjudicatory hearing for that alleged juvenile offender. If the juvenile court disposes of a case prior to the prosecutor's involvement in the case, the court or a court employee shall notify the victim in the case that the alleged juvenile offender will be granted pretrial diversion, the complaint against that alleged juvenile offender will be amended or dismissed, or the court will conduct an adjudicatory hearing for that alleged juvenile offender. If the prosecutor fails to confer with the victim at any of those times, the court, if informed of the failure, shall note on the record the failure and the prosecutor's reasons for the failure. A prosecutor's failure to confer with a victim as required by this division and a court's failure to provide the notice as required by this division do not affect the validity of an agreement between the prosecutor and the defendant or alleged juvenile offender in the case, a pretrial diversion of the defendant or alleged juvenile offender, an amendment or dismissal of an indictment, information, or complaint filed against the defendant or alleged juvenile offender, a plea entered by the defendant or alleged juvenile offender, an admission entered by the defendant or alleged juvenile offender, or any other disposition in the case. A court shall not dismiss a criminal complaint, charge, information, or indictment or a delinquent child complaint solely at the request of the victim and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer responsible for the prosecution of the case.

(B) After a prosecution in a case has been commenced, the prosecutor or a designee of the prosecutor other than a court or court employee, to the extent practicable, promptly shall give the victim all of the

following information, except that, if the juvenile court disposes of a case prior to the prosecutor's involvement in the case, the court or a court employee, to the extent practicable, promptly shall give the victim all of the following information:

(1) The name of the crime or specified delinquent act with which the defendant or alleged juvenile offender in the case has been charged and the name of the defendant or alleged juvenile offender;

(2) The file number of the case;

(3) A brief statement regarding the procedural steps in a criminal prosecution or delinquency proceeding involving a crime or specified delinquent act similar to the crime or specified delinquent act with which the defendant or alleged juvenile offender has been charged and the right of the victim to be present during all proceedings held throughout the prosecution of the case;

(4) A summary of the rights of a victim under this chapter;

(5) Procedures the victim or the prosecutor may follow if the victim becomes subject to threats or intimidation by the defendant, alleged juvenile offender, or any other person;

(6) The name and business telephone number of a person to contact for further information with respect to the case;

(7) The right of the victim to have a victim's representative exercise the victim's rights under this chapter in accordance with section 2930.02 of the Revised Code and the procedure by which a victim's representative may be designated;

(8) Notice that any notification under division (C) of this section, sections 2930.07 to 2930.19, and section 5139.56 of the Revised Code will be given to the victim only if the victim asks to receive the notification.

(C) Upon the request of the victim, the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, the court shall give the victim notice of the date, time, and place of any scheduled criminal or juvenile proceedings in the case and notice of any changes in those proceedings or in the schedule in the case.

(D) A victim who requests notice under division (C) of this section and who elects pursuant to division (B) of section 2930.03 of the Revised Code to receive any further notice from the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, the court under this chapter shall keep the prosecutor or the court informed of the victim's current address and telephone number until the case is dismissed or terminated, the defendant is acquitted or sentenced, the delinquent child complaint is dismissed, the defendant is adjudicated a delinquent child, or the appellate process is completed, whichever is the final disposition in the case.

(E) If a defendant is charged with the commission of a misdemeanor offense that is not identified in division (A) (2) of section 2930.01 of the Revised Code and if a police report or a complaint, indictment, or information that charges the commission of that offense and provides the basis for a criminal prosecution of that defendant identifies one or more individuals as individuals against whom that offense was committed, after a prosecution in the case has been commenced, the prosecutor or a designee of the prosecutor other than a court or court employee, to the extent practicable, promptly shall notify each of the individuals so identified in the report, complaint, indictment,

or information that, if the defendant is convicted of or pleads guilty to the offense, the individual may make an oral or written statement to the court hearing the case regarding the sentence to be imposed upon the defendant and that the court must consider any statement so made that is relevant. Before imposing sentence in the case, the court shall permit the individuals so identified in the report, complaint, indictment, or information to make an oral or written statement. Division (A) of section 2930.14 of the Revised Code applies regarding any statement so made. The court shall consider a statement so made, in accordance with division (B) of that section and division (D) of section 2929.22 of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 98 (Eff 3-17-98); 148 v H 3, Eff 11-22-99; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

[§ 2930.06.1] § 2930.061 Written notice of charges sent to department of mental retardation and developmental disabilities.

(A) If a person is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any other violation of law, and if the case involves a victim that the prosecutor in the case knows is a mentally retarded person or a developmentally disabled person, in addition to any other notices required under this chapter or under any other provision of law, the prosecutor in the case shall send written notice of the charges to the department of mental retardation and developmental disabilities. The written notice shall specifically identify the person so charged.

(B) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

HISTORY: 150 v S 178, § 1, eff. 1-30-04.

[§ 2930.06.2] § 2930.062 Certain victims of vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident may notify prosecutor or court.

A victim described in division (H)(2) of section 2930.01 of the Revised Code may provide the prosecutor, or if it is a delinquency proceeding and a prosecutor is not involved in the case may provide the court, in the victim's case with written notification of the victim's injuries at any time. Upon receipt of the written notification, the prosecutor or court shall give the victim all of the information specified in division (B) of section 2930.06 if the prosecutor has not already done so.

HISTORY: 151 v H 108, § 1, eff. 5-17-06.

§ 2930.07 Concealment of victim's or representative's address, telephone number and similar identifying facts.

(A) If the prosecutor in a case determines that there are reasonable grounds for the victim in a case to be apprehensive regarding acts or threats of violence or intimidation by the defendant or alleged juvenile offender in the case or at the defendant's or alleged juvenile offender's direction against the victim, the victim's family,

or the victim's representative, the prosecutor may file a motion with the court requesting that the court issue an order specifying that the victim and other witnesses in the case not be compelled in any phase of the criminal or delinquency proceeding to give testimony that would disclose the victim's or victim's representative's address, place of employment, or similar identifying fact without the victim's or victim's representative's consent. The court shall hold a hearing on the motion in chambers, and a court reporter shall make a record of the proceeding.

(B) If the court, pursuant to division (A) of this section, orders that the victim's or victim's representative's address, telephone number, place of employment, or other identifying fact shall be confidential, the court files or documents shall not contain that information unless it is used to identify the location of the crime or specified delinquent act. The hearing shall be recorded, and the court shall order the transcript sealed.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.08 Notice of substantial delay in prosecution; victim's objections.

If a motion, request, or agreement between counsel is made in a case and the motion, request, or agreement might result in a substantial delay in the prosecution of the case, the prosecutor in the case, to the extent practicable and if the victim has requested notice pursuant to division (B) of section 2930.03 of the Revised Code, shall inform the victim that the motion, request, or agreement has been made and that it might result in a delay. If the victim objects to the delay, the prosecutor shall inform the court of the victim's objections, and the court shall consider the victim's objections in ruling on the motion, request, or agreement.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 3.

§ 2930.09 Presence of victim at proceedings; individual providing support.

A victim in a case may be present whenever the defendant or alleged juvenile offender in the case is present during any stage of the case against the defendant or alleged juvenile offender that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or to a fair delinquency proceeding. At any stage of the case at which the victim is present, the court, at the victim's request, shall permit the victim to be accompanied by an individual to provide support to the victim unless the court determines that exclusion of the individual is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or to a fair delinquency proceeding.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.10 Minimization of unwanted contact between prosecution and defense sides.

(A) The court in which a criminal prosecution or delinquency proceeding is held shall make a reasonable effort to minimize any contact between the victim in the

case, members of the victim's family, the victim's representative, or witnesses for the prosecution and the defendant or alleged juvenile offender in the case, members of the defendant's or alleged juvenile offender's family, or witnesses for the defense before, during, and immediately after all court proceedings.

(B) The court shall provide a waiting area for the victim, members of the victim's family, the victim's representative, or witnesses for the prosecution that is separate from the waiting area provided for the defendant or alleged juvenile offender, members of the defendant's or alleged juvenile offender's family, and defense witnesses if a separate waiting area is available and the use of the area is practical.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.11 Return or retention of victim's property.

(A) Except as otherwise provided in this section or in Chapter 2981. of the Revised Code, the law enforcement agency responsible for investigating a crime or specified delinquent act shall promptly return to the victim of the crime or specified delinquent act any property of the victim that was taken in the course of the investigation. In accordance with Criminal Rule 26 or an applicable juvenile rule, the law enforcement agency may take photographs of the property for use as evidence. If the ownership of the property is in dispute, the agency shall not return the property until the dispute is resolved.

(B) The law enforcement agency responsible for investigating a crime or specified delinquent act shall retain any property of the victim of the crime or specified delinquent act that is needed as evidence in the case, including any weapon used in the commission of the crime or specified delinquent act, if the prosecutor certifies to the court a need to retain the property in lieu of a photograph of the property or of another evidentiary substitute for the property itself.

(C) If the defendant or alleged juvenile offender in a case files a motion requesting the court to order the law enforcement agency to retain property of the victim because the property is needed for the defense in the case, the agency shall retain the property until the court rules on the motion. The court, in making a determination on the motion, shall weigh the victim's need for the property against the defendant's or alleged juvenile offender's assertion that the property has evidentiary value for the defense. The court shall rule on the motion in a timely fashion.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

§ 2930.12 Notice of acquittal or conviction or of juvenile court dismissal or delinquency adjudication; inclusion of impact statement in presentence investigation report.

At the request of the victim in a criminal prosecution, the prosecutor shall give the victim notice of the defendant's acquittal or conviction. At the request of the victim in a delinquency proceeding, the prosecutor shall give the victim notice of the dismissal of the complaint against the alleged juvenile offender or of the adjudication of the alleged juvenile offender as a delinquent child, except

that, if the juvenile court dismisses the complaint against the alleged juvenile offender or adjudicates the alleged juvenile offender a delinquent child prior to the prosecutor's involvement in the case, at the request of the victim, the court or a court employee shall give the victim notice of the dismissal or of the adjudication. If the defendant or alleged juvenile offender is convicted or is adjudicated a delinquent child, the notice shall include all of the following:

(A) The crimes or specified delinquent acts of which the defendant was convicted or for which the alleged juvenile offender was adjudicated a delinquent child;

(B) The address and telephone number of the probation office or other person, if any, that is to prepare a presentence investigation report pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, the address and telephone number of the person, if any, who is to prepare a disposition investigation report pursuant to division (C)(1) of section 2152.18 of the Revised Code, and the address and telephone number of the person, if any, who is to prepare a victim impact statement pursuant to division (D)(1) of section 2152.19 or section 2947.051 [2947.05.1] of the Revised Code;

(C) Notice that the victim may make a statement about the impact of the crime or specified delinquent act to the probation officer or other person, if any, who prepares the presentence investigation report or to the person, if any, who prepares a victim impact statement, that a statement of the victim included in the report will be made available to the defendant or alleged juvenile offender unless the court exempts it from disclosure, and that the court may make the victim impact statement available to the defendant or alleged juvenile offender;

(D) Notice of the victim's right under section 2930.14 of the Revised Code to make a statement about the impact of the crime or specified delinquent act before sentencing or disposition;

(E) The date, time, and place of the sentencing hearing or dispositional hearing;

(F) One of the following:

(1) Any sentence imposed upon the defendant and any subsequent modification of that sentence, including modification under section 2929.20 of the Revised Code or as a result of the defendant's appeal of the sentence pursuant to section 2953.08 of the Revised Code;

(2) Any disposition ordered for the defendant and any subsequent modification of that disposition, including judicial release or early release in accordance with section 2151.38 of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3 (Eff 11-22-99); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 2930.13 Victim may make written or oral statement to person preparing impact statement.

(A) If the court orders the preparation of a victim impact statement pursuant to division (D)(1) of section 2152.19 or section 2947.051 [2947.05.1] of the Revised Code, the victim in the case may make a written or oral statement regarding the impact of the crime or specified delinquent act to the person whom the court orders to prepare the victim impact statement. A statement made by the victim under this section shall be included in the victim impact statement.

(B) If a probation officer or other person is preparing a presentence investigation report pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2, or a disposition investigation report pursuant to section 2152.18 of the Revised Code, concerning the defendant or alleged juvenile offender in the case, the victim may make a written or oral statement regarding the impact of the crime or specified delinquent act to the probation officer or other person. The probation officer or other person shall use the statement in preparing the presentence investigation report or disposition investigation report and, upon the victim's request, shall include a written statement submitted by the victim in the presentence investigation report or disposition investigation report.

(C) A statement made by the victim under division (A) or (B) of this section may include the following:

(1) An explanation of the nature and extent of any physical, psychological, or emotional harm suffered by the victim as a result of the crime or specified delinquent act that is the basis of the case;

(2) An explanation of the extent of any property damage or other economic loss suffered by the victim as a result of that crime or specified delinquent act;

(3) An opinion regarding the extent to which, if any, the victim needs restitution for harm caused by the defendant or alleged juvenile offender as a result of that crime or specified delinquent act and information about whether the victim has applied for or received any compensation for loss or damage caused by that crime or specified delinquent act;

(4) The victim's recommendation for an appropriate sanction or disposition for the defendant or alleged juvenile offender regarding that crime or specified delinquent act.

(D) If a statement made by a victim under division (A) of this section is included in a victim impact statement, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of the victim impact statement is governed by division (B)(2) of section 2152.20 or by division (C) of section 2947.051 [2947.05.1] of the Revised Code, as appropriate. If a statement made by a victim under division (B) of this section is included in a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 or in a disposition investigation report pursuant to division (C)(1) of section 2152.18 of the Revised Code, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of the presentence investigation report or disposition investigation report that contains the victim's statement is governed by section 2951.03 of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v H 3 (Eff 11-22-99); 148 v S 179, § 3. Eff 1-1-2002; 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

The effective date is set by section 5 of SB 179.

§ 2930.14 Victim may make statement prior to sentencing or disposition of juvenile; defendant's or juvenile's opportunity to respond.

(A) Before imposing sentence upon, or entering an order of disposition for, a defendant or alleged juvenile offender for the commission of a crime or specified delinquent act, the court shall permit the victim of the crime or

specified delinquent act to make a statement. The court may give copies of any written statement made by a victim to the defendant or alleged juvenile offender and defendant's or alleged juvenile offender's counsel and may give any written statement made by the defendant or alleged juvenile offender to the victim and the prosecutor. The court may redact any information contained in a written statement that the court determines is not relevant to and will not be relied upon in the sentencing or disposition decision. The written statement of the victim or of the defendant or alleged juvenile offender is confidential and is not a public record as used in section 149.43 of the Revised Code. Any person to whom a copy of a written statement was released by the court shall return it to the court immediately following sentencing or disposition.

(B) The court shall consider a victim's statement made under division (A) of this section along with other factors that the court is required to consider in imposing sentence or in determining the order of disposition. If the statement includes new material facts, the court shall not rely on the new material facts unless it continues the sentencing or dispositional proceeding or takes other appropriate action to allow the defendant or alleged juvenile offender an adequate opportunity to respond to the new material facts.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3, Eff 11-22-99.

§ 2930.15 Notice of filing of appeal; victim's rights after return to trial court.

(A) If a defendant is convicted of committing a crime against a victim or an alleged juvenile offender is adjudicated a delinquent child for committing a specified delinquent act against a victim, if the victim requests notice of the filing of an appeal, and if the defendant or alleged juvenile offender files an appeal, the prosecutor in the case promptly shall notify the victim of the appeal. The prosecutor also shall give the victim all of the following information:

(1) A brief explanation of the appellate process, including the possible disposition of the case;

(2) Whether the defendant or alleged juvenile offender has been released on bail or other recognizance or under conditions imposed by the juvenile court pending the disposition of the appeal;

(3) The time, place, and location of appellate court proceedings and any subsequent changes in the time, place, or location of those proceedings;

(4) The result of the appeal.

(B) If the appellate court returns the defendant's or alleged juvenile offender's case to the trial court or juvenile court for further proceedings, the victim may exercise all the rights that previously were available to the victim in the trial court or the juvenile court.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3, Eff 11-22-99.

§ 2930.16 Notice of defendant's incarceration and release date or of juvenile's commitment; prior notice of events affecting release or of defendant's escape or death.

Effective until 1-1-08.

(A) If a defendant is incarcerated, a victim in a case who has requested to receive notice under this section

shall be given notice of the incarceration of the defendant. If an alleged juvenile offender is committed to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children or to the legal custody of the department of youth services, a victim in a case who has requested to receive notice under this section shall be given notice of the commitment. Promptly after sentence is imposed upon the defendant or the commitment of the alleged juvenile offender is ordered, the prosecutor in the case shall notify the victim of the date on which the defendant will be released from confinement or the prosecutor's reasonable estimate of that date or the date on which the alleged juvenile offender will have served the minimum period of commitment or the prosecutor's reasonable estimate of that date. The prosecutor also shall notify the victim of the name of the custodial agency of the defendant or alleged juvenile offender and tell the victim how to contact that custodial agency. If the custodial agency is the department of rehabilitation and correction, the prosecutor shall notify the victim of the services offered by the office of victims' services pursuant to section 5120.60 of the Revised Code. If the custodial agency is the department of youth services, the prosecutor shall notify the victim of the services provided by the office of victims' services within the release authority of the department pursuant to section 5139.55 of the Revised Code and the victim's right pursuant to section 5139.56 of the Revised Code to submit a written request to the release authority to be notified of actions the release authority takes with respect to the alleged juvenile offender. The victim shall keep the custodial agency informed of the victim's current address and telephone number.

(B)(1) Upon the victim's request, the prosecutor promptly shall notify the victim of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised Code or of any hearing for judicial release or early release of the alleged juvenile offender pursuant to section 2151.38 of the Revised Code and of the victim's right to make a statement under those sections. The court shall notify the victim of its ruling in each of those hearings and on each of those applications.

(2) If an offender is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense, the offender is adjudicated a sexually violent predator in relation to that crime, and the offender is sentenced to a prison term for that crime pursuant to division (A)(3) of section 2971.03 of the Revised Code, if an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment, and the offender is sentenced to a prison term for that offense pursuant to division (B)(1)(a), (b), or (c) of section 2971.03 of the Revised Code, if an offender is convicted of or pleads guilty to attempted rape committed on or after the effective date of this amendment, the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18] of the Revised Code, and the offender is sentenced to a prison term for that offense pursuant to division (B)(2)(a) of section 2971.03 of the Revised Code, if the offender is convicted of or pleads guilty to attempted rape committed on or after the effective date of this amendment, the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1419

[2941.14.19] of the Revised Code, and the offender is sentenced to a prison term for that offense pursuant to division (B)(2)(b) of section 2971.03 of the Revised Code, or if the offender is convicted of or pleads guilty to attempted rape committed on or after the effective date of this amendment, the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 [2941.14.20] of the Revised Code, and the offender is sentenced to a prison term for that offense pursuant to division (B)(2)(c) of section 2971.03 of the Revised Code, upon the request of the victim of the crime, the prosecutor promptly shall notify the victim of any hearing to be conducted pursuant to section 2971.05 of the Revised Code to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility in accordance with division (C) of that section, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term in accordance with division (D) of that section. The court shall notify the victim of any order issued at the conclusion of the hearing. As used in this division:

(a) "Adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(b) "Designated homicide, assault, or kidnapping offense" and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code.

(C) Upon the victim's request made at any time before the particular notice would be due, the custodial agency of a defendant or alleged juvenile offender shall give the victim any of the following notices that is applicable:

(1) At least three weeks before the adult parole authority recommends a pardon or commutation of sentence for the defendant or at least three weeks prior to a hearing before the adult parole authority regarding a grant of parole to the defendant, notice of the victim's right to submit a statement regarding the impact of the defendant's release in accordance with section 2967.12 of the Revised Code and, if applicable, of the victim's right to appear at a full board hearing of the parole board to give testimony as authorized by section 5149.101 of the Revised Code;

(2) At least three weeks before the defendant is transferred to transitional control under section 2967.26 of the Revised Code, notice of the pendency of the transfer and of the victim's right under that section to submit a statement regarding the impact of the transfer;

(3) At least thirty days before the release authority of the department of youth services holds a release review, release hearing, or discharge review for the alleged juvenile offender, notice of the pendency of the review or hearing, of the victim's right to make an oral or written statement regarding the impact of the crime upon the victim or regarding the possible release or discharge, and, if the notice pertains to a hearing, of the victim's right to attend and make statements or comments at the hearing as authorized by section 5139.56 of the Revised Code;

(4) Prompt notice of the defendant's or alleged juvenile offender's escape from a facility of the custodial agency in which the defendant was incarcerated or in which the alleged juvenile offender was placed after commitment, of the defendant's or alleged juvenile offender's absence without leave from a mental health or mental retardation and developmental disabilities facility

or from other custody, and of the capture of the defendant or alleged juvenile offender after an escape or absence;

(5) Notice of the defendant's or alleged juvenile offender's death while in confinement or custody;

(6) Notice of the defendant's or alleged juvenile offender's release from confinement or custody and the terms and conditions of the release.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 148 v H 3, Eff 11-22-99; 150 v H 375, § 1, eff. 4-29-05; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

§ 2930.16 Notice of defendant's incarceration and release date or of juvenile's commitment; prior notice of events affecting release or of defendant's escape or death.

Effective 1-1-08.

(A) If a defendant is incarcerated, a victim in a case who has requested to receive notice under this section shall be given notice of the incarceration of the defendant. If an alleged juvenile offender is committed to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children or to the legal custody of the department of youth services, a victim in a case who has requested to receive notice under this section shall be given notice of the commitment. Promptly after sentence is imposed upon the defendant or the commitment of the alleged juvenile offender is ordered, the prosecutor in the case shall notify the victim of the date on which the defendant will be released from confinement or the prosecutor's reasonable estimate of that date or the date on which the alleged juvenile offender will have served the minimum period of commitment or the prosecutor's reasonable estimate of that date. The prosecutor also shall notify the victim of the name of the custodial agency of the defendant or alleged juvenile offender and tell the victim how to contact that custodial agency. If the custodial agency is the department of rehabilitation and correction, the prosecutor shall notify the victim of the services offered by the office of victims' services pursuant to section 5120.60 of the Revised Code. If the custodial agency is the department of youth services, the prosecutor shall notify the victim of the services provided by the office of victims' services within the release authority of the department pursuant to section 5139.55 of the Revised Code and the victim's right pursuant to section 5139.56 of the Revised Code to submit a written request to the release authority to be notified of actions the release authority takes with respect to the alleged juvenile offender. The victim shall keep the custodial agency informed of the victim's current address and telephone number.

(B)(1) Upon the victim's request, the prosecutor promptly shall notify the victim of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised Code or of any hearing for judicial release or early release of the alleged juvenile offender pursuant to section 2151.38 of the Revised Code and of the victim's right to make a statement under those sections. The court shall notify the victim of its ruling in each of those hearings and on each of those applications.

(2) If an offender is sentenced to a prison term pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code, upon the request of the victim of the crime, the prosecutor promptly shall notify the victim of any hearing to be conducted pursuant to section 2971.05 of the Revised Code to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility in accordance with division (C) of that section, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term in accordance with division (D) of that section. The court shall notify the victim of any order issued at the conclusion of the hearing.

(C) Upon the victim's request made at any time before the particular notice would be due, the custodial agency of a defendant or alleged juvenile offender shall give the victim any of the following notices that is applicable:

(1) At least three weeks before the adult parole authority recommends a pardon or commutation of sentence for the defendant or at least three weeks prior to a hearing before the adult parole authority regarding a grant of parole to the defendant, notice of the victim's right to submit a statement regarding the impact of the defendant's release in accordance with section 2967.12 of the Revised Code and, if applicable, of the victim's right to appear at a full board hearing of the parole board to give testimony as authorized by section 5149.101 of the Revised Code;

(2) At least three weeks before the defendant is transferred to transitional control under section 2967.26 of the Revised Code, notice of the pendency of the transfer and of the victim's right under that section to submit a statement regarding the impact of the transfer;

(3) At least thirty days before the release authority of the department of youth services holds a release review, release hearing, or discharge review for the alleged juvenile offender, notice of the pendency of the review or hearing, of the victim's right to make an oral or written statement regarding the impact of the crime upon the victim or regarding the possible release or discharge, and, if the notice pertains to a hearing, of the victim's right to attend and make statements or comments at the hearing as authorized by section 5139.56 of the Revised Code;

(4) Prompt notice of the defendant's or alleged juvenile offender's escape from a facility of the custodial agency in which the defendant was incarcerated or in which the alleged juvenile offender was placed after commitment, of the defendant's or alleged juvenile offender's absence without leave from a mental health or mental retardation and developmental disabilities facility or from other custody, and of the capture of the defendant or alleged juvenile offender after an escape or absence;

(5) Notice of the defendant's or alleged juvenile offender's death while in confinement or custody;

(6) Notice of the defendant's or alleged juvenile offender's release from confinement or custody and the terms and conditions of the release.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 148 v H 3. Eff 11-22-99; 150 v H 375, § 1, eff. 4-29-05; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3(A) of 151 v S 260 read as follows:

SECTION 3. (A) Section 2930.16 of the Revised Code is presented in this act as a composite of the section as amended by

both Am. Sub. H.B. 375 and Am. Sub. H.B. 473 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

Comment, Legislative Service Commission

Section 2930.16 of the Revised Code is amended by Am. Sub. H.B. 375 and Am. Sub. H.B. 473 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 2930.17 Victim's statement prior to granting of judicial or early release.

(A) In determining whether to grant a judicial release to a defendant from a prison term pursuant to section 2929.20 of the Revised Code at a time before the defendant's stated prison term expires or in determining whether to grant a judicial release or early release to an alleged juvenile offender from a commitment to the department of youth services pursuant to section 2151.38 of the Revised Code, the court shall permit a victim of a crime or specified delinquent act for which the defendant or alleged juvenile offender was incarcerated or committed to make a statement, in addition to any other statement made under this chapter, concerning the effects of that crime or specified delinquent act on the victim, the circumstances surrounding the crime or specified delinquent act, the manner in which the crime or specified delinquent act was perpetrated, and the victim's opinion whether the defendant or alleged juvenile offender should be released. The victim may make the statement in writing or orally, at the court's discretion. The court shall give the defendant or alleged juvenile offender and either the adult parole authority or the department of youth services, whichever is applicable, a copy of any written impact statement made by the victim under this division.

(B) In deciding whether to grant a judicial release or early release to the defendant or alleged juvenile offender, the court shall consider a statement made by the victim under division (A) of this section or section 2930.14 or 2947.051 [2947.05.1] of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.18 Prohibited actions by employer of victim.

No employer of a victim shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim's family, or a victim's representative for participating, at the prosecutor's request, in preparation for a criminal or delinquency proceeding or for attendance, pursuant to a subpoena, at a criminal or delinquency proceeding if the attendance is reasonably necessary to protect the interests of the victim. This section generally does not require an employer to pay an employee for time lost as a result of attendance at a criminal or delinquency proceeding. An employer who knowingly violates this section is in contempt of court. This section does not limit

or affect the application to any person of section 2151.211 [2151.21.1], 2939.121 [2939.12.1], or 2945.451 [2945.45.1] of the Revised Code.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

§ 2930.19 Prosecutor's duty to seek compliance; effect of violations; conflicting statutes; incarcerated victims.

(A) In a manner consistent with the duty of a prosecutor to represent the interests of the public as a whole, a prosecutor shall seek compliance with this chapter on behalf of a victim, a member of the victim's family, or the victim's representative.

(B) The failure of a public official or public agency to comply with the requirements of this chapter does not give rise to a claim for damages against that public official or public agency, except that a public agency as an employer may be held responsible for a violation of section 2930.18 of the Revised Code.

(C) The failure of any person or entity to provide a right, privilege, or notice to a victim under this chapter does not constitute grounds for declaring a mistrial or new trial, for setting aside a conviction, sentence, adjudication, or disposition, or for granting postconviction release to a defendant or alleged juvenile offender.

(D) If there is a conflict between a provision in this chapter and a specific statute governing the procedure in a case involving a capital offense, the specific statute supersedes the provision in this chapter.

(E) If the victim of a crime is incarcerated in a state or local correctional facility or is in the legal custody of the department of youth services, the victim's rights under this chapter may be modified by court order to prevent any security risk, hardship, or undue burden upon a public official or public agency with a duty under this chapter.

HISTORY: 145 v S 186 (Eff 10-12-94); 146 v S 2 (Eff 7-1-96); 148 v H 3. Eff 11-22-99.

CHAPTER 2933: PEACE WARRANTS; SEARCH WARRANTS

§ 2933.41

Repealed, 151 v H 241, § 2 [134 v H 511 (Eff 1-1-74); 138 v S 50 (Eff 5-29-80); 139 v H 1 (Eff 8-5-81); 140 v H 632 (Eff 3-28-85); 140 v S 65 (Eff 4-4-85); 141 v H 49 (Eff 6-26-86); 141 v S 69 (Eff 9-3-86); 141 v H 428 (Eff 12-23-86); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); 144 v S 98 (Eff 11-12-92); 144 v S 275 (Eff 7-1-93)†; 145 v H 715 (Eff 7-22-94); 146 v H 1 (Eff 1-1-96); 146 v S 277, § 1 (Eff 3-31-97); 146 v S 162 (Eff 7-1-97); 146 v S 277, § 3 (Eff 7-1-97); 147 v S 164 (Eff 1-15-98); 147 v H 2 (Eff 1-1-99); 147 v H 402 (Eff 3-30-99); 148 v H 55 (Eff 9-29-99); 149 v H 510. Eff 3-31-2003; 150 v H 306, § 1, eff. 7-23-04; 151 v H 374, § 1, eff. 9-28-06]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01. This section concerned disposition of property held by law enforcement agency.

§ 2933.43

Repealed, 151 v H 241, § 2 [141 v S 69 (Eff 9-3-86); 141 v H 428 (Eff 12-23-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v S 258 (Eff 11-20-90); 144 v S 218 (Eff 10-11-91); 144 v S 174 (Eff 7-31-92); 144 v S 351 (Eff 7-31-92); 146 v H 107 (Eff 6-30-95); 146 v S 162 (Eff 10-29-95); 146 v H 1 (Eff 1-1-96); 146 v S 239 (Eff 9-6-96); 146 v H 670 (Eff 12-2-96); 146 v S 277 (Eff 3-31-97); 147 v H 210 (Eff 6-30-97); 147 v S 164 (Eff 1-15-98); 147 v H 2 (Eff 1-1-99); 148 v H 163 (Eff 6-30-99); 149 v H 7. Eff 8-7-2001; 150 v H 95, § 1, eff. 6-26-03; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 530, § 101.01, eff. 3-30-06]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned procedure for seizure and forfeiture of contraband; law enforcement agency authorized to use, destroy, or sell forfeited contraband; distribution of proceeds of sale.

§ 2933.44

Repealed, 151 v H 241, § 2 [146 v H 1 (Eff 1-1-96); 147 v H 2. Eff 1-1-99]. Eff 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 2901.01.

This section concerned annual report by alcohol and drug treatment program receiving juvenile-related forfeiture.

CHAPTER 2935: ARREST, CITATION, AND DISPOSITION ALTERNATIVES

[§ 2935.08.1] § 2935.081 Administration of oaths, acknowledgment of documents by peace officer.

(A) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code, except that "peace officer" does not include, for any purpose, the superintendent or any trooper of the state highway patrol.

(B) A peace officer who has completed a course of in-service training that includes training in the administration of oaths and the acknowledgment of documents and that is approved by the chief legal officer of the political subdivision in which the peace officer is elected or of the political subdivision or other entity in which or by which the peace officer is appointed or employed may administer oaths and acknowledge criminal and juvenile court complaints, summonses, affidavits, and returns of court orders in matters related to the peace officer's official duties.

(C) Except as authorized by division (B) of this section, no peace officer who has completed a course of in-service training of a type described in division (B) of this section shall knowingly perform any act that is specifically required of a notary public unless the peace officer has complied with Chapter 147. of the Revised Code.

HISTORY: 146 v H 72. Eff 3-18-97.

CHAPTER 2945: TRIAL

§ 2945.67 Appeal by state.

(A) A prosecuting attorney, village solicitor, city director of law, or the attorney general may appeal as a matter of right any decision of a trial court in a criminal case, or

any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24† of the Revised Code, and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case. In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general may appeal, in accordance with section 2953.08 of the Revised Code, a sentence imposed upon a person who is convicted of or pleads guilty to a felony.

(B) In any proceeding brought pursuant to division (A) of this section, the court, in accordance with Chapter 120. of the Revised Code, shall appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not represented by counsel, and does not waive the person's right to counsel.

HISTORY: 137 v H 1168 (Eff 11-1-78); 146 v S 2, Eff 7-1-96.

Analogous to former RC § 2945.67 (GC § 13446-1; 113 v 123; Bureau of Code Revision, 10-1-53; 131 v 682; 137 v H 219), repealed 137 v H 1168, § 2, eff 11-1-78.

† Division (A), RC § 2953.24 was repealed by HB 164 (136 v —), § 2, effective 1-13-76.

The effective date is set by section 6 of SB 2.

CHAPTER 2949: EXECUTION OF SENTENCE

[§ 2949.09.1] § 2949.091 Additional court costs or bail.

(A)(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The court shall not waive the payment of the additional fifteen dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

(2) The juvenile court, in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The fifteen dollars court costs shall be collected in all

cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the fifteen dollars court costs is waived.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the court shall add to the amount of the bail the fifteen dollars required to be paid by division (A)(1) of this section. The fifteen dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the fifteen dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail to the treasurer of state, who shall deposit it into the general revenue fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the fifteen dollars to the person.

(C) No person shall be placed or held in a detention facility for failing to pay the additional fifteen dollars court costs or bail that are required to be paid by this section.

(D) As used in this section:

(1) "Moving violation" and "bail" have the same meanings as in section 2743.70 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

HISTORY: 140 v H 291 (Eff 7-1-83); 142 v H 171 (Eff 7-1-87); 143 v H 111 (Eff 7-1-89); 143 v S 131 (Eff 7-25-90); 144 v H 298 (Eff 7-26-91); 147 v H 426, Eff 7-22-98; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 2949.12 Delivery of convict to reception facility; assignment to institution, jail or workhouse.

Unless the execution of sentence is suspended, a convicted felon who is sentenced to serve a term of imprisonment in a state correctional institution shall be conveyed, within five days after sentencing, excluding Saturdays, Sundays, and legal holidays, by the sheriff of the county in which the conviction was had to the facility that is designated by the department of rehabilitation and correction for the reception of convicted felons. The sheriff shall deliver the convicted felon into the custody of the managing officer of the reception facility and, at that time, shall present the managing officer with a copy of the convicted felon's sentence that clearly describes each offense for which the felon was sentenced to a correctional institution, designates each section of the Revised Code that the felon violated and that resulted in the felon's conviction and sentence to a correctional institution, designates the sentence imposed for each offense for which the felon was sentenced to a correctional institution, and, pursuant to section 2967.191 [2967.19.1] of the Revised Code, specifies the total number of days, if any, that the felon was confined for any reason prior to conviction and sentence. The sheriff, at that time, also shall present the managing officer with a copy of the indictment. The clerk of the court of common pleas shall furnish the copies of the sentence and indictment. In the case of a person under the age of eighteen years who is certified to the court of common pleas by the juvenile court, the clerk of the court of common pleas also shall

attach a copy of the certification to the copy of the indictment.

The convicted felon shall be assigned to an institution or designated to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if authorized pursuant to section 5120.161 [5120.16.1] of the Revised Code, shall be conveyed to the institution, jail, or workhouse, and shall be kept within the institution, jail, or workhouse until the term of the felon's imprisonment expires, the felon is pardoned, paroled, or placed under a post-release control sanction, or the felon is transferred under laws permitting the transfer of prisoners. If the execution of the felon's sentence is suspended, and the judgment thereafter affirmed, the felon shall be conveyed, in the same manner as if the execution of the felon's sentence had not been suspended, to the reception facility as soon as practicable after the judge directs the execution of sentence. The trial judge or other judge of the court, in the judge's discretion and for good cause shown, may extend the time of the conveyance.

HISTORY: GC § 13455-1; 113 v 123(205), ch 34; 120 v 628; **Bureau of Code Revision**, 10-1-53; 135 v § 254 (Eff 8-21-73); 136 v H 685 (Eff 5-21-76); 139 v § 199 (Eff 7-1-83); 140 v § 210 (Eff 7-1-83); 140 v § 172 (Eff 9-26-84); 142 v H 455 (Eff 7-20-87); 142 v H 261 (Eff 11-1-87); 142 v H 708 (Eff 4-19-88); 145 v H 571 (Eff 10-6-94); 146 v § 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

CHAPTER 2950: SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

Section

- 2950.01 Definitions.
 - [2950.01.1] 2950.011 Statutory references to sexually oriented or child-victim oriented offense.
- 2950.02 Legislative determinations and intent to provide information to protect public safety.
 - [2950.02.1] 2950.021 Determination removing presumptive exemption from registration.
- 2950.03 Notice to offender or delinquent child of duty to register and update address.
 - [2950.03.1] 2950.031 Attorney general to determine application of new SORN Law to each offender or delinquent child; registered letter to be sent; right to court hearing to contest application.
 - [2950.03.2] 2950.032 Attorney general to determine tier classification for each offender or delinquent child; notice of provisions implemented on January 1, 2008.
 - [2950.03.3] 2950.033 Offenders and delinquent children whose SORN Law duties are scheduled to terminate on or after 7-1-07 and prior to 1-1-08.
 - [2950.03.4] 2950.034 Residing within 1,000 feet of school, preschool, or child day-care center premises prohibited.
- 2950.04 Duty to register.
 - [2950.04.1] 2950.041 Duty to register resulting from child-victim oriented offense; notice of intent to reside.
 - [2950.04.2] 2950.042 Parole officers to verify compliance with registration requirements.
 - [2950.04.3] 2950.043 Sheriff to notify attorney general of registration on or after 12-1-07.
- 2950.05 Notice of change of address; registration of new address.
- 2950.06 Periodic verification of current address.
- 2950.07 Commencement of duty to register; duration.

Section

- 2950.08 Persons authorized to inspect information and records.
 - [2950.08.1] 2950.081 Disclosure of sex offender registration information in possession of sheriff.
- 2950.09 Classification as sexual predator; determination hearing; petition for removal from classification.
 - [2950.09.1] 2950.091 Classification as child-victim predator or habitual child-victim offender.
- 2950.10 Notice to victim of offender's or delinquent child's registration or change of information.
- 2950.11 Persons to be notified within geographical area.
 - [2950.11.1] 2950.111 Sheriff or designee may request confirmation of offender or delinquent child's address.
- 2950.12 Immunity.
- 2950.13 Duties of attorney general.
 - [2950.13.1] 2950.131 † Conformance to federal regulations, guidelines, or standards. [Effective 7-1-07.]
 - [2950.13.1] 2950.131 † Conformance to federal regulations, guidelines, or standards. [Effective 1-1-08.]
- 2950.14 Information to be provided to bureau of criminal identification and investigation prior to release; information to be entered on internet database.
- 2950.15 Motion requesting court to terminate duty to comply with registration requirements.
- 2950.16 Certification of sex offender and child-victim offender treatment programs.
- 2950.99 Penalties.

§ 2950.01 Definitions.

Effective until 1-1-08.

As used in this chapter, unless the context clearly requires otherwise:

(A) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to section 2929.16 or 2929.26 of the Revised Code.

(B) "Habitual sex offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of section 2152.85 of the Revised Code, a person to whom both of the following apply:

(1) The person is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile sex offender registrant based on that adjudication.

(2) One of the following applies to the person:

(a) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more sexually oriented offenses or child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(b) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses, regardless of when the offense was committed and

regardless of the person's age at the time of committing the offense.

(C) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(D) "Sexually oriented offense" means any of the following:

(1) Any of the following violations or offenses committed by a person eighteen years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code;

(b) Any of the following offenses involving a minor, in the circumstances specified:

(i) A violation of division (A)(4) of section 2905.01 or section 2907.04, 2907.06, or 2907.08 of the Revised Code, when the victim of the offense is under eighteen years of age;

(ii) A violation of section 2907.21 of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (A)(1) or (3) of section 2907.321 [2907.32.1] or 2907.322 [2907.32.2] of the Revised Code;

(iv) A violation of division (A)(1) or (2) of section 2907.323 [2907.32.3] of the Revised Code;

(v) A violation of division (B)(5) of section 2919.22 of the Revised Code when the child who is involved in the offense is under eighteen years of age;

(vi) A violation of division (A)(1), (2), (3), or (5) of section 2905.01, of section 2903.211 [2903.21.1], 2905.02, 2905.03, or 2905.05, or of former section 2905.04 of the Revised Code, when the victim of the offense is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code, or of division (A) of section 2903.04 of the Revised Code, that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of section 2907.06 or 2907.08 of the Revised Code when the victim of the offense is eighteen years of age or older, or a violation of section 2903.211 [2903.21.1] of the Revised Code when the victim of the offense is eighteen years of age or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (D)(1)(a), (b), (c), (d), or (e) of this section;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) An act committed by a person under eighteen years of age that is any of the following:

(a) Subject to division (D)(2)(i) of this section, regardless of the age of the victim of the violation, a violation of section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code;

(b) Subject to division (D)(2)(i) of this section, any of the following acts involving a minor in the circumstances specified:

(i) A violation of division (A)(4) of section 2905.01 or section 2907.06 or 2907.08 of the Revised Code, when the victim of the violation is under eighteen years of age;

(ii) A violation of section 2907.21 of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;

(iii) A violation of division (B)(5) of section 2919.22 of the Revised Code when the child who is involved in the violation is under eighteen years of age;

(iv) A violation of division (A)(1), (2), (3), or (5) of section 2905.01, section 2903.211 [2903.21.1], or former section 2905.04 of the Revised Code, when the victim of the violation is under eighteen years of age and the offense is committed with a sexual motivation.

(c) Subject to division (D)(2)(i) of this section, any of the following:

(i) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(ii) Any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense.

(d) Subject to division (D)(2)(i) of this section, a violation of section 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02 of the Revised Code, a violation of division (A) of section 2903.04 of the Revised Code, or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to division (D)(2)(i) of this section, a violation of division (A)(1) or (3) of section 2907.321 [2907.32.1], division (A)(1) or (3) of section 2907.322 [2907.32.2], or division (A)(1) or (2) of section 2907.323 [2907.32.3] of the Revised Code, or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to division (D)(2)(i) of this section, a violation of section 2907.06 or 2907.08 of the Revised Code when the victim of the violation is eighteen years of age or older, or a violation of section 2903.211 [2903.21.1] of the Revised Code when the victim of the violation is eighteen years of age or older and the offense is committed with a sexual motivation;

(g) Subject to division (D)(2)(i) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (D)(2)(a), (b), (c), (d), (e), or (f) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to division (D)(2)(i) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(2)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) If the child's case has been transferred for criminal prosecution under section 2152.12 of the Revised Code, the act is any violation listed in division (D)(1)(a), (b), (c), (d), (e), (f), or (g) of this section or would be any offense listed in any of those divisions if committed by an adult.

(E) "Sexual predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses.

(F) "Supervised release" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (F)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(G) An offender or delinquent child is "adjudicated as being a sexual predator" or "adjudicated a sexual predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to section 2152.84, 2152.85, or 2950.09 of the Revised Code:

(1) The offender is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and any of the following apply:

(a) The sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense, and the offender is adjudicated a sexually violent predator in relation to that offense.

(b) The sexually oriented offense is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment, and either the offender is sentenced under section 2971.03 of the Revised Code or a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code.

(c) The sexually oriented offense is attempted rape committed on or after the effective date of this amendment, and the offender also was convicted of or pleaded guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(2) Regardless of when the sexually oriented offense was committed, on or after January 1, 1997, the offender

is sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and the sentencing judge determines pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator.

(3) The delinquent child is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of section 2950.09 or pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that the delinquent child is a sexual predator.

(4) Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and the court determines pursuant to division (C) of section 2950.09 of the Revised Code that the offender is a sexual predator.

(5) Regardless of when the sexually oriented offense was committed, the offender or delinquent child is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required, under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under section 2950.04 of the Revised Code to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a sexual predator pursuant to division (F) of section 2950.09 of the Revised Code.

(H) "Sexually violent predator specification," "sexually violent offense," "sexual motivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code.

(I) "Post-release control sanction" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.

(J) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a juvenile offender registrant and specifies has a duty to comply with sections 2950.04,

2950.05, and 2950.06 of the Revised Code if the child committed a sexually oriented offense or with sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if the child committed a child-victim oriented offense. "Juvenile offender registrant" includes a person who, prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(K) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(L) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under section 2950.04 of the Revised Code to register in this state and the duty to otherwise comply with that section and sections 2950.05 and 2950.06 of the Revised Code if the child committed a sexually oriented offense or has a duty under section 2950.041 [2950.04.1] of the Revised Code to register in this state and the duty to otherwise comply with that section and sections 2950.05 and 2950.06 of the Revised Code if the child committed a child-victim oriented offense. "Out-of-state juvenile offender registrant" includes a person who, prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(M) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of section 2151.23 of the Revised Code.

(N) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing a sexually oriented offense.

(O) "Aggravated sexually oriented offense" means a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after June 13, 2002, or a violation of division (A)(2) of that section committed on or after July 31, 2003.

(P)(1) "Presumptive registration-exempt sexually oriented offense" means any of the following sexually oriented offenses described in division (P)(1)(a), (b), (c), (d), or (e) of this section, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section, any other sexually oriented offense, or any child-victim oriented offense and when the victim or intended victim of the offense is eighteen years of age or older:

(a) Any sexually oriented offense listed in division (D)(1)(e) or (D)(2)(f) of this section committed by a person who is eighteen years of age or older or, subject to division (P)(1)(e) of this section, committed by a person who is under eighteen years of age;

(b) Any violation of any former law of this state, any existing or former municipal ordinance or law of another

state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is eighteen years of age or older and that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section;

(c) Subject to division (P)(1)(e) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is committed by a person who is under eighteen years of age, that is or was substantially equivalent to any sexually oriented offense listed in division (P)(1)(a) of this section, and that would be a felony of the fourth degree if committed by an adult;

(d) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (P)(1)(a) or (b) of this section if the person is eighteen years of age or older or, subject to division (P)(1)(e) of this section, listed in division (P)(1)(a) or (c) of this section if the person is under eighteen years of age.

(e) Regarding an act committed by a person under eighteen years of age, if the child's case has been transferred for criminal prosecution under section 2152.12 of the Revised Code, the act is any sexually oriented offense listed in division (P)(1)(a), (b), or (d) of this section.

(2) "Presumptive registration-exempt sexually oriented offense" does not include any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section that is committed by a person who previously has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section or any other sexually oriented offense.

(Q)(1) "Registration-exempt sexually oriented offense" means any presumptive registration-exempt sexually oriented offense, if a court does not issue an order under section 2950.021 [2950.02.1] of the Revised Code that removes the presumptive exemption and subjects the offender who was convicted of or pleaded guilty to the offense to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that removes the presumptive exemption and potentially subjects the child who was adjudicated a delinquent child for committing the offense to classification as a juvenile offender registrant under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense.

(2) "Registration-exempt sexually oriented offense" does not include a presumptive registration-exempt sexually oriented offense if a court issues an order under section 2950.021 [2950.02.1] of the Revised Code that removes the presumptive exemption and subjects the offender or potentially subjects the delinquent child to

the duties and responsibilities described in division (Q)(1) of this section.

(R) "School" and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(S)(1) "Child-victim oriented offense" means any of the following:

(a) Subject to division (S)(2) of this section, any of the following violations or offenses committed by a person eighteen years of age or older, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) A violation of division (A)(1), (2), (3), or (5) of section 2905.01, of section 2905.02, 2905.03, or 2905.05, or of former section 2905.04 of the Revised Code;

(ii) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (S)(1)(a)(i) of this section;

(iii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(a)(i) or (ii) of this section.

(b) Subject to division (S)(2) of this section, an act committed by a person under eighteen years of age that is any of the following, when the victim of the violation is under eighteen years of age and is not a child of the person who commits the violation:

(i) Subject to division (S)(1)(b)(iv) of this section, a violation of division (A)(1), (2), (3), or (5) of section 2905.01 or of former section 2905.04 of the Revised Code;

(ii) Subject to division (S)(1)(b)(iv) of this section, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (S)(1)(b)(i) of this section and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(iii) Subject to division (S)(1)(b)(iv) of this section, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (S)(1)(b)(i) or (ii) of this section;

(iv) If the child's case has been transferred for criminal prosecution under section 2152.12 of the Revised Code, the act is any violation listed in division (S)(1)(a)(i), (ii), or (iii) of this section or would be any offense listed in any of those divisions if committed by an adult.

(2) "Child-victim oriented offense" does not include any offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense. An offense identified in division (S)(1)(a) or (b) of this section that is a sexually violent offense is within the definition of a sexually oriented offense.

(T)(1) "Habitual child-victim offender" means, except when a juvenile judge removes this classification pursuant to division (A)(2) of section 2152.84 or division (C)(2) of section 2152.85 of the Revised Code, a person to whom both of the following apply:

(a) The person is convicted of or pleads guilty to a child-victim oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a child-victim oriented offense, was fourteen years

of age or older at the time of committing the offense, and is classified a juvenile offender registrant based on that adjudication.

(b) One of the following applies to the person:

(i) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(ii) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(2) "Habitual child-victim offender" includes a person who has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and who, on and after July 31, 2003, is automatically classified a habitual child-victim offender pursuant to division (E) of section 2950.091 [2950.09.1] of the Revised Code.

(U) "Child-victim predator" means a person to whom either of the following applies:

(1) The person has been convicted of or pleaded guilty to committing a child-victim oriented offense and is likely to engage in the future in one or more child-victim oriented offenses.

(2) The person has been adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more child-victim oriented offenses.

(V) An offender or delinquent child is "adjudicated as being a child-victim predator" or "adjudicated a child-victim predator" if any of the following applies and if, regarding a delinquent child, that status has not been removed pursuant to section 2152.84, 2152.85, or 2950.09 of the Revised Code:

(1) The offender or delinquent child has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and, on and after July 31, 2003, is automatically classified a child-victim predator pursuant to division (A) of section 2950.091 [2950.09.1] of the Revised Code.

(2) Regardless of when the child-victim oriented offense was committed, on or after July 31, 2003, the offender is sentenced for a child-victim oriented offense, and the sentencing judge determines pursuant to division (B) of section 2950.091 [2950.09.1] of the Revised Code that the offender is a child-victim predator.

(3) The delinquent child is adjudicated a delinquent child for committing a child-victim oriented offense, was fourteen years of age or older at the time of committing the offense, and has been classified a juvenile offender registrant based on that adjudication, and the adjudicating judge or that judge's successor in office determines pursuant to division (B) of section 2950.09 or pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that the delinquent child is a child-victim predator.

(4) Prior to July 31, 2003, the offender was convicted of or pleaded guilty to a child-victim oriented offense, at the time of the conviction or guilty plea, the offense was considered a sexually oriented offense, on or after July 31, 2003, the offender is serving a term of imprisonment in a state correctional institution, and the court determines pursuant to division (C) of section 2950.091 [2950.09.1] of the Revised Code that the offender is a child-victim predator.

(5) Regardless of when the child-victim oriented offense was committed, the offender or delinquent child is convicted, pleads guilty, has been convicted, pleaded guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense, as a result of that conviction, plea of guilty, or adjudication, the offender or delinquent child is required under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, to register as a child-victim offender or sex offender until the offender's or delinquent child's death, and, on or after July 1, 1997, for offenders or January 1, 2002, for delinquent children the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days or the offender is required under section 2950.041 [2950.04.1] of the Revised Code to register a school, institution of higher education, or place of employment address in this state, unless a court of common pleas or juvenile court determines that the offender or delinquent child is not a child-victim predator pursuant to division (F) of section 2950.091 [2950.09.1] of the Revised Code.

(W) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(X) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(Y) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(Z) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(AA) "Halfway house" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.

(BB) "Adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393, Eff 7-5-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

§ 2950.01 Definitions.

Effective 1-1-08.

As used in this chapter, unless the context clearly requires otherwise:

(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(1) A violation of section 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.21, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], or 2907.323 [2907.32.3] of the Revised Code;

(2) A violation of section 2907.04 of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(4) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(5) A violation of division (A) of section 2903.04 of the Revised Code when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of division (A)(3) of section 2903.211 [2903.21.1] of the Revised Code;

(7) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the offense is committed with a sexual motivation;

(8) A violation of division (A)(4) of section 2905.01 of the Revised Code;

(9) A violation of division (B) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(10) A violation of division (B) of section 2905.02, of division (B) of section 2905.03, of division (B) of section 2905.05, or of division (B)(5) of section 2919.22 of the Revised Code;

(11) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of this section;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section.

(B)(1) "Sex offender" means, subject to division (B)(2) of this section, a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense.

(2) "Sex offender" does not include a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and either of the following applies:

(a) The victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense.

(b) The victim of the offense was thirteen years of age or older, and the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense is not more than four years older than the victim.

(C) "Child-victim oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under eighteen years of age and is not a child of the person who commits the violation:

(1) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the violation is not included in division (A)(7) of this section;

(2) A violation of division (A) of section 2905.02, division (A) of section 2905.03, or division (A) of section 2905.05 of the Revised Code;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (C)(1) or (2) of this section;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (C)(1), (2), or (3) of this section.

(D) "Child-victim offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense.

(E) "Tier I sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.06, 2907.07, 2907.08, or 2907.32 of the Revised Code;

(b) A violation of section 2907.04 of the Revised Code when the offender is less than four years older than the

other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(c) A violation of division (A)(1), (2), (3), or (5) of section 2907.05 of the Revised Code;

(d) A violation of division (A)(3) of section 2907.323 [2907.32.3] of the Revised Code;

(e) A violation of division (A)(3) of section 2903.211 [2903.21.1], of division (B) of section 2905.03, or of division (B) of section 2905.05 of the Revised Code;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (E)(1)(a), (b), (c), (d), or (e) of this section;

(g) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (E)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense and who is not within either category of child-victim offender described in division (F)(2) or (G)(2) of this section.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.

(F) "Tier II sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.21, 2907.321 [2907.32.1], or 2907.322 [2907.32.2] of the Revised Code;

(b) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or former section 2907.12 of the Revised Code;

(c) A violation of division (A)(4) of section 2907.05 or of division (A)(1) or (2) of section 2907.323 [2907.32.3] of the Revised Code;

(d) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the offense is committed with a sexual motivation;

(e) A violation of division (A)(4) of section 2905.01 of the Revised Code when the victim of the offense is eighteen years of age or older;

(f) A violation of division (B) of section 2905.02 or of division (B)(5) of section 2919.22 of the Revised Code;

(g) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (F)(1)(a), (b), (c), (d), (e), or (f) of this section;

(h) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or has been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier II sex offender/child-victim offender set forth in division (F)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, and who prior to that date was determined to be a habitual sex offender or determined to be a habitual child-victim offender, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code as a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(b) A juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.02 or 2907.03 of the Revised Code;

(b) A violation of division (B) of section 2907.05 of the Revised Code;

(c) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(d) A violation of division (A) of section 2903.04 of the Revised Code when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(e) A violation of division (A)(4) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age;

(f) A violation of division (B) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(g) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (G)(1)(a), (b), (c), (d), (e), or (f) of this section;

(h) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier III sex offender/child-victim offender set forth in division (G)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-

victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or adjudicated a child-victim predator, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(b) The sex offender or child-victim offender is a delinquent child, and a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that division (F) of section 2971.03 of the Revised Code automatically classifies the offender as a tier III sex offender/child-victim offender;

(7) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States if both of the following apply:

(a) Under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, the offender or delinquent child is in a category substantially equivalent to a category of tier III sex offender/child-victim offender described in division (G)(1), (2), (3), (4), (5), or (6) of this section.

(b) Subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in this state in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(H) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to section 2929.16 or 2929.26 of the Revised Code.

(I) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(J) "Supervised release" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (J)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(K) "Sexually violent predator specification," "sexually violent predator," "sexually violent offense," "sexual mo-

tivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code.

(L) "Post-release control sanction" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.

(M) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under section 2152.82, 2152.83, 2152.84, 2152.85, or 2152.86 of the Revised Code, classifies a juvenile offender registrant and specifies has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(N) "Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code before, on, or after January 1, 2008, and to whom all of the following apply:

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(b) A violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(3) A juvenile court judge, pursuant to an order issued under section 2152.86 of the Revised Code, classifies the person a juvenile offender registrant, specifies the person has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated pursuant to division (D) of section 2152.86 of the Revised Code.

(O) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(P) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code to register in this state and the duty

to otherwise comply with that applicable section and sections 2950.05 and 2950.06 of the Revised Code. "Out-of-state juvenile offender registrant" includes a person who prior to January 1, 2008, was an "out-of-state juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(Q) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of section 2151.23 of the Revised Code.

(R) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing a sexually oriented offense.

(S) "School" and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(T) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(U) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(V) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(W) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(X) "Halfway house" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v S 111 (Eff 3-17-98); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The effective date is set by section 3 of S.B. 5.

Analogous to former RC § 2950.01 (130 v 669; 134 v H 511), repealed 146 v H 180, § 2, eff 1-1-97.

[§ 2950.01.1] § 2950.011 Statutory references to sexually oriented or child-victim oriented offense.

Effective 1-1-08.

Except as specifically provided to the contrary in sections 2950.02 to 2950.99 of the Revised Code, all

references in any of those sections to "sexually oriented offense" include, in addition to the violations specified in division (A) of section 2950.01 of the Revised Code on and after January 1, 2008, any sexually oriented offense, as that term was defined in section 2950.01 of the Revised Code prior to January 1, 2008, that was committed prior to that date and that was not a registration exempt sexually oriented offense, as that term was defined in that section prior to January 1, 2008.

Except as specifically provided to the contrary in sections 2950.02 to 2950.99 of the Revised Code, all references in any of those sections to "child-victim oriented offense" include, in addition to the violations specified in division (C) of section 2950.01 of the Revised Code on and after January 1, 2008, any child-victim oriented offense, as that term was defined in section 2950.01 of the Revised Code prior to January 1, 2008, that was committed prior to that date.

HISTORY: 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.02 Legislative determinations and intent to provide information to protect public safety.

Effective until 1-1-08.

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and offenders who commit child-victim oriented offenses have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or to have committed a child-victim oriented offense has a reduced expectation of privacy because of the public's

interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and offenders who commit child-victim oriented offenses to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and offenders who commit child-victim oriented offenses among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and offenders who commit child-victim oriented offenses to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2950.02 Legislative determinations and intent to provide information to protect public safety.

Effective 1-1-08.

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from

public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Analogous to former RC § 2950.02 (130 v 669), repealed 146 v H 180, § 2, eff 7-1-97.

[§ 2950.02.1] § 2950.021 Determination removing presumptive exemption from registration.

Effective until 1-1-08.

(A) If an offender is convicted of or pleads guilty to, or a child is adjudicated a delinquent child for committing, any presumptive registration-exempt sexually oriented offense, the court that is imposing sentence on the offender for that offense or the juvenile court that is making the disposition of the delinquent child for that offense may determine, prior to imposing the sentence or making the disposition, that the offender should be subjected to registration under section 2950.04 of the Revised Code and all other duties and responsibilities

generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that the child potentially should be subjected to classification as a juvenile offender registrant under sections 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense. The court may make a determination as described in this division without a hearing but may conduct a hearing on the matter. In making a determination under this division, the court shall consider all relevant factors, including, but not limited to, public safety, the interests of justice, and the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders that are set forth in section 2950.02 of the Revised Code.

(B) If a court determines under division (A) of this section that an offender who has been convicted of or pleaded guilty to a presumptive registration-exempt sexually oriented offense should be subjected to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that a delinquent child potentially should be subjected to classification as a juvenile offender registrant under sections 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense, all of the following apply:

(1) The court shall issue an order that contains its determination and that removes the presumptive exemption from registration for the sexually oriented offense, shall include the order in the offender's sentence or in the delinquent child's dispositional order, and shall enter the order in the record in the case.

(2) Regarding an offender, the presumptive exemption from registration is terminated, and the offender is subject to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense.

(3) Regarding a delinquent child, the presumptive exemption from registration is terminated, the delinquent child is potentially subject to classification as a juvenile offender registrant under sections 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and to registration under section 2950.04 of the Revised Code and all other duties and responsibilities generally imposed under this chapter upon persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense, and the juvenile court shall proceed as required and may proceed as authorized under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised

Code regarding the child in the same manner as for persons who are adjudicated delinquent children for committing a sexually oriented offense other than a presumptive registration-exempt sexually oriented offense.

HISTORY: 150 v S 5, § 1, eff. 7-31-03.

[§ 2950.02.1] § 2950.021

Effective 1-1-08.

Repealed, 152 v S 10, § 2 [150 v S 5, § 1, eff. 7-31-03].
Eff 1-1-08.

§ 2950.03 Notice to offender or delinquent child of duty to register and update address.

Effective until 1-1-08.

(A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has a duty to register pursuant to section 2950.04 of the Revised Code, each person who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication, each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a child-victim oriented offense and has a duty to register pursuant to section 2950.041 of the Revised Code, and each person who is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall be provided notice in accordance with this section of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. A person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense that is a registration-exempt sexually oriented offense, and a person who is or has been adjudicated a delinquent child for committing a sexually oriented offense that is a registration-exempt sexually oriented offense, does not have a duty to register under section 2950.04 of the Revised Code based on that conviction, guilty plea, or adjudication, and no notice is required to be provided to that person under this division based on that conviction, guilty plea, or adjudication. The following official shall provide the notice required under this division to the specified person at the following time:

(1) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced for the sexually oriented offense or child-victim oriented offense to a prison term, a term of imprisonment, or any other type of confinement, and if, on or after January 1, 1997, the offender is serving that term or is under that confinement, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the

offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement. This division applies to a child-victim oriented offense if the offender is sentenced for the offense on or after July 31, 2003, or if, prior to July 31, 2003, the child-victim oriented offense was a sexually oriented offense and the offender was sentenced as described in this division for the child-victim oriented offense when it was designated a sexually oriented offense. If a person was provided notice under this division prior to July 31, 2003, in relation to an offense that, prior to July 31, 2003, was a sexually oriented offense but that, on and after July 31, 2003, is a child-victim oriented offense, the notice provided under this division shall suffice for purposes of this section as notice to the offender of the offender's duties under sections 2950.041, 2950.05, and 2950.06 of the Revised Code imposed as a result of the conviction or plea of guilty to the child-victim oriented offense.

(2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced for the sexually oriented offense on or after January 1, 1997, or who is sentenced for the child-victim oriented offense on or after July 31, 2003, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing. If a person was provided notice under this division prior to July 31, 2003, in relation to an offense that, prior to July 31, 2003, was a sexually oriented offense but that, on and after July 31, 2003, is a child-victim oriented offense, the notice so provided under this division shall suffice for purposes of this section as notice to the offender of the offender's duties under sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code imposed as a result of the conviction or plea of guilty to the child-victim oriented offense.

(3) If the person is an offender who committed the sexually oriented offense prior to January 1, 1997, if neither division (A)(1) nor division (A)(2) of this section applies, and if, immediately prior to January 1, 1997, the offender was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code, the chief of police or sheriff with whom the offender most recently registered under that chapter, in the circumstances described in this division, shall provide the notice to the offender. If the offender has registered with a chief of police or sheriff under Chapter 2950. of the Revised Code as it existed prior to January 1, 1997, the chief of police or sheriff with whom the offender most recently registered shall provide the notice to the offender as soon as possible after January 1, 1997, as described in division (B)(1) of this section. If the offender has not registered with a chief of police or sheriff under that chapter, the failure to register shall constitute a waiver by the offender of any right to notice under this section. If an offender described in this division does not receive notice under this section, the offender is not relieved of the offender's duties imposed under sections 2950.04, 2950.05, and 2950.06 of the Revised Code.

(4) If neither division (A)(1), (2), nor (3) of this section applies and if the offender is adjudicated a sexual predator pursuant to division (C) of section 2950.09 of the Revised Code or a child-victim predator pursuant to

division (C) of section 2950.091 [2950.09.1] of the Revised Code, the judge shall provide the notice to the offender at the time of adjudication.

(5) If the person is a delinquent child who is classified a juvenile offender registrant, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (D) of section 2152.83, division (C) of section 2152.84, or division (E) of section 2152.85 of the Revised Code, whichever is applicable. If a delinquent child was provided notice under this division prior to July 31, 2003, in relation to an offense that, prior to July 31, 2003, was a sexually oriented offense but that, on and after July 31, 2003, is a child-victim oriented offense, the notice so provided under this division shall suffice for purposes of this section as notice to the delinquent child of the delinquent child's duties under sections 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code imposed as a result of the adjudication as a delinquent child for the child-victim oriented offense.

(6) If the person is an offender in any category described in division (A)(1), (2), (3), or (4) of this section and if, prior to July 31, 2003, the offender was provided notice of the offender's duties in accordance with that division, not later than ninety days after July 31, 2003, the sheriff with whom the offender most recently registered or verified an address under section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall provide notice to the offender of the offender's duties imposed on and after July 31, 2003, pursuant to any of those sections to register a school, institution of higher education, or place of employment address, provide notice of a change of that address, and verify that address. The sheriff may provide the notice to the offender at the time the offender registers, provides notice of a change in, or verifies a residence, school, institution of higher education, or place of employment address under any of those sections within the specified ninety-day period. If the offender does not so register, provide notice of a change in, or verify an address within the specified ninety-day period, the sheriff shall provide the notice to the offender by sending it to the offender at the most recent residence address available for the offender. If the offender was required to register prior to July 31, 2003, and failed to do so, the failure to register constitutes a waiver by the offender of any right to notice under this division. If the offender has not registered prior to July 31, 2003, the offender is presumed to have knowledge of the law and of the duties referred to in this division that are imposed on and after July 31, 2003. If an offender does not receive notice under this division, the offender is not relieved of any of the duties described in this division.

(7) If the person is an offender or delinquent child who has a duty to register in this state pursuant to division (A)(3) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or delinquent child is presumed to have knowledge of the law and of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B)(1) The notice provided under division (A) of this section shall inform the offender or delinquent child of the offender's or delinquent child's duty to register, to provide notice of a change in the offender's or delinquent child's residence address or in the offender's school, institution of higher education, or place of employment

address, as applicable, and register the new address, to periodically verify the offender's or delinquent child's residence address or the offender's school, institution of higher education, or place of employment address, as applicable, and, if applicable, to provide notice of the offender's or delinquent child's intent to reside, pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. The notice shall specify that, for an offender, it applies regarding residence addresses or school, institution of higher education, and place of employment addresses and that, for a delinquent child, it applies regarding residence addresses. Additionally, it shall inform the offender of the offender's duties to similarly register, provide notice of a change in, and verify those addresses in states other than this state as described in division (A) of this section. A notice provided under division (A)(6) of this section shall state the new duties imposed on the offender on and after July 31, 2003, to register, provide notice of a change in, and periodically verify, a school, institution of higher education, or place of employment address and specify that the new duties are in addition to the prior duties imposed upon the offender. A notice provided under division (A)(1), (2), (3), (4), or (5) of this section shall comport with the following:

(a) If the notice is provided to an offender under division (A)(3) of this section, the notice shall state the offender's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, the offender's duties in other states as described in division (A) of this section, and that, if the offender has any questions concerning these duties, the offender may contact the chief of police or sheriff who sent the form for an explanation of the duties. If the offender appears in person before the chief of police or sheriff, the chief or sheriff shall provide the notice as described in division (B)(1)(a) of this section, and all provisions of this section that apply regarding a notice provided by an official, official's designee, or judge in that manner shall be applicable.

(b) If the notice is provided to an offender under division (A)(1), (2), or (4) of this section, the official, official's designee, or judge shall require the offender to read and sign a form stating that the offender's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, and the offender's duties in other states as described in division (A) of this section have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge shall certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

(c) If the notice is provided to a delinquent child under division (A)(5) of this section, the judge shall require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form stating that the delinquent child's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address, and to periodically verify that address have been explained to the delinquent child and to the delinquent child's parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge shall certify

on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties.

(2) The notice provided under divisions (A)(1) to (6) of this section shall be on a form prescribed by the bureau of criminal identification and investigation and shall contain all of the information specified in division (A) of this section and all of the information required by the bureau. The notice provided under divisions (A)(1) to (5) of this section shall include, but is not limited to, all of the following:

(a) For any notice provided under division (A)(1) to (5) of this section, a statement as to whether the offender or delinquent child has been adjudicated a sexual predator or a child-victim predator relative to the sexually oriented offense or child-victim oriented offense in question, a statement as to whether the offender or delinquent child has been determined to be a habitual sex offender or habitual child-victim offender, a statement as to whether the offense for which the offender has the duty to register is an aggravated sexually oriented offense, an explanation of the offender's periodic residence address or periodic school, institution of higher education, or place of employment address verification process or of the delinquent child's periodic residence address verification process, an explanation of the frequency with which the offender or delinquent child will be required to verify those addresses under that process, a statement that the offender or delinquent child must verify those addresses at the times specified under that process or face criminal prosecution or a delinquent child proceeding, and an explanation of the offender's duty to similarly register, verify, and reregister those addresses in another state if the offender resides in another state, attends a school or institution of higher education in another state, or is employed in another state.

(b) If the notice is provided under division (A)(4) of this section, a statement that the notice replaces any notice previously provided to the offender under division (A)(1) of this section, a statement that the offender's duties described in this notice supersede the duties described in the prior notice, and a statement notifying the offender that, if the offender already has registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender must register again pursuant to division (A)(6) of that section;

(c) If the notice is provided under division (A)(5) of this section, a statement that the delinquent child has been classified by the adjudicating juvenile court judge or the judge's successor in office a juvenile offender registrant and has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(d) If the notice is provided under division (A)(5) of this section, a statement that, if the delinquent child fails to comply with the requirements of sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, both of the following apply:

(i) If the delinquent child's failure occurs while the child is under eighteen years of age, the child is subject to proceedings under Chapter 2152. of the Revised Code based on the failure, but if the failure occurs while the child is eighteen years of age or older, the child is subject to criminal prosecution based on the failure.

(ii) If the delinquent child's failure occurs while the child is under eighteen years of age, unless the child is emancipated, as defined in section 2919.121 [2919.12.1] of the Revised Code, the failure of the parent, guardian, or custodian to ensure that the child complies with those requirements is a violation of section 2919.24 of the Revised Code and may result in the prosecution of the parent, guardian, or custodian for that violation.

(3)(a) After an offender described in division (A)(1), (2), or (4) of this section has signed the form described in divisions (B)(1) and (2) of this section or the official, official's designee, or judge has certified on the form that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official, official's designee, or judge shall give one copy of the form to the offender, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, and shall send one copy of the form to the sheriff of the county in which the offender expects to reside.

(b) After a chief of police or sheriff has sent a form to an offender under division (A)(3) of this section, the chief or sheriff shall send a copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code.

(c) After a delinquent child described in division (A)(5) of this section and the delinquent child's parent, guardian, or custodian have signed the form described in divisions (B)(1) and (2) of this section or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties and information indicated on the form, the judge shall give a copy of the form to both the delinquent child and to the delinquent child's parent, guardian, or custodian, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, and shall send one copy of the form to the sheriff of the county in which the delinquent child expects to reside.

(C) The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender or delinquent child under divisions (A)(1) to (5) of this section shall do all of the following:

(1) If the notice is provided under division (A)(1), (2), (4), or (5) of this section, the official, designee, or judge shall determine the offender's or delinquent child's name, identifying factors, and expected future residence address in this state or any other state, shall obtain the offender's or delinquent child's criminal and delinquency history, and shall obtain a photograph and the fingerprints of the offender or delinquent child. Regarding an offender, the official, designee, or judge also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. If the notice is provided by a judge under division (A)(2), (4), or (5) of this section, the sheriff shall provide the offender's or delinquent child's criminal and delinquency history to the judge. The official, official's designee, or judge shall obtain this information and these items prior to giving the notice,

except that a judge may give the notice prior to obtaining the offender's or delinquent child's criminal and delinquency history. Within three days after receiving this information and these items, the official, official's designee, or judge shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code, to the sheriff of the county in which the offender or delinquent child expects to reside, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If the notice is provided under division (A)(5) of this section and if the delinquent child has been committed to the department of youth services or to a secure facility, the judge, in addition to the other information and items described in this division, also shall forward to the bureau and to the sheriff notification that the child has been so committed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data received under this division to the federal bureau of investigation.

(2) If the notice is provided under division (A)(3) of this section, the chief of police or sheriff shall determine the offender's name, identifying factors, and residence address in this state or any other state, shall obtain the offender's criminal history from the bureau of criminal identification and investigation, and, to the extent possible, shall obtain a photograph and the fingerprints of the offender. Regarding an offender, the chief or sheriff also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. Within three days after receiving this information and these items, the chief or sheriff shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code and, in relation to a chief of police, to the sheriff of the county in which the offender resides, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data so received to the federal bureau of investigation.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 93 (Eff 12-31-97); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

† As enrolled, (A)(2), 150 v H 473.

§ 2950.03 Notice to offender or delinquent child of duty to register and update address.

Effective 1-1-08.

(A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and each person who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is classified a juvenile offender

registrant based on that adjudication shall be provided notice in accordance with this section of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. The following official shall provide the notice required under this division to the specified person at the following time:

(1) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and if on or after January 1, 2008, the offender is serving that term or is under that confinement, subject to division (A)(5) of this section, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, term of imprisonment, or confinement, or a designee of that official, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender otherwise is released from the prison term, term of imprisonment, or confinement.

(2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing.

(3) If the person is a delinquent child who is classified a juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, or division (E) of section 2152.85 of the Revised Code, whichever is applicable.

(4) If the person is a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant on or after January 1, 2008, the judge shall provide the notice to the delinquent child at the time specified in division (B) of section 2152.86 of the Revised Code.

(5) If the person is an offender or delinquent child in any of the following categories, the attorney general, department of rehabilitation and correction, or department of youth services shall provide the notice to the offender or delinquent child at the time and in the manner specified in section 2950.031 [2950.03.1] or division (A) or (B) of section 2950.032 [2950.03.2] of the Revised Code, whichever is applicable:

(a) An offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code;

(b) An offender or delinquent child who registers with a sheriff pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on or after December 1, 2007, previously had not registered under either section with that sheriff or any other sheriff, and was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007;

(c) An offender who on December 1, 2007, is serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense or each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on that date is confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense;

(d) An offender or delinquent child who on or after December 2, 2007, commences a prison term in a state correctional institution or confinement in an institution of the department of youth services for a sexually oriented offense or child-victim oriented offense and who was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense prior to that date.

(6) If the person is an offender or delinquent child who on or after July 1, 2007, and prior to January 1, 2008, is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and is not sentenced to a prison term for that offense or is classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and is not committed to the custody of the department of youth services for that offense, the sentencing court or juvenile court shall provide the notice to the offender or delinquent child at the time and in the manner specified in division (C) of section 2950.032 [2950.03.2] of the Revised Code.

(7) If the person is an offender or delinquent child who has a duty to register in this state pursuant to division (A)(4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or delinquent child is presumed to have knowledge of the law and of the offender's or delinquent child's duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(B)(1) The notice provided under division (A) of this section shall inform the offender or delinquent child of the offender's or delinquent child's duty to register, to provide notice of a change in the offender's or delinquent child's residence address or in the offender's school, institution of higher education, or place of employment address, as applicable, and register the new address, to periodically verify the offender's or delinquent child's residence address or the offender's school, institution of higher education, or place of employment address, as applicable, and, if applicable, to provide notice of the offender's or delinquent child's intent to reside, pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. The notice shall specify that, for an offender, it applies regarding residence addresses or school, institution of higher education, and place of employment addresses and that, for a delinquent child, it applies regarding residence addresses. Additionally, it shall inform the offender of the offender's duties to similarly register, provide notice of a change in, and verify those addresses in states other than this state as described in division (A) of this section. A notice provided under division (A)(1), (2), (3), or (4) of this section shall comport with the following:

(a) If the notice is provided to an offender under division (A)(1) or (2) of this section, the official, official's designee, or judge shall require the offender to read and sign a notice stating that the offender's duties to register, to file a notice of intent to reside, if applicable, to register a

new residence address or new school, institution of higher education, or place of employment address, and to periodically verify those addresses, and the offender's duties in other states as described in division (A) of this section have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge shall certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties.

(b) If the notice is provided to a delinquent child under division (A)(3) or (4) of this section, the judge shall require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form stating that the delinquent child's duties to register, to file a notice of intent to reside, if applicable, to register a new residence address, and to periodically verify that address have been explained to the delinquent child and to the delinquent child's parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge shall certify on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties.

(2) The notice provided under divisions (A)(1) to (4) of this section shall be on a form prescribed by the bureau of criminal identification and investigation and shall contain all of the information specified in division (A) of this section and all of the information required by the bureau. The notice provided under divisions (A)(1) to (4) of this section shall include, but is not limited to, all of the following:

(a) For any notice provided under divisions (A)(1) to (4) of this section, an explanation of the offender's periodic residence address or periodic school, institution of higher education, or place of employment address verification process or of the delinquent child's periodic residence address verification process, an explanation of the frequency with which the offender or delinquent child will be required to verify those addresses under that process, a statement that the offender or delinquent child must verify those addresses at the times specified under that process or face criminal prosecution or a delinquent child proceeding, and an explanation of the offender's duty to similarly register, verify, and reregister those addresses in another state if the offender resides in another state, attends a school or institution of higher education in another state, or is employed in another state.

(b) If the notice is provided under division (A)(3) or (4) of this section, a statement that the delinquent child has been classified by the adjudicating juvenile court judge or the judge's successor in office a juvenile offender registrant and, if applicable, a public-registry qualified juvenile offender registrant and has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(c) If the notice is provided under division (A)(3) or (4) of this section, a statement that, if the delinquent child fails to comply with the requirements of sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, both of the following apply:

(i) If the delinquent child's failure occurs while the child is under eighteen years of age, the child is subject to proceedings under Chapter 2152. of the Revised Code

based on the failure, but if the failure occurs while the child is eighteen years of age or older, the child is subject to criminal prosecution based on the failure.

(ii) If the delinquent child's failure occurs while the child is under eighteen years of age, unless the child is emancipated, as defined in section 2919.121 [2919.12.1] of the Revised Code, the failure of the parent, guardian, or custodian to ensure that the child complies with those requirements is a violation of section 2919.24 of the Revised Code and may result in the prosecution of the parent, guardian, or custodian for that violation.

(3)(a) After an offender described in division (A)(1) or (2) of this section has signed the form described in divisions (B)(1) and (2) of this section or the official, official's designee, or judge has certified on the form that the form has been explained to the offender and that the offender indicated an understanding of the duties indicated on it, the official, official's designee, or judge shall give one copy of the form to the offender, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the offender expects to reside, and shall send one copy of the form to the sheriff of the county in which the offender was convicted or pleaded guilty if the offender has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(b) After a delinquent child described in division (A)(3) or (4) of this section and the delinquent child's parent, guardian, or custodian have signed the form described in divisions (B)(1) and (2) of this section or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties and information indicated on the form, the judge shall give a copy of the form to both the delinquent child and to the delinquent child's parent, guardian, or custodian, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, shall send one copy of the form to the sheriff of the county in which the delinquent child expects to reside, and shall send one copy of the form to the sheriff of the county in which the child was adjudicated a delinquent child if the delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(C) The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender or delinquent child under divisions (A)(1) to (4) of this section shall determine the offender's or delinquent child's name, identifying factors, and expected future residence address in this state or any other state, shall obtain the offender's or delinquent child's criminal and delinquency history, and shall obtain a photograph and the fingerprints of the offender or delinquent child. Regarding an offender, the official, designee, or judge also shall obtain from the offender the offender's current or expected future school, institution of higher education, or place of employment address in this state, if any. If the notice is provided by a judge under division (A)(2), (3), or (4) of this section, the sheriff shall provide the offender's or delinquent child's criminal and delinquency history to the judge. The official, official's designee, or judge shall obtain this information and these items prior to giving the

notice, except that a judge may give the notice prior to obtaining the offender's or delinquent child's criminal and delinquency history. Within three days after receiving this information and these items, the official, official's designee, or judge shall forward the information and items to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code, to the sheriff of the county in which the offender or delinquent child expects to reside and to the sheriff of the county in which the offender or delinquent child was convicted, pleaded guilty, or adjudicated a delinquent child if the offender or delinquent child has a duty to register pursuant to division (A)(1) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, and, regarding an offender, to the sheriff of the county, if any, in which the offender attends or will attend a school or institution of higher education or is or will be employed. If the notice is provided under division (A)(3) or (4) of this section and if the delinquent child has been committed to the department of youth services or to a secure facility, the judge, in addition to the other information and items described in this division, also shall forward to the bureau and to the sheriff notification that the child has been so committed. If it has not already done so, the bureau of criminal identification and investigation shall forward a copy of the fingerprints and conviction data received under this division to the federal bureau of investigation.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 93 (Eff 12-31-97); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

† As enrolled, (A)(2), 150 v H 473.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2950.03 (130 v 670; 145 v H 571), repealed 146 v H 180, § 2, eff 1-1-97.

[§ 2950.03.1] § 2950.031 Attorney general to determine application of new SORN Law to each offender or delinquent child; registered letter to be sent; right to court hearing to contest application.

(A)(1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall determine for each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall send to each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041

[2950.04.1], or 2950.05 of the Revised Code a registered letter that contains the information described in this division. The registered letter shall be sent return receipt requested to the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child. The letter sent to an offender or to a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or the delinquent child and the delinquent child's parents of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made.

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, a summary of the provisions of section 2950.033 [2950.03.3] of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies to a delinquent child only if the child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code.

(3) The attorney general shall make the determinations described in division (A)(1) of this section for each offender or delinquent child who has registered an address as described in that division, even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The attorney general shall send the registered letter described in division (A)(2) of this section to each offender or delinquent child who has registered an address as described in that division even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate

prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, Section 2950.033 [2950.03.3] of the Revised Code applies to any offender who has registered an address as described in division (A)(1) or (2) of this section and whose duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If a sheriff informs the attorney general pursuant to section 2950.043 [2950.04.3] of the Revised Code that an offender or delinquent child registered with the sheriff pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on or after December 1, 2007, that the offender or delinquent child previously had not registered under either section with that sheriff or any other sheriff, and that the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, within fourteen days after being so informed of the registration and receiving the information and material specified in division (D) of that section, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1) of this section. Upon making the determinations, the attorney general immediately shall send to the offender or to the delinquent child and the delinquent child's parents a registered letter pursuant to division (A)(2) of this section that contains the information specified in that division.

(C) The attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are sent a registered letter under division (A) or (B) of this section. For each offender, delinquent child, and parents of a delinquent child, the attorney general shall send a copy of the return receipt for the offender, delinquent child, or parents to the sheriff with whom the offender or delinquent child most recently registered a residence address and, if applicable, a school, institution of higher education, or place of employment address and to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code. If a return receipt indicates that the offender, delinquent child, or parents of a delinquent child to whom the registered letter was sent does not reside or have temporary domicile at the listed address, the attorney general immediately shall provide notice of that fact to the sheriff with whom the offender or delinquent child registered that residence address.

(D) The attorney general shall mail to each sheriff a list of all offenders and delinquent children who have registered a residence address or a school, institution of higher education, or place of employment address with that sheriff and to whom a registered letter is sent under

division (A) or (B) of this section. The list shall specify the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(E) An offender or delinquent child who is in a category described in division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the manner in which the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section specifies that the new registration requirements apply to the offender or delinquent child or may contest whether those new registration requirements apply at all to the offender or delinquent child. To request the hearing, the offender or delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. If the offender or delinquent child resides in or is temporarily domiciled in this state and requests a hearing, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled. If the offender does not reside in and is not temporarily domiciled in this state, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas of the county in which the offender registered a school, institution of higher education, or place of employment address, but if the offender has registered addresses of that nature in more than one county, the offender may file such a petition in the court of only one of those counties.

If the offender or delinquent child requests a hearing by timely filing a petition with the appropriate court, the offender or delinquent child shall serve a copy of the petition on the prosecutor of the county in which the petition is filed. The prosecutor shall represent the interests of the state in the hearing. In any hearing under this division, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor of the date, time, and place of the hearing.

If an offender or delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the offender or delinquent child shall comply prior to January 1, 2008, with Chapter 2950. of the Revised Code as it exists prior to that date and shall comply on and after January 1, 2008, with Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on that date. If an offender or delinquent child requests a hearing in

accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. If, at the conclusion of the hearing, the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child in the manner specified in the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section, the court shall issue an order that specifies the manner in which the court has determined that the new registration requirements do apply to the offender or delinquent child. If at the conclusion of the hearing the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child, the court shall issue an order that specifies that the new registration requirements do not apply to the offender or delinquent child. The court promptly shall serve a copy of an order issued under this division upon the sheriff with whom the offender or delinquent child most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and upon the bureau of criminal identification and investigation. The offender or delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2950.031, amended and renumbered to RC § 2950.034 by 152 v S 10, eff 7-1-07.

[§ 2950.03.2] § 2950.032 Attorney general to determine tier classification for each offender or delinquent child; notice of provisions implemented on January 1, 2008.

(A)(1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as a tier I sex offender/child-victim offender,

a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties;

(b) For each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on December 1, 2007, will be confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense, determine the delinquent child's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, the delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and whether the delinquent child is a public registry-qualified juvenile offender registrant and provide to the department a document that describes that classification, those duties, and whether the delinquent child is a public registry-qualified juvenile offender registrant.

(c) For each offender and delinquent child described in division (A)(1)(a) or (b) of this section, determine whether the attorney general is required to send a registered letter to that offender or that delinquent child and delinquent child's parents pursuant to section 2950.031 [2950.03.1] of the Revised Code relative to the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is serving the prison term or is confined and, if the attorney general is required to send such a letter to that offender or that delinquent child and delinquent child's parents relative to that offense, include in the document provided to the department of rehabilitation and correction or the department of youth services under division (A)(1)(a) or (b) of this section a conspicuous notice that the attorney general will be sending the offender or delinquent child and delinquent child's parent the registered letter and that the department is not required to provide to the offender or delinquent child the written notice described in division (A)(2) of this section.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, except as otherwise described in this division, the department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section and to the delinquent child's parents a written notice that contains the information described in this division. The department of rehabilitation and correction and the department of youth services are not required to provide the written notice to an offender or a delinquent child and the delinquent child's parents if the attorney general included in the document provided to the particular department under division (A)(1)(a) or (b) of this section notice that the attorney general will be sending that offender or that delinquent child and the delinquent child's parents a registered letter and that the department is not required to provide to that offender or that delinquent child and parents the written notice. The written notice provided to an offender or a delinquent child and the delinquent

child's parents pursuant to this division shall notify the offender or delinquent child of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made;

(d) If the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, a summary of the provisions of section 2950.033 [2950.03.3] of the Revised Code and the application of those provisions to the offender or delinquent child, provided that this division applies regarding a delinquent child only if the child is in a category specified in division (A) of section 2950.033 [2950.03.3] of the Revised Code.

(3) The attorney general shall make the determinations described in divisions (A)(1)(a) and (b) of this section for each offender or delinquent child who is described in either of those divisions even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. The department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section the notice described in division (A)(2) of this section, even if the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of section 2950.033 [2950.03.3] of the Revised Code, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date. Section 2950.033 [2950.03.3] of the Revised Code applies regarding any offender described in division (A)(1)(a) or (b) of

this section whose duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date and any delinquent child who is in a category specified in division (A) of section 2950.033 [2950.03.3] of the Revised Code and whose duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to that date.

(B) If on or after December 2, 2007, an offender commences a prison term in a state correctional institution or a delinquent child commences confinement in an institution of the department of youth services for a sexually oriented offense or a child-victim oriented offense and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense on or before that date, as soon as practicable, the department of rehabilitation and correction or the department of youth services, as applicable, shall contact the attorney general, inform the attorney general of the commencement of the prison term or institutionalization, and forward to the attorney general information and material that identifies the offender or delinquent child and that describes the sexually oriented offense resulting in the prison term or institutionalization, the facts and circumstances of it, and the offender's or delinquent child's criminal or delinquency history. Within fourteen days after being so informed of the commencement of the prison term or institutionalization and receiving the information and material specified in this division, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1)(a), (b), or (c) of this section and immediately provide to the appropriate department a document that describes the offender's or delinquent child's classification and duties as so determined.

Upon receipt from the attorney general of a document described in this division that pertains to an offender or delinquent child, the department of rehabilitation and correction shall provide to the offender or the department of youth services shall provide to the delinquent child, as applicable, a written notice that contains the information specified in division (A)(2) of this section.

(C) If, on or after July 1, 2007, and prior to January 1, 2008, an offender is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and the court does not sentence the offender to a prison term for that offense or if, on or after July 1, 2007, and prior to January 1, 2008, a delinquent child is classified a juvenile offender registrant relative to a sexually oriented offense or a child-victim oriented offense and the juvenile court does not commit the child to the custody of the department of youth services for that offense, the court at the time of sentencing or the juvenile court at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, division (E) of section 2152.85, or division (A) of section 2152.86 of the Revised Code, whichever is applicable, shall do all of the following:

(1) Provide the offender or the delinquent child and the delinquent child's parents with the notices required under section 2950.03 of the Revised Code, as it exists prior to January 1, 2008, regarding the offender's or

delinquent child's duties under this chapter as it exists prior to that date;

(2) Provide the offender or the delinquent child and the delinquent child's parents with a written notice that contains the information specified in divisions (A)(2)(a) and (b) of this section;

(3) Provide the offender or the delinquent child and the delinquent child's parents a written notice that clearly indicates that the offender or delinquent child is required to comply with the duties described in the notice provided under division (C)(1) of this section until January 1, 2008, and will be required to comply with the duties described in the notice provided under division (C)(2) of this section on and after that date.

(D)(1) Except as otherwise provided in this division, the officer or employee of the department of rehabilitation and correction or the department of youth services who provides an offender or a delinquent child and the delinquent child's parents with the notices described in division (A)(2) or (B) of this section shall require the offender or delinquent child to read and sign a form stating that the changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008, the offender's or delinquent child's classification as a tier I sex offender, a tier II sex offender, or a tier III sex offender, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, the delinquent child's classification as a public registry-qualified juvenile offender registrant if applicable, the information specified in division (B) of section 2950.03 of the Revised Code to the extent it is relevant to the offender or delinquent child, and the right to a hearing, procedures for requesting the hearing, and period of time within which the request for the hearing must be made have been explained to the offender or delinquent child.

Except as otherwise provided in this division, the judge who provides an offender or delinquent child with the notices described in division (C) of this section shall require the offender or delinquent child to read and sign a form stating that all of the information described in divisions (C)(1) to (3) of this section has been explained to the offender or delinquent child.

If the offender or delinquent child is unable to read, the official, employee, or judge shall certify on the form that the official, employee, or judge specifically informed the offender or delinquent child of all of that information and that the offender or delinquent child indicated an understanding of it.

(2) After an offender or delinquent child has signed the form described in division (D)(1) of this section or the official, employee, or judge has certified on the form that the form has been explained to the offender or delinquent child and that the offender or delinquent child indicated an understanding of the specified information, the official, employee, or judge shall give one copy of the form to the offender or delinquent child, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to section 2950.13 of the Revised Code, and shall send one copy of the form to the sheriff of the county in which the offender or delinquent child expects to reside and one copy to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense

that resulted in the offender's or child's registration duty under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(E) An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the matters that are identified in division (E) of section 2950.031 [2950.03.1] of the Revised Code. To request the hearing, an offender or delinquent child who is provided a notice under division (A)(2) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division, and an offender or delinquent child who is provided a notice under division (B) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division. The request for the hearing shall be made in the manner and with the court specified in division (E) of section 2950.031 [2950.03.1] of the Revised Code, and, except as otherwise provided in this division, the provisions of that division regarding the service of process and notice regarding the hearing, the conduct of the hearing, the determinations to be made at the hearing, and appeals of those determinations also apply to a hearing requested under this division. If a hearing is requested as described in this division, the offender or delinquent child shall appear at the hearing by video conferencing equipment if available and compatible, except that, upon the court's own motion or the motion of the offender or delinquent child or the prosecutor representing the interests of the state and a determination by the court that the interests of justice require that the offender or delinquent child be present, the court may permit the offender or delinquent child to be physically present at the hearing. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender or delinquent child were physically present at the hearing. The provisions of division (E) of section 2950.031 [2950.03.1] of the Revised Code regarding the effect of a failure to timely request a hearing also apply to a failure to timely request a hearing under this division.

If a juvenile court issues an order under division (A)(2) or (3) of section 2152.86 of the Revised Code that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of section 2152.86 of the Revised Code.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.03.3] § 2950.033 Offenders and delinquent children whose SORN Law duties are scheduled to terminate on or after 7-1-07 and prior to 1-1-08.

(A) If, on or before July 1, 2007, an offender who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a delinquent

child in a category specified in division (C) of this section has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code based on that offense and if the offender's or delinquent child's duty to comply with those sections based on that offense is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, the offender's or delinquent child's duties under those sections shall not terminate as scheduled and shall remain in effect for the following period of time:

(1) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue at least until the court issues its decision at or subsequent to the hearing. The offender's or delinquent child's duty to comply with those sections shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general, unless the court's decision terminates the offender's or delinquent child's duty to comply with those sections or provides a different duration for which the offender or delinquent child has a duty to comply with them.

(2) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, receives a registered letter from the attorney general pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the offender or delinquent child specified by the attorney general, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender or delinquent child received from the attorney general.

(3) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and timely requests a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented

on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(1) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who timely request a hearing in accordance with division (E) of that section.

(4) If the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code, receives a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, and does not timely request a hearing in accordance with division (E) of that section to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, or the tier classification of the delinquent child specified by the attorney general the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in the same manner and for the same duration as is described in division (A)(2) of this section regarding offenders and delinquent children in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code, who receive a registered letter from the attorney general pursuant to division (A)(2) of that section, and who do not timely request a hearing in accordance with division (E) of that section.

(5) If the offender or delinquent child is in a category described in division (A)(1) of section 2950.031 [2950.03.1] of the Revised Code but does not receive a registered letter from the attorney general pursuant to division (A)(2) of that section, or if the offender or delinquent child is in a category described in division (A)(1)(a) or (b) of section 2950.032 [2950.03.2] of the Revised Code but does not receive a notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of that section, notwithstanding the failure of the offender or delinquent child to receive the registered letter or the notice, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950. of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008.

(B) An offender or a delinquent child in a category specified in division (C) of this section who, on or before July 1, 2007, has a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code based on a conviction, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and whose duty to comply with those sections is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, is presumed to have knowledge of the law, the

content of division (A) of this section and its application to the offender or delinquent child, and the offender's or delinquent child's duties under Chapter 2950, of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. Any failure of any such offender or delinquent child to receive a registered letter from the attorney general pursuant to division (A)(2) of section 2950.031 [2950.03.1] of the Revised Code or to receive a written notice from the department of rehabilitation and correction or department of youth services pursuant to division (A)(2) of section 2950.032 [2950.03.2] of the Revised Code does not negate, limit, or modify the presumption specified in this division.

(C) Divisions (A) and (B) of this section apply to a person who is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense only if the person is so adjudicated prior to January 1, 2008, and, under the version of section 2950.01 of the Revised Code that is to take effect on January 1, 2008, will be a public registry-qualified juvenile offender registrant relative to that offense.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.03.4] § 2950.034 Residing within 1,000 feet of school, preschool, or child day-care center premises prohibited.

(A) No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises or preschool or child day-care center premises.

(B) If a person to whom division (A) of this section applies violates division (A) of this section by establishing a residence or occupying residential premises within one thousand feet of any school premises or preschool or child day-care center premises, an owner or lessee of real property that is located within one thousand feet of those school premises or preschool or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff shall not be required to prove irreparable harm in order to obtain the relief.

(C) As used in this section:

(1) "Child day-care center" has the same meaning as in section 5104.01 of the Revised Code.

(2) "Preschool" means any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children described in this division.

(3) "Preschool or child day-care center premises" means all of the following:

(a) Any building in which any preschool or child day-care center activities are conducted if the building has signage that indicates that the building houses a preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(b) The parcel of real property on which a preschool or child day-care center is situated if the parcel of real property has signage that indicates that a preschool or child day-care center is situated on the parcel, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(c) Any grounds, play areas, and other facilities of a preschool or child day-care center that are regularly used by the children served by the preschool or child day-care center if the grounds, play areas, or other facilities have signage that indicates that they are regularly used by children served by the preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply.

HISTORY: 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

This section was renumbered from RC § 2950.031 by 152 v S 10, effective July 1, 2007.

The provisions of § 8 of S.B. 5 (150 v —) read as follows:

SECTION 8. Sections 1923.01, 1923.02, 1923.051, 5321.01, and 5321.03 of the Revised Code, as amended by this act, and sections 2950.031 and 5321.051 of the Revised Code, as enacted by this act, apply to rental agreements entered into on or after the effective date of this act.

§ 2950.04 Duty to register.

Effective until 1-1-08.

(A)(1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall register personally with the sheriff of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days, shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register with the sheriff or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than fourteen days or for an aggregate period of thirty or more days in that

calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state:

(a) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement;

(b) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom division (A)(1)(a) of this section does not apply;

(c) If the sexually oriented offense was committed prior to July 1, 1997, and neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 1, 1997, was a habitual sex offender who was required to register under Chapter 2950, of the Revised Code.

(2) Each child who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff of the county within five days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than five days. If the delinquent child is committed for the sexually oriented offense that is not a registration-exempt sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department, if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility. The delinquent child does not have a duty to register under this division while the child is in a department of youth services secure facility or in a secure facility that is not operated by the department.

(3) If divisions (A)(1) and (2) of this section do not apply, each following type of offender and each following type of delinquent child shall register personally with the sheriff of the county within five days of the offender's or delinquent child's coming into a county in which the offender or delinquent child resides or temporarily is domiciled for more than five days, and each following type of offender shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty days or more in that calendar year, and shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year:

(a) Regardless of when the sexually oriented offense was committed, a person who is convicted, pleads guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year, and if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) Regardless of when the sexually oriented offense was committed, a person who is convicted of, pleads guilty to, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child is released from imprisonment, confinement, or detention imposed for that offense, and if, on or after July 1, 1997, for offenders, or January 1, 2002, for delinquent children, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year. The duty to register as described in this division applies to an offender regardless of whether the offender, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, at the time of entering into this state to attend the school or institution of higher education, or at the time of being employed in this state for the specified period of time, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the conviction or guilty plea occurred. The duty to register as described in this division applies to a delinquent child only if the delinquent child, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, has a duty to register as a sex offender or child-victim offender under the law of the jurisdiction in which the delinquent child adjudication occurred or if, had the delinquent child adjudication occurred in this state, the adjudicating juvenile court judge would have been required to issue an order classifying the delinquent child as a juvenile offender registrant pursuant to section 2152.82 or division (A) of section 2152.83 of the Revised Code.

(4) If neither division (A)(1), (2), nor (3) of this section applies and if the offender is adjudicated a sexual predator under division (C) of section 2950.09 of the Revised Code, the offender shall register within five days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than five days, shall register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than five days within five days of coming into that county, shall register within five days of the adjudication with the sheriff of the county in which the offender attends any school or institution of higher education on a full-time or part-time basis or in which the offender is employed if the offender has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has temporary domicile in this state or another state, and shall register within five days of the adjudication with the sheriff or other appropriate person of any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or in which the offender then is employed if the offender has been employed in that state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year regardless of whether the offender resides or has temporary domicile in this state, the other state, or a different state.

(5) A person who is adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense is not required to register under division (A)(2) of this section unless the delinquent child committed the offense on or after January 1, 2002, is classified a juvenile offender registrant by a juvenile court judge pursuant to an order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code based on that adjudication, and has a duty to register pursuant to division (A)(2) of this section.

(6) A person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense that is a registration-exempt sexually oriented offense, and a person who is or has been adjudicated a delinquent child for committing a sexually oriented offense that is a registration-exempt sexually oriented offense, does not have any duty to register under this section based on that conviction, guilty plea, or adjudication. The exemption of an offender or delinquent child from registration under this division for a conviction of, plea of guilty to, or delinquent child adjudication for a registration-exempt sexually oriented offense does not limit, affect, or supersede any duties imposed upon the offender or delinquent child under this chapter or sections 2152.82 to 2152.85 of the Revised Code for a conviction of, plea of guilty to, or delinquent child adjudication for any other sexually oriented offense or any child-victim oriented offense.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete

when the offender or delinquent child returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include the photograph of the offender or delinquent child who is registering and shall contain all of the following:

(1) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than five days, the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, the name and address of the offender's school or institution of higher education if the offender attends one at the time of registration or if the offender knows at the time of registration that the offender will be commencing attendance at that school or institution subsequent to registration, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender who is registering under a duty imposed under division (A)(1), (3), or (4) of this section as a result of the offender attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than fourteen days or for an aggregate of thirty or more days in any calendar year, the current address of the school, institution of higher education, or place of employment of the offender who is registering and any other information required by the bureau of criminal identification and investigation.

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section for any reason, if the offender has been adjudicated a sexual predator relative to the sexually oriented offense in question, if the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense in question and the court has not subsequently determined pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a sexual predator, if the judge determined pursuant to division (C) of section 2950.09 or pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that the offender or delinquent child is a habitual sex offender and the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code, or if the offender has the duty to register as a result of the conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall include on the signed, written registration form all of the following information:

(a) A specific declaration that the person has been adjudicated a sexual predator, has been determined to be a habitual sex offender, or was convicted of or pleaded guilty to an aggravated sexually oriented offense, whichever is applicable;

(b) If the offender or delinquent child has been adjudicated a sexual predator, the identification license

plate number of each motor vehicle the offender or delinquent child owns and of each motor vehicle registered in the offender's or delinquent child's name.

(D) After an offender or delinquent child registers with a sheriff pursuant to this section, the sheriff shall forward the signed, written registration form and photograph to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials forwarded to it under this division in the state registry of sex offenders and child victim offenders established and maintained under section 2950.13 of the Revised Code.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code.

(G) If an offender or delinquent child who is required by division (A) of this section to register is adjudicated a sexual predator or a habitual sexual offender subject to community notification under division (C)(2) or (E) of section 2950.09 of the Revised Code, or if an offender who is required by division (A) of this section to register has that duty as a result of a conviction of or plea of guilty to an aggravated sexually oriented offense, the offender or delinquent child also shall send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

- (1) The offender's or delinquent child's name;
- (2) The address or addresses at which the offender or delinquent child intends to reside;
- (3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;
- (4) A statement that the offender has been adjudicated a sexual predator, a statement that the delinquent child has been adjudicated a sexual predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a sexual predator, a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination has not been removed

pursuant to section 2152.84 or 2152.85 of the Revised Code, or a statement that the offender was convicted of or pleaded guilty to an aggravated sexually oriented offense.

(H) If, immediately prior to July 31, 2003, an offender or delinquent child who was convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a sexually oriented offense was required by division (A) of this section to register and if, on or after July 31, 2003, that offense no longer is a sexually oriented offense but instead is designated a child-victim oriented offense, division (A)(1)(c) or (2)(b) of section 2950.041 [2950.04.1] of the Revised Code applies regarding the offender or delinquent child and the duty to register that is imposed pursuant to that division shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the offender prior to July 31, 2003, under this section.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

§ 2950.04 Duty to register and comply with registration requirements.

Effective 1-1-08.

(A)(1)(a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a sexually oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delinquent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that sexually oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison

term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the sexually oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense shall comply with the following registration requirements described in divisions (A)(2)(a), (b), (c), (d), and (e) of this section:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3)(a) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days.

(b) In addition to the registration duty imposed under division (A)(3)(a) of this section, each public registry-qualified juvenile offender registrant shall comply with the following additional registration requirements:

(i) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the registrant attends a school

or institution of higher education on a full-time or part-time basis regardless of whether the registrant resides or has a temporary domicile in this state or another state.

(ii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant is employed if the registrant resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iii) The public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the registrant then is employed if the registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than three days or for an aggregate period of fourteen or more days in that calendar year.

(iv) The public registry-qualified juvenile offender registrant shall register with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the registrant attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the registrant resides or has a temporary domicile in this state, the other state, or a different state.

(c) If the delinquent child is committed to the sexually oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the sexually oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender or public registry-qualified juvenile offender registrant enters this state to attend a school or institution of higher education, or the offender or public registry-qualified juvenile offender registrant is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immedi-

ately upon coming into a county in which the offender or public registry-qualified juvenile offender registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender or public registry-qualified juvenile offender registrant resides or has a temporary domicile in this state or another state.

(c) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant then is employed if the offender or public registry-qualified juvenile offender registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender or a delinquent child who is a public registry-qualified juvenile offender registrant is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code pursuant to section 2950.15 of the Revised Code. A delinquent child who is a juvenile offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to section 2152.84 or 2152.85 of the Revised Code.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph, copies of travel and immigration documents, and any other required material to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, other required material, signatures, and date, to the sheriff or designee.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of

this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of registration or if the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, any other employment information, such as the general area where the offender or delinquent child is employed, if the offender or delinquent child is employed in many locations, and the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of registration or if the offender or public registry-qualified juvenile offender registrant knows at the time of registration that the offender or public registry-qualified juvenile offender registrant will be commencing attendance at that school or institution subsequent to registration;

(5) Regarding an offender or public registry-qualified juvenile offender registrant who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or public registry-qualified juvenile offender registrant attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant who is registering, including any other employment information, such as the general area where the offender or public registry-qualified juvenile offender registrant is employed, if the offender or public registry-qualified juvenile offender registrant is employed in many locations;

(6) The identification license plate number of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under section 4507.50 or 4507.51 of the Revised Code or a comparable identification card issued by another state,

the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in section 109.573 [109.57.3] of the Revised Code, from the offender or delinquent child, a citation for, and the name of, the sexually oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that sexually oriented offense;

(9) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(10) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(11) Any other information required by the bureau of criminal identification and investigation.

(D) After an offender or delinquent child registers with a sheriff, or the sheriff's designee, pursuant to this section, the sheriff, or the sheriff's designee, shall forward the signed, written registration form, photograph, and other material to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. If an offender registers a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (C)(4) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has registered that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include the information and materials forwarded to it under this division in the state registry of sex offenders and child victim offenders established and maintained under section 2950.13 of the Revised Code.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the

date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain the following information:

(1) The offender's or delinquent child's name;

(2) The address or addresses at which the offender or delinquent child intends to reside;

(3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, was required by division (A) of this section or section 2950.041 [2950.04.1] of the Revised Code to register and if, on or after January 1, 2008, that offense is a sexually oriented offense as that term is defined in section 2950.01 of the Revised Code on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or section 2950.041 [2950.04.1] of the Revised Code.

HISTORY: 146 v H 180 (EFF 7-1-97); 147 v H 565 (EFF 3-30-99); 148 v H 502 (EFF 3-15-2001); 149 v S 3 (EFF 1-1-2002); 149 v S 175 (EFF 5-7-2002); 149 v H 485 (EFF 6-13-2002); 149 v H 393, EFF 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2950.04 (130 v 670), repealed 146 v H 180, § 2, eff 7-1-97.

See provisions, § 3 of HB 485 (149 v —) following RC § 2929.13.

See provisions, § 5 of HB 485 (149 v —) following RC § 2950.01.

[§ 2950.04.1] § 2950.041 Duty to register resulting from child-victim oriented offense; notice of intent to reside.

Effective until 1-1-08.

(A)(1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a child-victim oriented offense shall register personally with the sheriff of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days, shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, shall register personally with the sheriff of the county in which the offender then is employed if the

offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register personally with the sheriff or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state:

(a) Regardless of when the child-victim oriented offense was committed, an offender who is sentenced for the child-victim oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 31, 2003, is released in any manner from the prison term, term of imprisonment, or confinement;

(b) Regardless of when the child-victim oriented offense was committed, an offender who is sentenced for a child-victim oriented offense on or after July 31, 2003, and to whom division (A)(1)(a) of this section does not apply;

(c) If the child-victim oriented offense was committed prior to July 31, 2003, if the offense was considered prior to that date to be a sexually oriented offense, and if neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 31, 2003, was required to register as a result of conviction or plea of guilty to the commission of that offense under section 2950.04 of the Revised Code. For any offender who is described in this division, the duty imposed under this division shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the offender prior to July 31, 2003, under section 2950.04 of the Revised Code.

(2) Each of the following types of delinquent children shall register personally with the sheriff of the county within five days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than five days:

(a) Regardless of when the child-victim oriented offense was committed, a child who on or after July 31, 2003, is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department, if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility. The delinquent child does not have a duty to register under this division while the child is in a department of youth services secure facility or in a secure facility that is not operated by the department.

(b) If the child-victim oriented offense was committed prior to July 31, 2003, if the offense was considered prior to that date to be a sexually oriented offense, and if division (A)(2)(a) of this section does not apply, a delinquent child who, immediately prior to July 31, 2003, was

classified a juvenile sex offender registrant and required to register as a result of a delinquent child adjudication for the commission of that offense under section 2950.04 of the Revised Code. For any delinquent child who is described in this division, the duty imposed under this division shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty imposed upon the delinquent child prior to July 31, 2003, under section 2950.04 of the Revised Code. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the provisions of division (A)(2)(a) of this section regarding the beginning, and tolling, of a duty imposed under that division also apply regarding the beginning, and tolling, of the duty imposed under this division.

(3) If divisions (A)(1) and (2) of this section do not apply, each following type of offender and each following type of delinquent child shall register personally with the sheriff of the county within five days of the offender's or delinquent child's coming into a county in which the offender or delinquent child resides or temporarily is domiciled for more than five days, and each following type of offender shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year:

(a) Regardless of when the child-victim oriented offense was committed, a person who is convicted, pleads guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense, if, on or after July 31, 2003, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year, and if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a child-victim offender or sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication.

(b) Regardless of when the child-victim oriented offense was committed, a person who is convicted, pleads

guilty, or adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense, if, on or after July 31, 2003, the offender or delinquent child is released from imprisonment, confinement, or detention imposed for that offense, and if, on or after July 31, 2003, the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than five days, the offender enters this state to attend any school or institution of higher education on a full-time or part-time basis, or the offender is employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year. The duty to register as described in this division applies to an offender regardless of whether the offender, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, at the time of entering into this state to attend the school or institution of higher education, or at the time of being employed in this state for more than the specified period of time, has a duty to register as a child-victim offender or sex offender under the law of the jurisdiction in which the conviction or guilty plea occurred. The duty to register as described in this division applies to a delinquent child only if the delinquent child, at the time of moving to and residing in this state or temporarily being domiciled in this state for more than five days, has a duty to register as a child-victim offender or sex offender under the law of the jurisdiction in which the delinquent child adjudication occurred or if, had the delinquent child adjudication occurred in this state, the adjudicating juvenile court judge would have been required to issue an order classifying the delinquent child as a juvenile offender registrant pursuant to section 2152.82 or division (A) of section 2152.83 of the Revised Code.

(4) If neither division (A)(1), (2), nor (3) of this section applies and if the offender is adjudicated a child-victim predator under division (C) of section 2950.091 [2950.09.1] of the Revised Code, the offender shall register within five days of the adjudication with the sheriff of the county in which the offender resides or temporarily is domiciled for more than five days, shall register with the sheriff of any county in which the offender subsequently resides or temporarily is domiciled for more than five days within five days of coming into that county, shall register within five days of the adjudication with the sheriff of the county in which the offender attends any school or institution of higher education on a full-time or part-time basis or in which the offender is employed if the offender has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has temporary domicile in this state or another state, and shall register within five days of the adjudication with the sheriff or other appropriate person of any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or in which the offender then is employed if the offender has been employed in this state for more than fourteen days or for an aggregate period of thirty or more days in any calendar year regardless of whether the offender resides or has temporary domicile in this state, the other state, or a different state.

(5) A person who is adjudicated a delinquent child for committing a child-victim oriented offense is not required to register under division (A)(2) of this section unless the delinquent child committed the offense on or after July 31, 2003, is classified a juvenile offender registrant by a juvenile court judge pursuant to an order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code based on that adjudication, and has a duty to register pursuant to division (A)(2) of this section.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of section 2950.04 of the Revised Code, and the registration is complete as described in that division.

(C) The registration form to be used under divisions (A) and (B) of this section shall include the photograph of the offender or delinquent child who is registering and shall contain all of the following:

(1) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than five days, all of the information described in division (C)(1) of section 2950.04 of the Revised Code;

(2) Regarding an offender who is registering under a duty imposed under division (A)(1), (3), or (4) of this section as a result of the offender attending a school or institution of higher education on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than fourteen days or for an aggregate of thirty or more days in any calendar year, all of the information described in division (C)(2) of section 2950.04 of the Revised Code;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1), (2), (3), or (4) of this section, if the offender has been adjudicated a child-victim predator relative to the child-victim oriented offense in question, if the delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense in question and the court has not subsequently determined pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a child-victim predator, if the offender or delinquent child is automatically classified a habitual child-victim offender under division (E) of section 2950.091 [2950.09.1] of the Revised Code, or if the judge determined pursuant to division (C) or (E) of section 2950.091 [2950.09.1] or pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code that the offender or delinquent child is a habitual child-victim offender and the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code, the offender or delinquent child shall include on the signed, written registration form all of the information described in division (C)(3) of section 2950.04 of the Revised Code.

(D) Division (D) of section 2950.04 of the Revised Code applies when an offender or delinquent child registers with a sheriff pursuant to this section.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code.

(G) If an offender or delinquent child who is required by division (A) of this section to register is adjudicated a child-victim predator or a habitual child-victim offender subject to community notification under division (C)(2) or (E) of section 2950.091 [2950.09.1] of the Revised Code, the offender or delinquent child also shall send the sheriff of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain all of the following information:

(1) The information specified in divisions (G)(1) and (2) of section 2950.04 of the Revised Code;

(2) The child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(3) A statement that the offender has been adjudicated a child-victim predator, a statement that the delinquent child has been adjudicated a child-victim predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a child-victim predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual child-victim offender and that, as of the date of the notice, the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code.

HISTORY: 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

[§ 2950.04.1] § 2950.041 Duty to register resulting from child-victim oriented offense; notice of intent to reside.

Effective 1-1-08.

(A)(1)(a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a child-victim oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the child-victim offense.

(b) Immediately after a dispositional hearing is held on or after January 1, 2008, for a child who is adjudicated a delinquent child for committing a child-victim oriented offense, is classified a juvenile offender registrant based on that adjudication, and is committed to the custody of the department of youth services or to a secure facility that is not operated by the department and before the child is transferred to the custody of the department of youth services or the secure facility to which the delin-

quent child is committed, the delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county in which the delinquent child was classified a juvenile offender registrant based on that child-victim oriented offense.

(c) A law enforcement officer shall be present at the sentencing hearing or dispositional hearing described in division (A)(1)(a) or (b) of this section to immediately transport the offender or delinquent child who is the subject of the hearing to the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child is convicted, pleads guilty, or is adjudicated a delinquent child.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by the department, the delinquent child shall register as provided in division (A)(3) of this section.

(2) Regardless of when the child-victim oriented offense was committed, each offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense shall comply with all of the following registration requirements:

(a) The offender shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days.

(b) The offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(d) The offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(e) The offender shall register personally with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than three days or for an aggregate period of fourteen or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state.

(3) Regardless of when the child-victim oriented offense was committed, each child who on or after July 31,

2003, is adjudicated a delinquent child for committing a child-victim oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days. If the delinquent child is committed for the child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, this duty begins when the delinquent child is discharged or released in any manner from custody in a department of youth services secure facility or from the secure facility that is not operated by the department if pursuant to the discharge or release the delinquent child is not committed to any other secure facility of the department or any other secure facility.

(4) Regardless of when the child-victim oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a child-victim oriented offense shall comply with all of the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender enters this state to attend the school or institution of higher education, or the offender is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a child-victim offender or sex offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

(b) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state.

(c) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

(d) Each offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has not been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year.

(5) An offender is not required to register under division (A)(2), (3), or (4) of this section if a court issues an order terminating the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code pursuant to section 2950.15 of the Revised Code. A delinquent child who is a juvenile

offender registrant but is not a public registry-qualified juvenile offender registrant is not required to register under any of those divisions if a juvenile court issues an order declassifying the delinquent child as a juvenile offender registrant pursuant to section 2152.84 or 2152.85 of the Revised Code.

(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of section 2950.04 of the Revised Code, and the registration is complete as described in that division.

(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

(1) The offender's or delinquent child's name, any aliases used by the offender or delinquent child, and a photograph of the offender or delinquent child;

(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, all of the information described in division (C)(4) of section 2950.04 of the Revised Code;

(5) Regarding an offender who is registering under a duty imposed under division (A)(2) or (4) of this section as a result of the offender attending a school or institution of higher education on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, all of the information described in division (C)(5) of section 2950.04 of the Revised Code;

(6) The identification license plate number issued by this state or any other state of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under section 4507.50 or 4507.51 of the Revised Code or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the child-victim oriented offense

resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in section 109.573 [109.57.3] of the Revised Code, from the offender or delinquent child, a citation for, and the name of, the child-victim oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that child-victim oriented offense;

(9) Copies of travel and immigration documents;

(10) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

(11) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

(12) Any other information required by the bureau of criminal identification and investigation.

(D) Division (D) of section 2950.04 of the Revised Code applies when an offender or delinquent child registers with a sheriff pursuant to this section.

(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice as required in accordance with those divisions or that division.

(F) An offender or delinquent child who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code, with the duty commencing on the date specified in division (A) of that section.

(G) If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county. The notice of intent to reside shall contain all of the following information:

(1) The information specified in divisions (G)(1) and (2) of section 2950.04 of the Revised Code;

(2) The child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child

(H) If, immediately prior to January 1, 2008, an offender or delinquent child who was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a child-victim oriented offense or a sexually oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, was required by division (A) of this section or section 2950.04 of the Revised Code to register and if, on or after January 1, 2008, that offense is a child-victim oriented offense as that term is defined in section 2950.01 of the Revised Code on and after January 1, 2008, the duty to register that is imposed pursuant to this section on and after January 1, 2008, shall be considered, for purposes of section 2950.07 of the Revised Code and for

all other purposes, to be a continuation of the duty imposed upon the offender or delinquent child prior to January 1, 2008, under this section or section 2950.04 of the Revised Code.

HISTORY: 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.04.2] § 2950.042 Parole officers to verify compliance with registration requirements.

By January 1, 2008, the department of rehabilitation and correction, the adult parole authority, and the department of youth services shall adopt rules to require parole officers to verify within three days of an offender's or delinquent child's release that the offender or delinquent child has registered as provided in divisions (A)(2) and (3) of section 2950.04 of the Revised Code or in divisions (A)(2) and (3) of section 2950.041 [2950.04.1] of the Revised Code, whichever is applicable.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.04.3] § 2950.043 Sheriff to notify attorney general of registration on or after 12-1-07.

If an offender or delinquent child registers with a sheriff pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on or after December 1, 2007, if the offender or delinquent child previously has not registered under either section with that sheriff or any other sheriff, and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, as soon as practicable after the registration, the sheriff shall contact the attorney general, inform the attorney general of the registration, and forward to the attorney general in the manner specified in division (D) of section 2950.04 of the Revised Code all of the information and material specified in that division. Upon being informed of the registration and receiving the information and material, the attorney general shall comply with division (B) of section 2950.031 [2950.03.1] of the Revised Code.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

The effective date is set by § 3 of 152 v S 10.

§ 2950.05 Notice of change of address; registration of new address.

Effective until 1-1-08.

(A) If an offender or delinquent child is required to register pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or delinquent child, at least twenty days prior to changing the offender's or delinquent child's residence address, or the offender, at least twenty days prior to changing the address of the offender's school or institution of higher

education and not later than five days after changing the address of the offender's place of employment, during the period during which the offender or delinquent child is required to register, shall provide written notice of the residence, school, institution of higher education, or place of employment address change, as applicable, to the sheriff with whom the offender or delinquent child most recently registered the address under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code or under division (B) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the notice shall be considered the person's residence address and registered residence address, until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than five days after changing the place of employment address, as applicable, also shall register the new address in the manner described in divisions (B) and (C) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the registration shall be considered the person's residence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in

another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D)(1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's residence, school, institution of higher education, or place of employment address or the delinquent child's residence address, a sheriff promptly shall forward the new address to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under section 2950.13 of the Revised Code and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender registers a new residence, school, institution of higher education, or place of employment address or a delinquent child registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable.

(E)(1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(F)(1) It is an affirmative defense to a charge of a violation of division (E)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing

notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (E)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(G) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in section 2950.07 of the Revised Code.

(H) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175, Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

§ 2950.05 Notice of change of address; registration of new address; notice of change in vehicle information, email addresses, internet identifiers, or telephone numbers.

Effective 1-1-08.

(A) If an offender or delinquent child is required to register pursuant to division (A)(2), (3), or (4) of section

2950.04 or 2950.041 [2950.04.1] of the Revised Code, the delinquent child if not a public registry-qualified juvenile offender registrant shall provide written notice of any change of residence address, and the offender and public registry-qualified juvenile offender registrant shall provide notice of any change of residence, school, institution of higher education, or place of employment address, to the sheriff with whom the offender or delinquent child most recently registered the address under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code or under division (B) of this section. A written notice of a change of school, institution of higher education, or place of employment address also shall include the name of the new school, institution of higher education, or place of employment. The delinquent child if not a public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the residence address, and the offender and public registry-qualified juvenile offender registrant shall provide the written notice at least twenty days prior to changing the address of the residence, school, or institution of higher education and not later than three days after changing the address of the place of employment. They shall provide the written notices during the period they are required to register. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (I) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the notice shall be considered the person's residence address and registered residence address until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender or public registry-qualified juvenile offender registrant is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child who is not a public registry-qualified juvenile offender registrant is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than three days after changing the place of employment address, as applicable, also shall register the new address in the manner, and using the form, described in divisions (B) and (C) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that

sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (I) of this section, sections 2950.06 to 2950.13 of the Revised Code, and sections 311.171 [311.17.1] and 2919.24 of the Revised Code, the place or places so described in the registration shall be considered the person's residence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D) If an offender or delinquent child who is a public registry-qualified juvenile offender registrant is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, the offender or public registry-qualified juvenile offender registrant shall provide written notice, within three days of the change, of any change in vehicle information, email addresses, internet identifiers, or telephone numbers registered to or used by the offender or registrant to the sheriff with whom the offender or registrant has most recently registered under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(E)(1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment address or the residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant, a sheriff promptly shall forward the new address to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. Upon receiving from an offender or public registry-qualified juvenile offender registrant notice of vehicle and identifier changes pursuant to division (D) of this section, a sheriff promptly shall forward the new information to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to section 2950.13 of the Revised Code. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under section 2950.13 of the Revised Code and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender or public registry-qualified juvenile offender registrant registers a new residence, school, institution of higher education, or place of em-

ployment address or a delinquent child who is not a public registry-qualified juvenile offender registrant registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, whichever is applicable.

(F)(1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section or a change in vehicle information or identifiers pursuant to division (D) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(G)(1) It is an affirmative defense to a charge of a violation of division (F)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (F)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(H) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in section 2950.07 of the Revised Code.

(I) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175, Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Analogous to former RC § 2950.05 (130 v 671), repealed 146 v H 180, § 2, eff 7-1-97.

§ 2950.06 Periodic verification of current address.

Effective until 1-1-08.

(A) An offender or delinquent child who is required to register a residence address pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code shall periodically verify the offender's or delinquent child's current residence address, and an offender who is required to register a school, institution of higher education, or place of employment address pursuant to either of those sections shall periodically verify the address of the offender's current school, institution of higher education, or place of employment, in accordance with this section. The frequency of verification shall be determined in accordance with division (B) of this section, and the manner of verification shall be determined in accordance with division (C) of this section.

(B) The frequency with which an offender or delinquent child must verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall be determined as follows:

(1) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, the offender shall verify the offender's current residence

address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section every ninety days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register if any of the following applies:

(a) The offender or delinquent child is required to register based on a sexually oriented offense, and either the offender has been adjudicated a sexual predator relative to the sexually oriented offense, the delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense and the court has not subsequently entered a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a sexual predator, or the offender is required to register as a result of an aggravated sexually oriented offense.

(b) The offender or delinquent child is required to register based on a child-victim oriented offense, and either the offender has been adjudicated a child-victim predator relative to the child-victim oriented offense or the delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense and the court has not subsequently entered a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a child-victim predator.

(2) In all circumstances not described in division (B)(1) of this section, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section on each anniversary of the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

If, prior to the effective date of this amendment, an offender or delinquent child registered with a sheriff under a duty imposed under section 2950.04 of the Revised Code as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense and if, on or after the effective date of this amendment, that offense no longer is a sexually oriented offense but instead is a child-victim oriented offense, the duty to register that is imposed on the offender or delinquent child pursuant to section 2950.041 [2950.04.1] of the Revised Code is a continuation of the duty imposed upon the offender prior to the effective date of this amendment under section 2950.04 of the Revised Code and, for purposes of divisions (B)(1) and (2) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under section 2950.04 of the Revised Code.

(C)(1) An offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall verify the address with the sheriff with whom the offender or delinquent child most recently registered the address by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required pursuant to division (B) of this section and no later than the date so

required for verification, and completing and signing a copy of the verification form prescribed by the bureau of criminal identification and investigation. The sheriff or designee shall sign the completed form and indicate on the form the date on which it is so completed. The verification required under this division is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this division.

(2) To facilitate the verification of an offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, under division (C)(1) of this section, the sheriff with whom the offender or delinquent child most recently registered the address may mail a nonforwardable verification form prescribed by the bureau of criminal identification and investigation to the offender's or delinquent child's last reported address and to the last reported address of the parents of the delinquent child, with a notice that conspicuously states that the offender or delinquent child must personally appear before the sheriff or a designee of the sheriff to complete the form and the date by which the form must be so completed. Regardless of whether a sheriff mails a form to an offender or delinquent child and that child's parents, each offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to division (A) of this section shall personally appear before the sheriff or a designee of the sheriff to verify the address in accordance with division (C)(1) of this section.

(D) The verification form to be used under division (C) of this section shall contain all of the following:

(1) Except as provided in division (D)(2) of this section, the current residence address of the offender or delinquent child, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of verification or if the offender or delinquent child knows at the time of verification that the offender or delinquent child will be commencing employment with that employer subsequent to verification, the name and address of the offender's school or institution of higher education if the offender attends one at the time of verification or if the offender knows at the time of verification that the offender will be commencing attendance at that school or institution subsequent to verification, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender who is verifying a current school, institution of higher education, or place of employment address, the current address of the school, institution of higher education, or place of employment of the offender and any other information required by the bureau of criminal identification and investigation.

(E) Upon an offender's or delinquent child's personal appearance and completion of a verification form under division (C) of this section, a sheriff promptly shall forward a copy of the verification form to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted by the attorney general pursuant to section 2950.13 of the Revised Code. If an offender verifies a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (D)(1) of this section, the sheriff also shall

provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's name and that the offender has verified or provided that address as a place at which the offender attends school or an institution of higher education or at which the offender is employed. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under section 2950.13 of the Revised Code.

(F) No person who is required to verify a current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to divisions (A) to (C) of this section shall fail to verify a current residence, school, institution of higher education, or place of employment address, as applicable, in accordance with those divisions by the date required for the verification as set forth in division (B) of this section, provided that no person shall be prosecuted or subjected to a delinquent child proceeding for a violation of this division, and that no parent, guardian, or custodian of a delinquent child shall be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of this division, prior to the expiration of the period of time specified in division (G) of this section.

(G)(1) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the sheriff with whom the offender or delinquent child is required to verify the current address, on the day following that date required for the verification, shall send a written warning to the offender or to the delinquent child and that child's parents, at the offender's or delinquent child's and that child's parents' last known residence, school, institution of higher education, or place of employment address, as applicable, regarding the offender's or delinquent child's duty to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable.

The written warning shall do all of the following:

(a) Identify the sheriff who sends it and the date on which it is sent;

(b) State conspicuously that the offender or delinquent child has failed to verify the offender's current residence, school, institution of higher education, or place of employment address or the delinquent child's current residence address by the date required for the verification;

(c) Conspicuously state that the offender or delinquent child has seven days from the date on which the warning is sent to verify the current residence, school, institution of higher education, or place of employment address, as applicable, with the sheriff who sent the warning;

(d) Conspicuously state that a failure to timely verify the specified current address or addresses is a felony offense;

(e) Conspicuously state that, if the offender verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will not be prosecuted or subjected to a

delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian will not be prosecuted based on a failure of the delinquent child to timely verify an address;

(f) Conspicuously state that, if the offender does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will be arrested or taken into custody, as appropriate, and prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian may be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address.

(2) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the offender or delinquent child shall not be prosecuted or subjected to a delinquent child proceeding for a violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian shall not be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address, as applicable, unless the seven-day period subsequent to that date that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address has expired and the offender or delinquent child, prior to the expiration of that seven-day period, has not verified the current address. Upon the expiration of the seven-day period that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address, if the offender or delinquent child has not verified the current address, all of the following apply:

(a) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, promptly shall notify the bureau of criminal identification and investigation of the failure.

(b) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, the sheriff of the county in which the offender or delinquent child resides, the sheriff of the county in which is located the offender's school, institution of higher education, or place of employment address that was to be verified, or a deputy of the appropriate sheriff, shall locate the offender or delinquent child, promptly shall seek a warrant for the arrest or taking into custody, as appropriate, of the offender or delinquent child for the violation of division (F) of this section and shall arrest the offender or take the child into custody, as appropriate.

(c) The offender or delinquent child is subject to prosecution or a delinquent child proceeding for the violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian may be subject to prosecution for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of that division.

(H) An offender who is required to verify the offender's current residence, school, institution of higher education, or place of employment address pursuant to

divisions (A) to (C) of this section and a delinquent child who is required to verify the delinquent child's current residence address pursuant to those divisions shall do so for the period of time specified in section 2950.07 of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485. Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2950.06 Periodic verification of current address.

Effective 1-1-08.

(A) An offender or delinquent child who is required to register a residence address pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code shall periodically verify the offender's or delinquent child's current residence address, and an offender or public registry-qualified juvenile offender registrant who is required to register a school, institution of higher education, or place of employment address pursuant to any of those divisions shall periodically verify the address of the offender's or public registry-qualified juvenile offender registrant's current school, institution of higher education, or place of employment, in accordance with this section. The frequency of verification shall be determined in accordance with division (B) of this section, and the manner of verification shall be determined in accordance with division (C) of this section.

(B) The frequency with which an offender or delinquent child must verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall be determined as follows:

(1) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier I sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section on each anniversary of the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register

(2) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier II sex offender/child-victim offender, the offender shall verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address, in accordance with division (C) of this section every one hundred eighty days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(3) Regardless of when the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is required to register was committed, if the offender or delinquent child is a tier III sex offender/child-victim offender, the offender shall verify the offend-

er's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child shall verify the delinquent child's current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, in accordance with division (C) of this section every ninety days after the offender's or delinquent child's initial registration date during the period the offender or delinquent child is required to register.

(4) If, prior to January 1, 2008, an offender or delinquent child registered with a sheriff under a duty imposed under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code as a result of a conviction of, plea of guilty to, or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, the duty to register that is imposed on the offender or delinquent child pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code on and after January 1, 2008, is a continuation of the duty imposed upon the offender prior to January 1, 2008, under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and, for purposes of divisions (B)(1), (2), and (3) of this section, the offender's initial registration date related to that offense is the date on which the offender initially registered under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code.

(C)(1) An offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address pursuant to division (A) of this section shall verify the address with the sheriff with whom the offender or delinquent child most recently registered the address by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required pursuant to division (B) of this section and no later than the date so required for verification, and completing and signing a copy of the verification form prescribed by the bureau of criminal identification and investigation. The sheriff or designee shall sign the completed form and indicate on the form the date on which it is so completed. The verification required under this division is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this division.

(2) To facilitate the verification of an offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, under division (C)(1) of this section, the sheriff with whom the offender or delinquent child most recently registered the address may mail a nonforwardable verification form prescribed by the bureau of criminal identification and investigation to the offender's or delinquent child's last reported address and to the last reported address of the parents of the delinquent child, with a notice that conspicuously states that the offender or delinquent child must personally appear before the sheriff or a designee of the sheriff to complete the form and the date by which the form must be so completed. Regardless of whether a sheriff mails a form to an offender or delinquent child and that child's parents, each offender or delinquent child who is required to verify the offender's or delinquent child's current residence, school,

institution of higher education, or place of employment address, as applicable, pursuant to division (A) of this section shall personally appear before the sheriff or a designee of the sheriff to verify the address in accordance with division (C)(1) of this section.

(D) The verification form to be used under division (C) of this section shall contain all of the following:

(1) Except as provided in division (D)(2) of this section, the current residence address of the offender or delinquent child, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of verification or if the offender or delinquent child knows at the time of verification that the offender or delinquent child will be commencing employment with that employer subsequent to verification, the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of verification or if the offender or public registry-qualified juvenile offender registrant knows at the time of verification that the offender will be commencing attendance at that school or institution subsequent to verification, and any other information required by the bureau of criminal identification and investigation.

(2) Regarding an offender or public registry-qualified juvenile offender registrant who is verifying a current school, institution of higher education, or place of employment address, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant and any other information required by the bureau of criminal identification and investigation.

(E) Upon an offender's or delinquent child's personal appearance and completion of a verification form under division (C) of this section, a sheriff promptly shall forward a copy of the verification form to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted by the attorney general pursuant to section 2950.13 of the Revised Code. If an offender or public registry-qualified juvenile offender registrant verifies a school, institution of higher education, or place of employment address, or provides a school or institution of higher education address under division (D)(1) of this section, the sheriff also shall provide notice to the law enforcement agency with jurisdiction over the premises of the school, institution of higher education, or place of employment of the offender's or public registry-qualified juvenile offender registrant's name and that the offender or public registry-qualified juvenile offender registrant has verified or provided that address as a place at which the offender or public registry-qualified juvenile offender registrant attends school or an institution of higher education or at which the offender or public registry-qualified juvenile offender registrant is employed. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under section 2950.13 of the Revised Code.

(F) No person who is required to verify a current residence, school, institution of higher education, or place of employment address, as applicable, pursuant to divisions (A) to (C) of this section shall fail to verify a current residence, school, institution of higher education, or place

of employment address, as applicable, in accordance with those divisions by the date required for the verification as set forth in division (B) of this section, provided that no person shall be prosecuted or subjected to a delinquent child proceeding for a violation of this division, and that no parent, guardian, or custodian of a delinquent child shall be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of this division, prior to the expiration of the period of time specified in division (G) of this section.

(G)(1) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the sheriff with whom the offender or delinquent child is required to verify the current address, on the day following that date required for the verification, shall send a written warning to the offender or to the delinquent child and that child's parents, at the offender's or delinquent child's and that child's parents' last known residence, school, institution of higher education, or place of employment address, as applicable, regarding the offender's or delinquent child's duty to verify the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable.

The written warning shall do all of the following:

(a) Identify the sheriff who sends it and the date on which it is sent;

(b) State conspicuously that the offender or delinquent child has failed to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address or the current residence address of a delinquent child who is not a public registry-qualified juvenile offender registrant by the date required for the verification;

(c) Conspicuously state that the offender or delinquent child has seven days from the date on which the warning is sent to verify the current residence, school, institution of higher education, or place of employment address, as applicable, with the sheriff who sent the warning;

(d) Conspicuously state that a failure to timely verify the specified current address or addresses is a felony offense;

(e) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant verifies the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant verifies the current residence address with that sheriff within that seven-day period, the offender or delinquent child will not be prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian will not be prosecuted based on a failure of the delinquent child to timely verify an address;

(f) Conspicuously state that, if the offender or public registry-qualified juvenile offender registrant does not verify the current residence, school, institution of higher education, or place of employment address or the delinquent child who is not a public registry-qualified juvenile offender registrant does not verify the current residence address with that sheriff within that seven-day period, the offender or delinquent child will be arrested or taken into

custody, as appropriate, and prosecuted or subjected to a delinquent child proceeding for a failure to timely verify a current address and the delinquent child's parent, guardian, or custodian may be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address.

(2) If an offender or delinquent child fails to verify a current residence, school, institution of higher education, or place of employment address, as applicable, as required by divisions (A) to (C) of this section by the date required for the verification as set forth in division (B) of this section, the offender or delinquent child shall not be prosecuted or subjected to a delinquent child proceeding for a violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian shall not be prosecuted for a violation of section 2919.24 of the Revised Code based on the delinquent child's failure to timely verify a current residence address and, if the delinquent child is a public registry-qualified juvenile offender registrant, the current school, institution of higher education, or place of employment address, as applicable, unless the seven-day period subsequent to that date that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address has expired and the offender or delinquent child, prior to the expiration of that seven-day period, has not verified the current address. Upon the expiration of the seven-day period that the offender or delinquent child is provided under division (G)(1) of this section to verify the current address, if the offender or delinquent child has not verified the current address, all of the following apply:

(a) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, promptly shall notify the bureau of criminal identification and investigation of the failure.

(b) The sheriff with whom the offender or delinquent child is required to verify the current residence, school, institution of higher education, or place of employment address, as applicable, the sheriff of the county in which the offender or delinquent child resides, the sheriff of the county in which is located the offender's or public registry-qualified juvenile offender registrant's school, institution of higher education, or place of employment address that was to be verified, or a deputy of the appropriate sheriff, shall locate the offender or delinquent child, promptly shall seek a warrant for the arrest or taking into custody, as appropriate, of the offender or delinquent child for the violation of division (F) of this section and shall arrest the offender or take the child into custody, as appropriate.

(c) The offender or delinquent child is subject to prosecution or a delinquent child proceeding for the violation of division (F) of this section, and the delinquent child's parent, guardian, or custodian may be subject to prosecution for a violation of section 2919.24 of the Revised Code based on the delinquent child's violation of that division.

(H) An offender or public registry-qualified juvenile offender registrant who is required to verify the offender's or public registry-qualified juvenile offender registrant's current residence, school, institution of higher education, or place of employment address pursuant to divisions (A) to (C) of this section and a delinquent child who is not a public registry-qualified juvenile offender registrant who is required to verify the delinquent child's

current residence address pursuant to those divisions shall do so for the period of time specified in section 2950.07 of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2950.06 (130 v 671), repealed 146 v H 180, § 2, eff 7-1-97.

§ 2950.07 Commencement of duty to register; duration.

Effective until 1-1-08.

(A) The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under section 2950.041 [2950.04.1] of the Revised Code, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of the offender's release from a prison term, term of imprisonment, or any other type of confinement or on the effective date of this amendment, whichever is later.

(2) If the offender's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses on the date of entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on July 1, 1997, for a duty under section 2950.04 or the effective date of this amendment for a duty under section 2950.041 [2950.04.1] of the Revised Code, whichever is later, and commences regarding addresses of schools, institutions of higher education, and places of employment on the date of entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense or on the effective date of this amendment, whichever is later.

(3) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of section 2950.04 of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses fourteen days after July 1, 1997, and commences regarding addresses of schools, institutions of higher education, and places of

employment fourteen days after the effective date of this amendment.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(3)(a) or (b) of section 2950.04 or division (A)(3)(a) or (b) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state or on March 30, 1999, for a duty under section 2950.04 of the Revised Code or the effective date of this amendment for a duty under section 2950.041 of the Revised Code, whichever is later, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the effective date of this amendment or on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, whichever is later, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state or on January 1, 2002, for a duty under section 2950.04 of the Revised Code or the effective date of this amendment for a duty under section 2950.041 [2950.04.1] of the Revised Code, whichever is later.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of section 2950.041 [2950.04.1] of the Revised Code, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2)(a) of section 2950.041 [2950.04.1] of the Revised Code and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to sections 2152.83 of the Revised Code, the delinquent child's duty to comply with those sections commences on the date of entry of the court's order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's duty to register is imposed pursuant to division (A)(1)(c) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections regarding residence addresses is a continuation of the offender's former duty to register regarding residence addresses imposed prior to the effective date of this amendment under section 2950.04 of the Revised Code and shall be considered for all purposes as having commenced on the date that the offender's former duty under that section commenced. The offender's duty to

comply with those sections commences regarding addresses of schools, institutions of higher education, and places of employment on the effective date of this amendment.

(8) If the delinquent child's duty to register is imposed pursuant to division (A)(2)(b) of section 2950.041 [2950.04.1] of the Revised Code, the delinquent child's duty to comply with those sections is a continuation of the delinquent child's former duty to register imposed prior to the effective date of this amendment under section 2950.04 of the Revised Code and shall be considered for all purposes as having commenced on the date that the delinquent child's former duty under that section commenced or commences.

(B) The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the offense is a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense, if the offense is a sexually oriented offense and the offender has the duty to register as a result of an aggravated sexually oriented offense, or if the offense is a child-victim oriented offense and the offender or delinquent child has been adjudicated a child-victim predator relative to the child-victim oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who has been adjudicated a sexual predator relative to the sexually oriented offense or who has been adjudicated a child-victim predator relative to the child-victim oriented offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a sexual predator or child-victim predator, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(2) or (3) of this section. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is adjudicated a sexual predator or is adjudicated a child-victim predator or is imposed under this division for an aggravated sexually oriented offense, or the adjudication, classification, or conviction that subjects the offender to this division, be removed or terminated.

(2) If the judge who sentenced the offender or made the disposition for the delinquent child for committing the sexually oriented offense that is not a registration-exempt sexually oriented offense or the child-victim oriented offense, or the successor in office of the juvenile court judge who made the delinquent child disposition, determined pursuant to division (E) of section 2950.09 or

2950.091 [2950.09.1] or pursuant to division (B) of section 2152.83, section 2152.84, or section 2152.85 of the Revised Code that the offender or delinquent child is a habitual sex offender or a habitual child-victim offender, or if the offender or delinquent child is automatically classified a habitual child-victim offender pursuant to division (E) of section 2950.091 [2950.09.1] of the Revised Code, the offender's duty to comply with those sections continues either until the offender's death or for twenty years, determined as provided in this division, and the delinquent child's duty to comply with those sections continues for twenty years. If a delinquent child is so determined or classified to be a habitual sex offender or a habitual child-victim offender and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a habitual sex offender or habitual child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the delinquent child under division (B)(3) of this section. Except as otherwise provided in this division, the offender's duty to comply with those sections continues until the offender's death. If a lifetime duty to comply is imposed under this division on an offender, in no case shall that lifetime duty, or the determination that subjects the offender to this division, be removed or terminated. The offender's duty to comply with those sections continues for twenty years if the offender is a habitual sex offender and both of the following apply:

(a) At least one of the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination is a violation of division (A)(1) or (5) of section 2907.06 of the Revised Code involving a victim who is eighteen years of age or older, a violation of division (A), (B), or (E) of section 2907.08 of the Revised Code involving a victim who is eighteen years of age or older, or a violation of section 2903.211 [2903.21.1] of the Revised Code that is a misdemeanor;

(b) The total of all the sexually oriented offenses of which the offender has been convicted or to which the offender has pleaded guilty and that are included in the habitual sex offender determination does not include at least two sexually oriented offenses that are not described in division (B)(2)(a) of this section.

(3) If neither division (B)(1) nor (B)(2) of this section applies, the offender's or delinquent child's duty to comply with those sections continues for ten years. If a delinquent child is classified pursuant to section 2152.82 or 2152.83 of the Revised Code a juvenile offender registrant and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination.

(C)(1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented of-

fense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the separately calculated periods of time shall be complied with independently.

If a delinquent child has been adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to the offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing on or after January 1, 2002, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense, if the order containing the classification also contains a determination by the juvenile judge that the child is a sexual predator or a habitual sex offender or that the child is a child-victim predator or a habitual child-victim offender, and if the juvenile judge or the judge's successor in office subsequently determines pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a sexual predator or habitual sex offender or no longer is a child-victim predator or habitual child-victim offender, whichever is applicable, the judge's subsequent determination does not affect the date of commencement of the delinquent child's duty to comply with sections 2950.04,

2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code as determined under division (A) of this section.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been convicted or pleaded guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2950.07 Commencement of duty to register; duration.

Effective 1-1-08.

(A) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code commences on whichever of the following dates is applicable:

(1) If the offender's duty to register is imposed pursuant to division (A)(1)(a) of section 2950.04 or division (A)(1)(a) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections

commences immediately after the entry of the judgment of conviction.

(2) If the delinquent child's duty to register is imposed pursuant to division (A)(1)(b) of section 2950.04 or division (A)(1)(b) of section 2950.041 [2950.04.1] of the Revised Code, the delinquent child's duty to comply with those sections commences immediately after the order of disposition.

(3) If the offender's duty to register is imposed pursuant to division (A)(2) of section 2950.04 or division (A)(2) of section 2950.041 [2950.04.1] of the Revised Code, subject to division (A)(7) of this section, the offender's duty to comply with those sections commences on the date of the offender's release from a prison term, a term of imprisonment, or any other type of confinement, or if the offender is not sentenced to a prison term, a term of imprisonment, or any other type of confinement, on the date of the entry of the judgment of conviction of the sexually oriented offense or child-victim oriented offense.

(4) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(4) of section 2950.04 or division (A)(4) of section 2950.041 [2950.04.1] of the Revised Code, the offender's duty to comply with those sections commences regarding residence addresses on the date that the offender begins to reside or becomes temporarily domiciled in this state, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in this state on a full-time or part-time basis or becomes employed in this state, and the delinquent child's duty commences on the date the delinquent child begins to reside or becomes temporarily domiciled in this state.

(5) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of section 2950.041 [2950.04.1] of the Revised Code, if the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and if the delinquent child is committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge or release from custody in the department of youth services secure facility or from the secure facility not operated by the department as described in that division.

(6) If the delinquent child's duty to register is imposed pursuant to division (A)(3) of section 2950.04 or division (A)(3) of section 2950.041 [2950.04.1] of the Revised Code and if either the delinquent child's classification as a juvenile offender registrant is made at the time of the child's disposition for that sexually oriented offense or child-victim oriented offense, whichever is applicable, and the delinquent child is not committed for the sexually oriented offense or child-victim oriented offense to the department of youth services or to a secure facility that is not operated by the department or the child's classification as a juvenile offender registrant is made pursuant to section 2152.83 or division (A)(2) of section 2152.86 of the Revised Code, subject to divisions (A)(7) of this section, the delinquent child's duty to comply with those sections commences on the date of entry of the court's

order that classifies the delinquent child a juvenile offender registrant.

(7) If the offender's or delinquent child's duty to register is imposed pursuant to division (A)(2), (3), or (4) of section 2950.04 or section 2950.041 [2950.04.1] of the Revised Code and if the offender or delinquent child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code as they existed prior to that date, the offender or delinquent child initially shall register in accordance with section 2950.04 or 2950.041 of the Revised Code, whichever is applicable, as it exists on and after January 1, 2008, not later than the earlier of the dates specified in divisions (A)(7)(a) and (b) of this section. The offender's or delinquent child's duty to comply thereafter with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code as they exist on and after January 1, 2008, commences on the date of that initial registration. The offender or delinquent child initially shall register under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code as it exists on and after January 1, 2008, not later than the earlier of the following:

(a) The date that is six months after the date on which the offender or delinquent child received a registered letter from the attorney general under division (A)(2) or (B) of section 2950.031 [2950.03.1] of the Revised Code;

(b) The earlier of the date on which the offender or delinquent child would be required to verify a previously registered address under section 2950.06 of the Revised Code as it exists on and after January 1, 2008, or, if the offender or delinquent child has changed a previously registered address, the date on which the offender or delinquent child would be required to register a new residence, school, institution of higher education, or place of employment address under section 2950.05 of the Revised Code as it exists on and after January 1, 2008.

(8) If the offender's or delinquent child's duty to register was imposed pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and shall be considered for all purposes as having commenced on the date that the offender's duty under that section commenced.

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delin-

quent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death. Regarding a delinquent child who is a tier III sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a tier III sex offender/child-victim offender, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(2) or (3) of this section, based on the reclassification of the child pursuant to section 2152.84 or 2152.85 of the Revised Code as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender. In no case shall the lifetime duty to comply that is imposed under this division on an offender who is a tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a public registry-qualified juvenile offender registrant may have the lifetime duty to register terminated only pursuant to section 2950.15 of the Revised Code.

(2) If the person is an offender who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for twenty-five years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier II sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for twenty years. Regarding a delinquent child who is a tier II sex offender/child-victim offender relative to the offense but is not a public registry-qualified juvenile offender registrant relative to the offense, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is a tier II sex offender/child-victim offender but remains a juvenile offender registrant, the delinquent child's duty to comply with those sections continues for the period of time that is applicable to the delinquent child under division (B)(3) of this section, based on the reclassification of the child pursuant to section 2152.84 or 2152.85 of the Revised Code as a tier I sex offender/child-victim offender.

(3) Except as otherwise provided in this division, if the person is an offender who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the offender's duty to comply with those sections continues for fifteen years. Except as otherwise provided in this division, if the person is a delinquent child who is a tier I sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, the delinquent child's duty to comply with those sections continues for ten years. Regarding a delinquent child who is a juvenile offender registrant and a tier I sex offender/child-victim offender but is not a public registry-qualified juvenile

offender registrant, if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination. A person who is an offender who is a tier I sex offender/child-victim offender may have the fifteen-year duty to register terminated only pursuant to section 2950.15 of the Revised Code.

(C)(1) If an offender has been convicted of or pleaded guilty to a sexually oriented offense and the offender subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, if an offender has been convicted of or pleaded guilty to a child-victim oriented offense and the offender subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, if a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another sexually oriented offense or a child-victim oriented offense, or if a delinquent child has been adjudicated a delinquent child for committing a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant and the child subsequently is adjudicated a delinquent child for committing another child-victim oriented offense or a sexually oriented offense and is classified a juvenile offender registrant relative to that offense or subsequently is convicted of or pleads guilty to another child-victim oriented offense or a sexually oriented offense, the period of time for which the offender or delinquent child must comply with the sections specified in division (A) of this section shall be separately calculated pursuant to divisions (A)(1) to (8) and (B)(1) to (3) of this section for each of the sexually oriented offenses and child-victim oriented offenses, and the offender or delinquent child shall comply with each separately calculated period of time independently.

If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant relative to that offense, and, after attaining eighteen years of age, subsequently is convicted of or pleads guilty to another sexually oriented offense or child-victim oriented offense, the subsequent conviction or guilty plea does not limit, affect, or supersede the duties imposed upon the delinquent child under this chapter relative to the delinquent child's classification as a juvenile offender registrant or as an out-of-state juvenile offender registrant, and the delinquent child shall comply with both those duties and the duties imposed under this chapter relative to the subsequent conviction or guilty plea.

(2) If a delinquent child has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant relative to the offense and if the juvenile judge or the judge's successor in office subsequently reclassifies the offense tier in which the child is classified pursuant to section 2152.84 or 2152.85 of the

Revised Code, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code as determined under division (A) of this section. The child's duty to comply with those sections after the reclassification is a continuation of the child's duty to comply with the sections that was in effect prior to the reclassification, and the duty shall continue for the period of time specified in division (B)(1), (2), or (3) of this section, whichever is applicable.

If, prior to January 1, 2008, an offender had a duty to comply with the sections specified in division (A) of this section as a result of a conviction of or plea of guilty to a sexually oriented offense or child-victim oriented offense as those terms were defined in section 2950.01 of the Revised Code prior to January 1, 2008, or a delinquent child had a duty to comply with those sections as a result of an adjudication as a delinquent child for committing one of those offenses as they were defined prior to January 1, 2008, the period of time specified in division (B)(1), (2), or (3) of this section on and after January 1, 2008, for which a person must comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code applies to the person, automatically replaces the period of time for which the person had to comply with those sections prior to January 1, 2008, and is a continuation of the person's duty to comply with the sections that was in effect prior to the reclassification. If, prior to January 1, 2008, an offender or a delinquent child had a duty to comply with the sections specified in division (A) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for purposes of that period of time shall be determined as specified in section 2950.031 [2950.03.1] or 2950.032 [2950.03.2] of the Revised Code, as applicable.

(D) The duty of an offender or delinquent child to register under this chapter is tolled for any period during which the offender or delinquent child is returned to confinement in a secure facility for any reason or imprisoned for an offense when the confinement in a secure facility or imprisonment occurs subsequent to the date determined pursuant to division (A) of this section. The offender's or delinquent child's duty to register under this chapter resumes upon the offender's or delinquent child's release from confinement in a secure facility or imprisonment.

(E) An offender or delinquent child who has been or is convicted, has pleaded or pleads guilty, or has been or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense may apply to the sheriff of the county in which the offender or delinquent child resides or temporarily is domiciled, or in which the offender attends a school or institution of higher education or is employed, for credit against the duty to register for the time that the offender or delinquent child has complied with the sex offender or child-victim offender registration requirements of another jurisdiction. The sheriff shall grant the offender or delinquent child credit against the duty to register for time for which the offender or delinquent child provides adequate proof that the offender or delinquent child has complied with the sex offender or

child-victim offender registration requirements of another jurisdiction. If the offender or delinquent child disagrees with the determination of the sheriff, the offender or delinquent child may appeal the determination to the court of common pleas of the county in which the offender or delinquent child resides or is temporarily domiciled, or in which the offender attends a school or institution of higher education or is employed.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

Not analogous to former RC § 2950.07 (130 v 671), repealed 146 v H 180, § 2, eff 7-1-97.

§ 2950.08 Persons authorized to inspect information and records.

Effective until 1-1-08.

(A) Subject to division (B) of this section, the statements, information, photographs, and fingerprints required by sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and provided by a person who registers, who provides notice of a change of residence, school, institution of higher education, or place of employment address and registers the new residence, school, institution of higher education, or place of employment address, or who provides verification of a current residence, school, institution of higher education, or place of employment address pursuant to those sections and that are in the possession of the bureau of criminal identification and investigation and the information in the possession of the bureau that was received by the bureau pursuant to section 2950.14 of the Revised Code shall not be open to inspection by the public or by any person other than the following persons:

(1) A regularly employed peace officer or other law enforcement officer;

(2) An authorized employee of the bureau of criminal identification and investigation for the purpose of providing information to a board, administrator, or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

(3) The registrar of motor vehicles, or an employee of the registrar of motor vehicles, for the purpose of verifying and updating any of the information so provided, upon the request of the bureau of criminal identification and investigation.

(B) Division (A) of this section does not apply to any information that is contained in the internet sex offender and child-victim offender database established by the attorney general under division (A)(11) of section 2950.13 of the Revised Code regarding offenders and that is disseminated as described in that division.

HISTORY: 130 v 671 (Eff 10-4-63); 143 v S 140 (Eff 10-2-89); 146 v S 160 (Eff 1-27-97); 146 v H 180, Eff 7-1-97; 150 v S 5, § 1, Eff 7-31-03.

§ 2950.08 Persons authorized to inspect information and records.

Effective 1-1-08.

(A) Subject to division (B) of this section, the statements, information, photographs, fingerprints, and mate-

rial required by sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and provided by a person who registers, who provides notice of a change of residence, school, institution of higher education, or place of employment address and registers the new residence, school, institution of higher education, or place of employment address, or who provides verification of a current residence, school, institution of higher education, or place of employment address pursuant to those sections and that are in the possession of the bureau of criminal identification and investigation and the information in the possession of the bureau that was received by the bureau pursuant to section 2950.14 of the Revised Code shall not be open to inspection by the public or by any person other than the following persons:

(1) A regularly employed peace officer or other law enforcement officer;

(2) An authorized employee of the bureau of criminal identification and investigation for the purpose of providing information to a board, administrator, or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

(3) The registrar of motor vehicles, or an employee of the registrar of motor vehicles, for the purpose of verifying and updating any of the information so provided, upon the request of the bureau of criminal identification and investigation.

(B) Division (A) of this section does not apply to any information that is contained in the internet sex offender and child-victim offender database established by the attorney general under division (A)(11) of section 2950.13 of the Revised Code regarding offenders and that is disseminated as described in that division.

HISTORY: 130 v 671 (Eff 10-4-63); 143 v S 140 (Eff 10-2-89); 146 v S 160 (Eff 1-27-97); 146 v H 180. Eff 7-1-97; 150 v S 5, § 1, Eff 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 7 of S.B. 5 (150 v —) read as follows:

SECTION 7. (A) Section 2950.08 of the Revised Code is presented in Section 1 of this act as a composite of the section as amended by both Am. Sub. H.B. 180 and Am. Sub. S.B. 160 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in Section 1 of this act.

The effective date is set by section 5 of HB 180.

See provisions, § 5 of HB 180 (146 v —) following RC § 2935.36.

[§ 2950.08.1] § 2950.081 Disclosure of sex offender registration information in possession of sheriff.

Effective until 1-1-08.

(A) Any statements, information, photographs, or fingerprints that are required to be provided, and that are provided, by an offender or delinquent child pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code and that are in the possession of a county sheriff are public records open to public inspection under section 149.43 of the Revised Code and shall be included in the internet sex offender and child-victim offender database established and maintained

under section 2950.13 of the Revised Code to the extent provided in that section.

(B) Except when the child is classified a juvenile offender registrant and the act that is the basis of the classification is a violation of, or an attempt to commit a violation of, section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child, a violation of section 2907.02 of the Revised Code, or an attempt to commit a violation of that section, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, or fingerprints that are provided by a juvenile offender registrant who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

HISTORY: 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03.

[§ 2950.08.1] § 2950.081 Disclosure of sex offender registration information in possession of sheriff; internet database provisions.

Effective 1-1-08.

(A) Any statements, information, photographs, fingerprints, or materials that are required to be provided, and that are provided, by an offender or delinquent child pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code and that are in the possession of a county sheriff are public records open to public inspection under section 149.43 of the Revised Code and shall be included in the internet sex offender and child-victim offender database established and maintained under section 2950.13 of the Revised Code to the extent provided in that section.

(B) Except when the child is classified a public registry-qualified juvenile offender registrant, the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, fingerprints, or materials that are provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to this chapter and that are in the possession of a county sheriff.

(C) If a sheriff establishes on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials that are described in division (A) of this section, that are not prohibited from inclusion by division (B) of this section, and that pertain to offenders or delinquent children who register in the sheriff's county, in addition to all of the other information and materials included, the sheriff shall include in the database a chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of tier I sex offender/child-victim offender, tier II sex offender/child-victim offender, and tier III sex offender/child-victim offender and for each offender or delinquent child in relation to whom information and materials are provided a statement as to whether the offender or delinquent child is a tier I sex offender/child-victim offenders, a tier II sex offender/child-victim offenders, or a tier III sex offender/child-victim offenders.

HISTORY: 149 v S 3, Eff 1-1-2002; 150 v S 5, § 1, Eff 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.09 Classification as sexual predator; determination hearing; petition for removal from classification.

Effective until 1-1-08.

(A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if the sexually oriented offense is a violent sex offense or a designated homicide, assault, or kidnapping offense and the offender is adjudicated a sexually violent predator in relation to that offense, the conviction of or plea of guilty to the offense and the adjudication as a sexually violent predator automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment a sexually oriented offense that is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and if either the person is sentenced under section 2971.03 of the Revised Code, or the court imposes upon the offender a sentence of life without parole under division (B) of section 2907.02 of the Revised Code, the conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of this chapter. If a person is convicted of or pleads guilty to committing on or after the effective date of this amendment attempted rape and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a sexual predator for purposes of this chapter. If a person is convicted, pleads guilty, or is adjudicated a delinquent child, in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required, under the law of the jurisdiction in which the person was convicted, pleaded guilty, or was adjudicated, to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person as a sexual predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section. In all other cases, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense may be classified as a sexual predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of section 2152.83 of the Revised Code.

(B)(1)(a) The judge who is to impose sentence on a person who is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator if any of the following circumstances apply:

(i) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is not a sexually violent offense.

(ii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that is not a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment for which sentence is imposed under section 2971.03 of the Revised Code or for which a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code, and that is not attempted rape committed on or after the effective date of this amendment when the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, and either of the following applies: the sexually oriented offense is a violent sex offense other than a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and other than attempted rape committed on or after that date when the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code, and a sexually violent predator specification was not included in the indictment, count in the indictment, or information charging the violent sex offense; or the sexually oriented offense is a designated homicide, assault, or kidnapping offense and either a sexual motivation specification or a sexually violent predator specification, or both such specifications, were not included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense.

(iii) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after May 7, 2002, for a sexually oriented offense that is not a registration-exempt sexually oriented offense, and that offender was acquitted of a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually oriented offense.

(b) The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing as provided in this division to determine whether the child is to be classified as a sexual predator if either of the following applies:

(i) The judge is required by section 2152.82 or division (A) of section 2152.83 of the Revised Code to classify the child a juvenile offender registrant.

(ii) Division (B) of section 2152.83 of the Revised Code applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the sexually oriented offense for

which sentence is to be imposed is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by section 2929.19 of the Revised Code. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of section 2152.82 or 2152.83 of the Revised Code. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

(3) In making a determination under divisions (B)(1) and (4) of this section as to whether an offender or delinquent child is a sexual predator, the judge shall consider all relevant factors, including, but not limited to, all of the following:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;
- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;
- (e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;
- (g) Any mental illness or mental disability of the offender or delinquent child;
- (h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;
- (j) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

(4) After reviewing all testimony and evidence presented at the hearing conducted under division (B)(1) of this section and the factors specified in division (B)(3) of this section, the court shall determine by clear and convincing evidence whether the subject offender or delinquent child is a sexual predator. If the court determines that the subject offender or delinquent child is not a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is not a sexual predator and the reason or reasons why the court determined that the subject offender or delinquent child is not a sexual predator. If the court determines by clear and convincing evidence that the subject offender or delinquent child is a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is a sexual predator and shall specify that the determination was pursuant to division (B) of this section. In any case in which the sexually oriented offense in question is an aggravated sexually oriented offense, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence that the offender's offense is an aggravated sexually oriented offense. The offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense in question may appeal as a matter of right the court's determination under this division as to whether the offender or delinquent child is, or is not, a sexual predator.

(5) A hearing shall not be conducted under division (B) of this section regarding an offender if any of the following applies:

(a) The sexually oriented offense in question is a sexually violent offense, the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification, and the offender is convicted of or pleads guilty to that sexually violent predator specification.

(b) The sexually oriented offense in question is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment, and either the offender is sentenced under section 2971.03 of the Revised Code, or a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code.

(c) The sexually oriented offense in question is attempted rape committed on or after the effective date of this amendment, and the offender also was convicted of or pleaded guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(C)(1) If a person was convicted of or pleaded guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense prior to January 1, 1997, if the person was not sentenced for the offense on or after January 1, 1997, and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall do whichever of the following is applicable:

(a) If the sexually oriented offense was an offense described in division (D)(1)(c) of section 2950.01 of the Revised Code or was a violent sex offense, the department shall notify the court that sentenced the offender of this fact, and the court shall conduct a hearing to determine whether the offender is a sexual predator.

(b) If division (C)(1)(a) of this section does not apply, the department shall determine whether to recommend that the offender be adjudicated a sexual predator. In making a determination under this division as to whether to recommend that the offender be adjudicated a sexual predator, the department shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. If the department determines that it will recommend that the offender be adjudicated a sexual predator, it immediately shall send the recommendation to the court that sentenced the offender. If the department determines that it will not recommend that the offender be adjudicated a sexual predator, it immediately shall send its determination to the court that sentenced the offender. In all cases, the department shall enter its determination and recommendation in the offender's institutional record, and the court shall proceed in accordance with division (C)(2) of this section.

(2)(a) If the department of rehabilitation and correction sends to a court a notice under division (C)(1)(a) of this section, the court shall conduct a hearing to determine whether the subject offender is a sexual predator. If, pursuant to division (C)(1)(b) of this section, the department sends to a court a recommendation that an offender be adjudicated a sexual predator, the court is not bound by the department's recommendation, and the court shall conduct a hearing to determine whether the offender is a sexual predator. In any case, the court shall not make a determination as to whether the offender is, or is not, a sexual predator without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment.

(b) If, pursuant to division (C)(1)(b) of this section, the department sends to the court a determination that it is not recommending that an offender be adjudicated a sexual predator, the court shall not make any determination as to whether the offender is, or is not, a sexual predator but shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the department made its determination or previously has been convicted of or pleaded guilty to a child-victim oriented offense.

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code without a hearing. In determining whether to impose the community notification requirement, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The court shall include in the offender's institutional record any determi-

nation made under this division as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender.

(c) Upon scheduling a hearing under division (C)(2)(a) or (b) of this section, the court shall give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense, or that prosecutor's successor in office, notice of the date, time, and place of the hearing. If the hearing is scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator, the prosecutor who is given the notice may contact the department of rehabilitation and correction and request that the department provide to the prosecutor all information the department possesses regarding the offender that is relevant and necessary for use in making the determination as to whether the offender is a sexual predator and that is not privileged or confidential under law. If the prosecutor makes a request for that information, the department promptly shall provide to the prosecutor all information the department possesses regarding the offender that is not privileged or confidential under law and that is relevant and necessary for making that determination. A hearing scheduled under division (C)(2)(a) of this section to determine whether the offender is a sexual predator shall be conducted in the manner described in division (B)(1) of this section regarding hearings conducted under that division and, in making a determination under this division as to whether the offender is a sexual predator, the court shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. After reviewing all testimony and evidence presented at the sexual predator hearing and the factors specified in divisions (B)(2) and (3) of this section, the court shall determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines at the sexual predator hearing that the offender is not a sexual predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted.

Upon making its determinations at the sexual predator hearing, the court shall proceed as follows:

(i) If the court determines that the offender is not a sexual predator and that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted and previously has not been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determinations and the reason or reasons why it determined that the offender is not a sexual predator.

(ii) If the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted or previously has been convicted of or pleaded guilty to a child-victim oriented offense, it shall include in the offender's institutional record its determination that the offender is not a sexual predator but is a habitual sex offender and the reason or reasons why it determined that the offender is not a sexual predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were pursuant to division (C) of

this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(iii) If the court determines by clear and convincing evidence that the offender is a sexual predator, it shall enter its determination in the offender's institutional record, shall attach the determination to the offender's sentence, shall specify that the determination was pursuant to division (C) of this section, and shall provide a copy of the determination to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction. The offender and the prosecutor may appeal as a matter of right the judge's determination under divisions (C)(2)(a) and (c) of this section as to whether the offender is, or is not, a sexual predator.

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. In determining whether to impose the community notification requirements, the court, in the circumstances described in division (E)(2) of this section, shall apply the presumption specified in that division. The offender shall not be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.

(3) The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a new hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, the court previously conducted a hearing under those divisions regarding that offense to determine whether the offender was a sexual predator. The changes made in divisions (C)(1) and (2) of this section that take effect on July 31, 2003, do not require a court to conduct a hearing under those divisions for any offender regarding a sexually oriented offense if, prior to July 31, 2003, and pursuant to those divisions, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, and the court denied the recommendation and determined that the offender was

not a sexual predator without a hearing, provided that this provision does not apply if the sexually oriented offense in question was an offense described in division (D)(1)(c) of section 2950.01 of the Revised Code.

(D)(1) Division (D)(1) of this section does not apply to any person who has been convicted of or pleaded guilty to a sexually oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a sexual predator or habitual sex offender, may petition the adjudicating court for a reclassification or declassification pursuant to section 2152.85 of the Revised Code.

A judge who is reviewing a sexual predator determination for a delinquent child under section 2152.84 or 2152.85 of the Revised Code shall comply with this section. At the hearing, the judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that the delinquent child no longer is a sexual predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a sexual predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a sexual predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.05 of the Revised Code of the determination that the delinquent child no longer is a sexual predator.

(2) If an offender who has been convicted of or pleaded guilty to a sexually oriented offense is classified a sexual predator pursuant to division (A) of this section or has been adjudicated a sexual predator relative to the offense as described in division (B) or (C) of this section, subject to division (F) of this section, the classification or adjudication of the offender as a sexual predator is permanent and continues in effect until the offender's death and in no case shall the classification or adjudication be removed or terminated.

(E)(1) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is not a registration-exempt sexually oriented offense, the judge who is to impose sentence on the offender shall determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender. The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall determine, prior to entering the order classifying the delinquent child a juvenile offender registrant, whether the delinquent child previously has been convicted of or pleaded guilty to, or adjudicated a

delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and is a habitual sex offender, if either of the following applies:

(a) The judge is required by section 2152.82 or division (A) of section 2152.83 of the Revised Code to classify the child a juvenile offender registrant;

(b) Division (B) of section 2152.83 of the Revised Code applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has not been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense or that the offender otherwise does not satisfy the criteria for being a habitual sex offender, the judge shall specify in the offender's sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is not a habitual sex offender.

If, under division (E)(1) of this section, the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender, the offender or delinquent child is a habitual sex offender or habitual child-victim offender and the court shall determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code. In making the determination regarding the possible imposition of the community notification requirement, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender or habitual child-victim offender determination were committed against a victim who was under eighteen years of age, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary in order to comply with the determinations, findings, and declarations of the general assembly regarding sex offenders and child-victim offenders that are set forth in section 2950.02 of the Revised Code. When a judge determines as described in this division that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code. Unless the habitual sex offender also has been adjudicated a sexual predator relative to the sexually oriented offense in question or the habitual sex offender was convicted of or pleaded guilty to an aggravated sexually oriented offense, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and

the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual sex offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in the nation other than the United States subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F)(1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code if all of the following apply:

(a) The offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing, a sexually oriented offense that is not a registration-exempt sexually oriented offense in another state, in a federal court, a military court, or Indian tribal court, or in a court of any nation other than the United States.

(b) As a result of the conviction, plea of guilty, or adjudication described in division (F)(1)(a) of this section, the offender or delinquent child is required under the law of the jurisdiction under which the offender or delinquent child was convicted, pleaded guilty, or was adjudicated to register as a sex offender until the offender's or delinquent child's death.

(c) The offender or delinquent child was automatically classified a sexual predator under division (A) of this section in relation to the conviction, guilty plea, or adjudication described in division (F)(1)(a) of this section.

(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated sexual predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a sex offender until the offender's or delinquent child's death is not substantially similar to a classification as a sexual predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator in this state for those

purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

(G) If, prior to July 31, 2003, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender under this section or section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code and if, on and after July 31, 2003, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after July 31, 2003, all of the following apply:

(1) Divisions (A)(1) or (2) or (E)(1) and (2) of section 2950.091 [2950.09.1] of the Revised Code apply regarding the offender or child, and the judge's classification or determination made prior to July 31, 2003, shall be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under divisions (A)(1) or (2) or (E)(1) and (2) of section 2950.091 [2950.09.1] of the Revised Code shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the classification or determination made prior to July 31, 2003.

(3) The offender's or child's duties under this chapter relative to that classification or determination shall be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to July 31, 2003.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07.

See provisions, § 3 of HB 485 (149 v —) following RC § 2929.13.

See provisions, § 5 of HB 485 (149 v —) following RC § 2950.01.

§ 2950.09

Effective 1-1-08.

Repealed, 152 v S 10, § 2 [146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 148 v H 502 (Eff 3-15-2001); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485 (Eff 6-13-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07]. Eff 1-1-08.

The effective date is set by § 3 of 152 v S 10.

This section concerned classification as a sexual predator, determination hearings, and petitions for removal from classification.

[§ 2950.09.1] § 2950.091 Classification as child-victim predator or habitual child-victim offender.

Effective until 1-1-08.

(A)(1) If, prior to the effective date of this section, a person was convicted of, pleaded guilty to, or was

adjudicated a delinquent child for committing, a sexually oriented offense, if, prior to the effective date of this section, the offender or delinquent child was classified a sexual predator in relation to that offense pursuant to division (A) of section 2950.09 of the Revised Code, and if, on and after the effective date of this section, the sexually oriented offense upon which the classification was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of the offense, the classification of the offender or child as a sexual predator remains valid and in effect on and after the effective date of this section.

(2) If, prior to the effective date of this section, a person was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a sexually oriented offense, if, prior to the effective date of this section, the offender or delinquent child was adjudicated a sexual predator in relation to that offense under section 2950.09 or section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, if, on and after the effective date of this section, the sexually oriented offense upon which the adjudication was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, and if division (A)(1) of this section does not apply, notwithstanding the redesignation of the offense, on and after the effective date of this section, the offender or delinquent child automatically is classified a child-victim predator. If a person is convicted, pleads guilty, or adjudicated a delinquent child in a court of another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a child-victim oriented offense, and if, as a result of that conviction, plea of guilty, or adjudication, the person is required under the law of the jurisdiction in which the person was convicted, pleaded guilty, or adjudicated to register as a child-victim offender or sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person a child-victim predator for the purposes of this chapter, but the person may challenge that classification pursuant to division (F) of this section.

(3) In all cases not described in division (A)(1) or (2) of this section, a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing a child-victim oriented offense may be classified a child-victim predator for purposes of this chapter only in accordance with division (B) or (C) of this section or, regarding delinquent children, divisions (B) and (C) of section 2152.83 of the Revised Code.

(B)(1)(a) Regardless of when the offense was committed, the judge who is to impose sentence on or after the effective date of this section on an offender who has been convicted of or pleaded guilty to a child-victim oriented offense shall conduct a hearing to determine whether the offender is a child-victim predator.

(b) The judge who is to impose or has imposed an order of disposition upon a child who is adjudicated a delinquent child for committing on or after the effective date of this section a child-victim oriented offense shall conduct a hearing as provided in this division to determine whether the child is to be classified as a child-victim predator if either of the following applies:

(i) The judge is required by section 2152.82 or division (A) of section 2152.83 of the Revised Code to classify the child a juvenile offender registrant.

(ii) Division (B) of section 2152.83 of the Revised Code applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(2) Regarding an offender, the judge shall conduct the hearing required by division (B)(1)(a) of this section prior to sentencing and, if the child-victim oriented offense is a felony and if the hearing is being conducted under division (B)(1)(a) of this section, the judge may conduct it as part of the sentencing hearing required by section 2929.19 of the Revised Code. Regarding a delinquent child, the judge may conduct the hearing required by division (B)(1)(b) of this section at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of section 2152.82 or 2152.83 of the Revised Code. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the child-victim oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor have the same opportunities and rights as described in division (B)(2) of section 2950.09 of the Revised Code regarding sexual predator hearings.

(3) In making a determination under divisions (B)(1) and (4) of this section as to whether an offender or delinquent child is a child-victim predator, the judge shall consider all relevant factors, including, but not limited to, all of the factors identified in division (B)(3) of section 2950.09 of the Revised Code regarding sexual predator hearings, except that all references in the factors so identified in that division to any "sexual offense" or "sexually oriented offense" shall be construed for purposes of this division as being references to a "child-victim oriented offense" and all references in the factors so identified to "sexual offenders" shall be construed for purposes of this division as being references to "child-victim offenders."

(4) After reviewing all testimony and evidence presented at the hearing conducted under division (B)(1) of this section and the factors specified in division (B)(3) of this section, the court shall determine by clear and convincing evidence whether the subject offender or delinquent child is a child-victim predator. If the court determines that the subject offender or delinquent child is not a child-victim predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is not a child-victim predator and the reason or reasons why the court determined that the subject offender or delinquent child is not a child-victim predator. If the court determines by clear and convincing evidence that the subject offender or delinquent child is a child-victim predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order, as appropriate, that the court has determined that the offender or delinquent child is a child-victim predator and shall specify that the determination was pursuant to division (B) of this section. The offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the child-victim oriented offense in question may appeal as a matter of

right the court's determination under this division as to whether the offender or delinquent child is, or is not, a child-victim predator.

(C)(1) If, prior to the effective date of this section, a person was convicted of or pleaded guilty to a sexually oriented offense, if, on and after the effective date of this section, the sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, if the person was not sentenced for the offense on or after January 1, 1997, and if, on or after the effective date of this section, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall determine whether to recommend that the offender be adjudicated a child-victim predator. In making a determination under this division as to whether to recommend that the offender be adjudicated a child-victim predator, the department shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. If the department determines that it will recommend that the offender be adjudicated a child-victim predator or determines that it will not recommend that the offender be adjudicated a child-victim predator, it immediately shall send its recommendation or determination to the court that sentenced the offender. In all cases, the department shall enter its determination and recommendation in the offender's institutional record, and the court shall proceed in accordance with division (C)(2) of this section.

(2)(a) If, pursuant to division (C)(1) of this section, the department of rehabilitation and correction sends to a court a recommendation that an offender be adjudicated a child-victim predator, the court is not bound by the department's recommendation, and the court shall conduct a hearing to determine whether the offender is a child-victim predator. In any case, the court shall not make a determination that the offender is, or is not, a child-victim predator without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment.

(b) If, pursuant to division (C)(1) of this section, the department sends to the court a determination that it is not recommending that an offender be adjudicated a child-victim predator, the court shall not make any determination as to whether the offender is, or is not, a child-victim predator but shall determine whether the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense other than the offense in relation to which the department made its determination.

The court may conduct a hearing to determine whether the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of or pleaded guilty to an offense of that nature, it shall not impose a requirement that the offender be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code without a hearing. The court shall include in the offender's institutional record any determination made under this division as to whether the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense and whether the offender is a habitual child-victim offender.

(c) Upon scheduling a hearing under division (C)(2)(a) or (b) of this section, the court shall give the offender and the prosecutor who prosecuted the offender for the child-victim oriented offense, or that prosecutor's successor in office, notice of the date, time, and place of the hearing. If the hearing is scheduled under division (C)(2)(a) of this section to determine whether the offender is a child-victim predator, it shall be conducted in the manner described in division (B)(1) of this section regarding hearings conducted under that division, and, in making a determination under this division as to whether the offender is a child-victim predator, the court shall consider all relevant factors, including, but not limited to, all of the factors specified in divisions (B)(2) and (3) of this section. After reviewing all testimony and evidence presented at the child-victim predator hearing and the factors specified in divisions (B)(2) and (3) of this section, the court shall determine by clear and convincing evidence whether the offender is a child-victim predator. If the court determines at the child-victim predator hearing that the offender is not a child-victim predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense other than the offense in relation to which the hearing is being conducted.

Upon making its determinations at the child-victim predator hearing, the court shall proceed as follows:

(i) If the court determines that the offender is not a child-victim predator and that the offender previously has not been convicted of or pleaded guilty to a child-victim oriented offense other than the offense in relation to which the hearing is being conducted, it shall include in the offender's institutional record its determinations and the reason or reasons why it determined that the offender is not a child-victim predator.

(ii) If the court determines that the offender is not a child-victim predator but that the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense other than the offense in relation to which the hearing is being conducted, it shall include in the offender's institutional record its determination that the offender is not a child-victim predator but is a habitual child-victim offender and the reason or reasons why it determined that the offender is not a child-victim predator, shall attach the determinations and the reason or reasons to the offender's sentence, shall specify that the determinations were made pursuant to division (C) of this section, shall provide a copy of the determinations and the reason or reasons to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code. The offender shall not be subject to those community notification provisions relative to the child-victim oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual child-victim offender.

(iii) If the court determines by clear and convincing evidence that the offender is a child-victim predator, it shall enter its determination in the offender's institutional record, shall attach the determination to the offender's sentence, shall specify that the determination was made pursuant to division (C) of this section, and shall provide a copy of the determination to the offender, to the

prosecuting attorney, and to the department of rehabilitation and correction. The offender and the prosecutor may appeal as a matter of right the judge's determination under this division as to whether the offender is, or is not, a child-victim predator.

If the hearing is scheduled under division (C)(2)(b) of this section to determine whether the offender previously has been convicted of or pleaded guilty to a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code, upon making the determination, the court shall attach the determination or determinations to the offender's sentence, shall provide a copy to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction and may impose a requirement that the offender be subject to the community notification provisions. The offender shall not be subject to the community notification provisions relative to the child-victim oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes that requirement, the offender may appeal the judge's determination that the offender is a habitual child-victim offender.

(3) Divisions (C)(1) and (2) of this section do not require a court to conduct a new hearing under those divisions for any offender regarding a child-victim oriented offense if, prior to the effective date of this section, the court previously conducted a hearing under divisions (C)(1) and (2) of section 2950.09 of the Revised Code regarding that offense, while it formerly was classified a sexually oriented offense, to determine whether the offender was a sexual predator. Divisions (C)(1) and (2) of this section do not require a court to conduct a hearing under those divisions for any offender regarding a child-victim oriented offense if, prior to the effective date of this section and pursuant to divisions (C)(1) and (2) of section 2950.09 of the Revised Code, the department of rehabilitation and correction recommended that the offender be adjudicated a sexual predator regarding that offense, while it formerly was classified a sexually oriented offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing, provided that this provision does not apply if the child-victim oriented offense in question was an offense described in division (D)(1)(c) of section 2950.01 of the Revised Code.

(D)(1) Division (D) of this section does not apply to any person who has been convicted of or pleaded guilty to a child-victim oriented offense. Division (D) of this section applies only to delinquent children as provided in Chapter 2152. of the Revised Code. A person who has been adjudicated a delinquent child for committing a child-victim oriented offense and who has been classified by a juvenile court judge a juvenile offender registrant or, if applicable, additionally has been determined by a juvenile court judge to be a child-victim predator or habitual child-victim offender, may petition the adjudicating court for a reclassification or declassification pursuant to section 2152.85 of the Revised Code.

A judge who is reviewing a child-victim predator determination for a delinquent child under section 2152.84 or 2152.85 of the Revised Code shall comply with this section. At the hearing, the judge shall consider all relevant evidence and information, including, but not limited to, the factors set forth in division (B)(3) of this section. The judge shall not enter a determination that

the delinquent child no longer is a child-victim predator unless the judge determines by clear and convincing evidence that the delinquent child is unlikely to commit a child-victim oriented offense in the future. If the judge enters a determination under this division that the delinquent child no longer is a child-victim predator, the judge shall notify the bureau of criminal identification and investigation of the determination and shall include in the notice a statement of the reason or reasons why it determined that the delinquent child no longer is a child-victim predator. Upon receipt of the notification, the bureau promptly shall notify the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.05 of the Revised Code of the determination that the offender no longer is a child-victim predator.

(2) If an offender who has been convicted of or pleaded guilty to a child-victim oriented offense is classified a child-victim predator pursuant to division (A) of this section or has been adjudicated a child-victim predator relative to the offense as described in division (B) or (C) of this section, subject to division (F) of this section, the classification or adjudication of the offender as a child-victim predator is permanent and continues in effect until the offender's death, and in no case shall the classification or adjudication be removed or terminated.

(E)(1) If, prior to the effective date of this section, a person was convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a sexually oriented offense, if, on and after the effective date of this section, the sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, if, prior to the effective date of this section, a judge determined that the offender or delinquent child was a habitual sex offender, and if one or more of the offenses that was the basis of the offender or delinquent child being a habitual sex offender remains on and after the effective date of this section a sexually oriented offense, notwithstanding the redesignation of the offense as described in this division, the determination and classification of that person as a habitual sex offender remains valid and in effect on and after the effective date of this section.

(2) If, prior to the effective date of this section, a person was convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a sexually oriented offense, if, on and after the effective date of this section, the sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, if, prior to the effective date of this section, a judge determined that the offender or delinquent child was a habitual sex offender, and if none of the offenses that was the basis of the offender or delinquent child being a habitual sex offender remains on and after the effective date of this section a sexually oriented offense, on and after the effective date of this section, the offender or delinquent child automatically is classified a habitual child-victim offender.

(3) If a person is convicted of or pleads guilty to committing a child-victim oriented offense and is to be sentenced for the offense on or after the effective date of this section, the judge who is to impose sentence on the offender shall determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and is a habitual child-victim offender. The judge who is to impose or has

imposed an order of disposition on or after the effective date of this section upon a child who is adjudicated a delinquent child for committing a child-victim oriented offense shall determine, prior to entering the order classifying the delinquent child a juvenile child-victim offender registrant, whether the delinquent child previously has been convicted of or pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and is a habitual child-victim offender, if either of the following applies:

(a) The judge is required by section 2152.82 or division (A) of section 2152.83 of the Revised Code to classify the child a juvenile offender registrant.

(b) Division (B) of section 2152.83 of the Revised Code applies regarding the child, the judge conducts a hearing under that division for the purposes described in that division, and the judge determines at that hearing that the child will be classified a juvenile offender registrant.

(4) If, under division (E)(3) of this section, the judge determines that the offender or delinquent child previously has not been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a child-victim oriented offense or that the offender otherwise does not satisfy the criteria for being a habitual child-victim offender, the judge shall specify in the offender's sentence or in the order classifying the delinquent child a juvenile child-victim offender registrant that the judge has determined that the offender or delinquent child is not a habitual child-victim offender. If the judge determines that the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing, a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual child-victim offender, the judge shall specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual child-victim offender and may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code. Unless the habitual child-victim offender also has been adjudicated a child-victim predator relative to the child-victim oriented offense in question, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines pursuant to this division or division (C)(2) of this section that an offender is a habitual child-victim offender, the determination is permanent and continues in effect until the offender's death, and in no case shall the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States, determines a person is a habitual child-victim offender in that jurisdiction, the person is considered to be determined a habitual child-victim offender in this state. If the court in the other state, the federal court, military court, or Indian tribal court, or the court in any nation other than the United States subjects the habitual child-victim offender to community notification

tion regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.

(F)(1) An offender or delinquent child classified a child-victim predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled to enter a determination that the offender or delinquent child is not an adjudicated child-victim predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code if all of the following apply:

(a) The offender or delinquent child was convicted, pleaded guilty, or adjudicated a delinquent child in a court of another state, in a federal court, a military court, or Indian tribal court, or in a court of any nation other than the United States for committing a child-victim oriented offense.

(b) As a result of the conviction, plea of guilty, or adjudication described in division (F)(1)(a) of this section, the offender or delinquent child is required under the law of the jurisdiction under which the offender or delinquent child was convicted, pleaded guilty, or was adjudicated to register as a child-victim offender until the offender's or delinquent child's death.

(c) The offender or delinquent child was automatically classified a child-victim predator under division (A) of this section in relation to the conviction, guilty plea, or adjudication described in division (F)(1)(a) of this section.

(2) The court may enter a determination that the offender or delinquent child filing the petition described in division (F)(1) of this section is not an adjudicated child-victim predator in this state for purposes of the registration and other requirements of this chapter or the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code only if the offender or delinquent child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or delinquent child register as a child-victim offender until the offender's or delinquent child's death is not substantially similar to a classification as a child-victim predator for purposes of this chapter. If the court enters a determination that the offender or delinquent child is not an adjudicated child-victim predator in this state for those purposes, the court shall include in the determination a statement of the reason or reasons why it so determined.

HISTORY: 150 v S 5, § 1, eff. 7-31-03.

[§ 2950.09.1] § 2950.091

Effective 1-1-08.

Repealed, 152 v S 10, § 2 [150 v S 5, § 1, eff. 7-31-03]. Eff 1-1-08.

The effective date is set by § 3 of 152 v S 10.

This section concerned classification as a child-victim predator or habitual child-victim offender.

§ 2950.10 Notice to victim of offender's or delinquent child's registration or change of information.

Effective until 1-1-08.

(A)(1) If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code, and if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender or delinquent child has registered and shall include in the notice the offender's name and photograph, and the address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's name, photograph, and residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim, not later than five days after the offender or delinquent child registers with the sheriff.

(2) If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code, if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, and if the offender notifies the sheriff of a change of residence, school, institution of higher education, or place of employment address or the delinquent child notifies the sheriff of a change of residence address pursuant to section 2950.05 of the Revised Code, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender's or delinquent child's address has changed and shall include in the notice the offender's name and photograph, and the new address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the

delinquent child's name, photograph, and new residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim, no later than five days after the offender or delinquent child notifies the sheriff of the change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address.

(3) If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, the victim of the offense may make a request in accordance with rules adopted by the attorney general pursuant to section 2950.13 of the Revised Code that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. If the victim makes a request in accordance with those rules, the sheriff described in divisions (A)(1) and (2) of this section shall provide the victim with the notices described in those divisions.

(4) If a victim makes a request as described in division (A)(3) of this section that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section, all information a sheriff obtains regarding the victim from or as a result of the request is confidential, and the information is not a public record open for inspection under section 149.43 of the Revised Code.

(5) The notices described in divisions (A)(1) and (2) of this section are in addition to any notices regarding the offender or delinquent child that the victim is entitled to receive under Chapter 2930. of the Revised Code.

(B)(1) The duties to provide the notices described in divisions (A)(1) and (2) of this section apply regarding any offender or delinquent child who is in any of the following categories, if the other criteria set forth in division (A)(1) or (2) of this section, whichever is applicable, are satisfied:

(a) The offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense for which the offender or delinquent child has the duty to register under section 2950.04 of the Revised Code or has been adjudicated a child-victim predator relative to the child-victim oriented offense for which the offender or child has the duty to register under section 2950.041 [2950.04.1] of the Revised Code, and the court has not subsequently determined pursuant to section 2152.84 or 2152.85 of the Revised Code regarding a delinquent child that the delinquent child no longer is a sexual predator or no longer is a child-victim predator, whichever is applicable.

(b) The offender or delinquent child has been determined pursuant to division (C)(2) or (E) of section 2950.09 or 2950.091 [2950.09.1], division (B) of section 2152.83, section 2152.84, or section 2152.85 of the Revised Code to be a habitual sex offender or a habitual child-victim offender, the court has imposed a requirement under that division or section subjecting the habit-

ual sex offender or habitual child-victim offender to this section, and the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code regarding a delinquent child.

(c) The sexually oriented offense for which the offender has the duty to register under section 2950.04 of the Revised Code is an aggravated sexually oriented offense, regardless of whether the offender has been adjudicated a sexual predator relative to the offense or has been determined to be a habitual sex offender and, if the offender has been so determined to be a habitual sex offender, regardless of whether the habitual sex offender determination has not been removed as described in division (A)(1)(b) of this section.

(2) A victim of a sexually oriented offense that is not a registration-exempt sexually oriented offense or of a child-victim oriented offense is not entitled to be provided any notice described in division (A)(1) or (2) of this section unless the offender or delinquent child is in a category specified in division (B)(1)(a), (b), or (c) of this section. A victim of a sexually oriented offense that is not a registration-exempt sexually oriented offense or of a child-victim oriented offense is not entitled to any notice described in division (A)(1) or (2) of this section unless the victim makes a request in accordance with rules adopted by the attorney general pursuant to section 2950.13 of the Revised Code that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. This division does not affect any rights of a victim of a sexually oriented offense or child-victim oriented offense to be provided notice regarding an offender or delinquent child that are described in Chapter 2930. of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v H 15, § 1, eff. 11-23-05.

§ 2950.10 Notice to victim of offender's or delinquent child's registration or change of information.

Effective 1-1-08.

(A)(1) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code, and if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender or delinquent child has registered and shall include in the notice the offender's name and photograph, and the address or addresses of

the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's name, photograph, and residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim and not later than five days after the offender or delinquent child registers with the sheriff.

(2) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, if the offender or delinquent child registers with a sheriff pursuant to section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code, if the victim of the sexually oriented offense or child-victim oriented offense has made a request in accordance with rules adopted by the attorney general that specifies that the victim would like to be provided the notices described in this section, and if the offender notifies the sheriff of a change of residence, school, institution of higher education, or place of employment address or the delinquent child notifies the sheriff of a change of residence address pursuant to section 2950.05 of the Revised Code, the sheriff shall notify the victim of the sexually oriented offense or child-victim oriented offense, in writing, that the offender's or delinquent child's address has changed and shall include in the notice the offender's name and photograph, and the new address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's name, photograph, and new residence address or addresses. The sheriff shall provide the notice required by this division to the victim at the most recent residence address available for that victim and no later than five days after the offender or delinquent child notifies the sheriff of the change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address.

(3) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (B)(1)(a), (b), or (c) of this section, the victim of the offense may make a request in accordance with rules adopted by the attorney general pursuant to section 2950.13 of the Revised Code that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. If the victim makes a request in accordance with those rules, the sheriff described in divisions (A)(1) and (2) of this section shall provide the victim with the notices described in those divisions.

(4) If a victim makes a request as described in division (A)(3) of this section that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section, all information a sheriff obtains regarding the victim from or as a result of the request is confidential, and the information is not a public record open for inspection under section 149.43 of the Revised Code.

(5) The notices described in divisions (A)(1) and (2) of this section are in addition to any notices regarding the offender or delinquent child that the victim is entitled to receive under Chapter 2930. of the Revised Code.

(B)(1) The duties to provide the notices described in divisions (A)(1) and (2) of this section apply regarding any offender or delinquent child who is in any of the following categories:

(a) The offender is a tier III sex offender/child-victim offender relative to the offense described in division (A) of this section for which a victim requested to be provided notice under that division, or the delinquent child is a public registry-qualified juvenile offender registrant, and a juvenile court has not removed pursuant to section 2950.15 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(b) The delinquent child is a tier III sex offender/child-victim offender who is not a public-registry qualified juvenile offender registrant, the delinquent child was subjected to this section prior to the effective date of this amendment as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender, as those terms were defined in section 2950.01 of the Revised Code as it existed prior to the effective date of this amendment, and a juvenile court has not removed pursuant to section 2152.84 or 2152.85 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(c) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was classified a juvenile offender registrant on or after the effective date of this amendment, the court has imposed a requirement under section 2152.82, 2152.83, or 2152.84 of the Revised Code subjecting the delinquent child to this section, and a juvenile court has not removed pursuant to section 2152.84 or 2152.85 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(2) A victim of a sexually oriented offense or of a child-victim oriented offense is not entitled to be provided any notice described in division (A)(1) or (2) of this section unless the offender or delinquent child is in a category specified in division (B)(1)(a), (b), or (c) of this section. A victim of a sexually oriented offense or of a child-victim oriented offense is not entitled to any notice described in division (A)(1) or (2) of this section unless the victim makes a request in accordance with rules adopted by the attorney general pursuant to section 2950.13 of the Revised Code that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of this section. This division does not affect any rights of a victim of a sexually oriented offense or child-victim oriented offense to be provided notice regarding an offender or delinquent child that are described in Chapter 2930. of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v H 15, § 1, eff. 11-23-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.11 Persons to be notified within geographical area.

Effective until 1-1-08.

(A) As used in this section, "specified geographical notification area" means the geographic area or areas within which the attorney general, by rule adopted under section 2950.13 of the Revised Code, requires the notice described in division (B) of this section to be given to the persons identified in divisions (A)(2) to (8) of this section. If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (9) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

(1)(a) Any occupant of each residential unit that is located within one thousand feet of the offender's or delinquent child's residential premises, that is located within the county served by the sheriff, and that is not located in a multi-unit building. Division (D)(3) of this section applies regarding notices required under this division.

(b) If the offender or delinquent child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and that shares a common hallway with the offender or delinquent child. For purposes of this division, an occupant's unit shares a common hallway with the offender or delinquent child if the entrance door into the occupant's unit is located on the same floor and opens into the same hallway as the entrance door to the unit the offender or delinquent child occupies. Division (D)(3) of this section applies regarding notices required under this division.

(c) The building manager, or the person the building owner or condominium unit owners association autho-

ries to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

(d) All additional persons who are within any category of neighbors of the offender or delinquent child that the attorney general by rule adopted under section 2950.13 of the Revised Code requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3)(a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4)(a) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in division (A)(3) of this section;

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by Chapter 3301. of the Revised Code that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and

within the county served by the sheriff. As used in this division, "child day-care center," "type A family day-care home," and "certified type B family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(7) The president or other chief administrative officer of each institution of higher education, as defined in section 2907.03 of the Revised Code, that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under section 3345.04 or 1713.50 of the Revised Code, if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides.

(B) The notice required under division (A) of this section shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, or the delinquent child's residence address or addresses;

(3) The sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) All of the following statements that are applicable:

(a) A statement that the offender has been adjudicated a sexual predator, a statement that the offender has been convicted of or pleaded guilty to an aggravated sexually oriented offense, a statement that the delinquent child has been adjudicated a sexual predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination regarding a delinquent child has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code;

(b) A statement that the offender has been adjudicated a child-victim predator, a statement that the delinquent child has been adjudicated a child-victim predator and that, as of the date of the notice, the court has not entered a determination that the delinquent child no longer is a child-victim predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual child-victim offender and that, as of the date of the notice, the determination regarding a delinquent child has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code;

(5) The offender's or delinquent child's photograph.

(C) If a sheriff with whom an offender or delinquent child registers under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code or to whom

the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) of this section to each person or entity identified within those divisions that is located within the specified geographical notification area and within the county served by the sheriff in question.

(D)(1) A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notice to the neighbors that are described in division (A)(1) of this section and the notices to law enforcement personnel that are described in divisions (A)(8) and (9) of this section as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notices to all other specified persons that are described in divisions (A)(2) to (7) of this section as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

(2) If an offender or delinquent child in relation to whom division (A) of this section applies verifies the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, with a sheriff pursuant to section 2950.06 of the Revised Code, the sheriff may provide a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (9) of this section. If a sheriff provides a notice pursuant to this division to the sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided the notice under division (A)(8) of this section may provide, but is not required to provide, a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (7) and (A)(9) of this section.

(3) A sheriff may provide notice under division (A)(1)(a) or (b) of this section, and may provide notice under division (A)(1)(c) of this section to a building manager or person authorized to exercise management and control of a building, by mail, by personal contact, or by leaving the notice at or under the entry door to a residential unit. For purposes of divisions (A)(1)(a) and (b) of this section, and the portion of division (A)(1)(c) of this section relating to the provision of notice to occupants of a multi-unit building by mail or personal contact, the provision of one written notice per unit is deemed as providing notice to all occupants of that unit.

(E) All information that a sheriff possesses regarding a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under section 149.43 of the Revised Code.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender who is a juvenile offender registrant, except when the act that is the basis of the child's classification as a juvenile offender registrant is a violation of, or an attempt to commit a violation of, section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child, a violation of section 2907.02 of the Revised Code, or an attempt to commit a violation of that section.

(F)(1) The duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender or delinquent child who is in any of the following categories, if the other criteria set forth in division (A) or (C) of this section, whichever is applicable, are satisfied:

(a) The offender or delinquent child has been adjudicated a sexual predator relative to the sexually oriented offense for which the offender or delinquent child has the duty to register under section 2950.04 of the Revised Code or has been adjudicated a child-victim predator relative to the child-victim oriented offense for which the offender or child has the duty to register under section 2950.041 [2950.04.1] of the Revised Code, and the court has not subsequently determined pursuant to section 2152.84 or 2152.85 of the Revised Code regarding a delinquent child that the delinquent child no longer is a sexual predator or no longer is a child-victim predator, whichever is applicable.

(b) The offender or delinquent child has been determined pursuant to division (C)(2) or (E) of section 2950.09 or 2950.091 [2950.09.1], division (B) of section 2152.83, section 2152.84, or section 2152.85 of the Revised Code to be a habitual sex offender or a habitual child-victim offender, the court has imposed a requirement under that division or section subjecting the habitual sex offender or habitual child-victim offender to this section, and the determination has not been removed pursuant to section 2152.84 or 2152.85 of the Revised Code regarding a delinquent child.

(c) The sexually oriented offense for which the offender has the duty to register under section 2950.04 of the Revised Code is an aggravated sexually oriented offense, regardless of whether the offender has been adjudicated a sexual predator relative to the offense or has been determined to be a habitual sex offender.

(2) The notification provisions of this section do not apply regarding a person who is convicted of or pleads guilty to, has been convicted of or pleaded guilty to, or is adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense, who is not in the category specified in either division (F)(1)(a) or (c) of this section, and who is determined pursuant to division (C)(2) or (E) of section 2950.09 or 2950.091 [2950.09.1], division (B) of section 2152.83, section

2152.84, or section 2152.85 of the Revised Code to be a habitual sex offender or habitual child-victim offender unless the sentencing or reviewing court imposes a requirement in the offender's sentence and in the judgment of conviction that contains the sentence or in the delinquent child's adjudication, or imposes a requirement as described in division (C)(2) of section 2950.09 or 2950.091 [2950.09.1] of the Revised Code, that subjects the offender or the delinquent child to the provisions of this section.

(G) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home. The department of education shall compile, maintain, and update in January and July of each year, a list of all boards of education, schools, or programs of a type described in division (A)(3), (4), or (5) of this section that contains the name of each board of education, school, or program of that type, the county in which it is located, its address and telephone number, the name of the superintendent of the board or of an administrative officer or employee of the school or program, and, in relation to a board of education, the county or counties in which each of its schools is located and the address of each such school. The Ohio board of regents shall compile, maintain, and update in January and July of each year, a list of all institutions of a type described in division (A)(7) of this section that contains the name of each such institution, the county in which it is located, its address and telephone number, and the name of its president or other chief administrative officer. A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regarding an offender or delinquent child, or a designee of a sheriff of that type, may request the department of job and family services, department of education, or Ohio board of regents, by telephone, in person, or by mail, to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the notices described in divisions (A)(2) to (7) of this section are to be provided. Upon receipt of a request, the department or board shall provide the requesting sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom those notices are to be provided.

(H)(1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (B)(3) of section 2950.09 of the Revised Code. If, at the conclusion of the hearing, the judge finds that the

offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and does not suspend the victim notification requirement under section 2950.10 of the Revised Code.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after the judge has entered an order denying the initial motion or the most recent motion made under that division.

(3) The offender and the prosecuting attorney have the right to appeal an order approving or denying a motion made under division (H)(1) of this section.

(4) Divisions (H)(1) to (3) of this section do not apply to any of the following types of offender:

(a) A person who is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense and who, in relation to that offense, is adjudicated a sexually violent predator;

(b) A person who is convicted of or pleads guilty to a sexually oriented offense that is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and either who is sentenced under section 2971.03 of the Revised Code or upon whom a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code;

(c) A person who is convicted of or pleads guilty to a sexually oriented offense that is attempted rape committed on or after the effective date of this amendment and who also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code;

(d) A habitual sex offender or habitual child-victim oriented offender who is subject to community notification who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or a child-victim oriented offense;

(e) A sexual predator or child-victim predator who is not adjudicated a sexually violent predator who, subsequent to being subjected to community notification, has

pleaded guilty to or been convicted of a sexually oriented offense or child-victim oriented offense.

(1) If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, within the period of time specified in division (D) of this section, shall provide a written notice containing the information set forth in division (B) of this section to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff.

HISTORY: 146 v H 180 (EFF 7-1-97); 147 v H 396 (EFF 1-30-98); 147 v H 565 (EFF 3-30-99); 148 v H 471 (EFF 7-1-2000); 149 v S 3 (EFF 1-1-2002); 149 v S 175 (EFF 5-7-2002); 149 v H 485. EFF 6-13-2002; 150 v S 5, § 1, EFF 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v H 15, § 1, eff. 11-23-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07.

§ 2950.11 Community notification provisions.

Effective 1-1-08.

(A) Regardless of when the sexually oriented offense or child-victim oriented offense was committed, if a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, within the period of time specified in division (C) of this section, shall provide a written notice containing the information set forth in division (B) of this section to all of the persons described in divisions (A)(1) to (10) of this section. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers. The sheriff shall provide the notice to all of the following persons:

(1)(a) Any occupant of each residential unit that is located within one thousand feet of the offender's or delinquent child's residential premises, that is located within the county served by the sheriff, and that is not located in a multi-unit building. Division (D)(3) of this section applies regarding notices required under this division.

(b) If the offender or delinquent child resides in a multi-unit building, any occupant of each residential unit that is located in that multi-unit building and that shares a common hallway with the offender or delinquent child. For purposes of this division, an occupant's unit shares a common hallway with the offender or delinquent child if the entrance door into the occupant's unit is located on the same floor and opens into the same hallway as the entrance door to the unit the offender or delinquent child occupies. Division (D)(3) of this section applies regarding notices required under this division.

(c) The building manager, or the person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within one thousand feet of the offender's or delinquent child's residential premises, including a multi-unit building in which the offender or delinquent child resides, and that is located within the county served by the sheriff. In addition to notifying the building manager or the person authorized to exercise management and control in the multi-unit building under this division, the sheriff shall post a copy of the notice prominently in each common entryway in the building and any other location in the building the sheriff determines appropriate. The manager or person exercising management and control of the building shall permit the sheriff to post copies of the notice under this division as the sheriff determines appropriate. In lieu of posting copies of the notice as described in this division, a sheriff may provide notice to all occupants of the multi-unit building by mail or personal contact; if the sheriff so notifies all the occupants, the sheriff is not required to post copies of the notice in the common entryways to the building. Division (D)(3) of this section applies regarding notices required under this division.

(d) All additional persons who are within any category of neighbors of the offender or delinquent child that the attorney general by rule adopted under section 2950.13 of the Revised Code requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3)(a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4)(a) The appointing or hiring officer of each chartered nonpublic school located within the specified geo-

graphical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in division (A)(3) of this section;

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by Chapter 3301. of the Revised Code that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff. As used in this division, "child day-care center," "type A family day-care home," and "certified type B family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(7) The president or other chief administrative officer of each institution of higher education, as defined in section 2907.03 of the Revised Code, that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under section 3345.04 or 1713.50 of the Revised Code, if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides;

(10) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification as provided in division (J) of this section.

(B) The notice required under division (A) of this section shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses of the offender's or public registry-qualified juvenile offender registrant's residence, school, institution of higher education, or place of employment, as applicable, or the residence address or addresses of a delinquent child who is not a public registry-qualified juvenile offender registrant;

(3) The sexually oriented offense or child-victim oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that identifies the category specified in division (F)(1)(a), (b), or (c) of this section that includes the offender or delinquent child and that subjects the offender or delinquent child to this section;

(5) The offender's or delinquent child's photograph.

(C) If a sheriff with whom an offender or delinquent child registers under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code or to whom the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code is required by division (A) of this section to provide notices regarding an offender or delinquent child and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided notice under division (A)(8) of this section shall provide the notices described in divisions (A)(1) to (7) and (A)(9) and (10) of this section to each person or entity identified within those divisions that is located within the specified geographical notification area and within the county served by the sheriff in question.

(D)(1) A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notice to the neighbors that are described in division (A)(1) of this section and the notices to law enforcement personnel that are described in divisions (A)(8) and (9) of this section as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

A sheriff required by division (A) or (C) of this section to provide notices regarding an offender or delinquent child shall provide the notices to all other specified persons that are described in divisions (A)(2) to (7) and (A)(10) of this section as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is required by division (C) of this section to provide the notices, no later than five days after the sheriff is provided the notice described in division (A)(8) of this section.

(2) If an offender or delinquent child in relation to whom division (A) of this section applies verifies the offender's or delinquent child's current residence, school, institution of higher education, or place of employment address, as applicable, with a sheriff pursuant to section 2950.06 of the Revised Code, the sheriff may provide a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (10) of this section. If a sheriff provides a notice pursuant to this division to the sheriff of one or more other counties in accordance with division (A)(8) of this section, the sheriff of each of the other counties who is provided the notice under division (A)(8) of this section may provide, but is not required to provide, a written notice containing the information set forth in division (B) of this section to the persons identified in divisions (A)(1) to (7) and (A)(9) and (10) of this section.

(3) A sheriff may provide notice under division (A)(1)(a) or (b) of this section, and may provide notice under division (A)(1)(c) of this section to a building manager or person authorized to exercise management and control of a building, by mail, by personal contact, or by leaving the notice at or under the entry door to a residential unit. For purposes of divisions (A)(1)(a) and (b) of this section, and the portion of division (A)(1)(c) of

this section relating to the provision of notice to occupants of a multi-unit building by mail or personal contact, the provision of one written notice per unit is deemed as providing notice to all occupants of that unit.

(E) All information that a sheriff possesses regarding an offender or delinquent child who is in a category specified in division (F)(1)(a), (b), or (c) of this section that is described in division (B) of this section and that must be provided in a notice required under division (A) or (C) of this section or that may be provided in a notice authorized under division (D)(2) of this section is a public record that is open to inspection under section 149.43 of the Revised Code.

The sheriff shall not cause to be publicly disseminated by means of the internet any of the information described in this division that is provided by a delinquent child unless that child is in a category specified in division (F)(1)(a), (b), or (c) of this section.

(F)(1) Except as provided in division (F)(2) of this section, the duties to provide the notices described in divisions (A) and (C) of this section apply regarding any offender or delinquent child who is in any of the following categories:

(a) The offender is a tier III sex offender/child-victim offender, or the delinquent child is a public registry-qualified juvenile offender registrant, and a juvenile court has not removed pursuant to section 2950.15 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(b) The delinquent child is a tier III sex offender/child-victim offender who is not a public-registry qualified juvenile offender registrant, the delinquent child was subjected to this section prior to the effective date of this amendment as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender, as those terms were defined in section 2950.01 of the Revised Code as it existed prior to the effective date of this amendment, and a juvenile court has not removed pursuant to section 2152.84 or 2152.85 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(c) The delinquent child is a tier III sex offender/child-victim offender who is not a public registry-qualified juvenile offender registrant, the delinquent child was classified a juvenile offender registrant on or after the effective date of this amendment, the court has imposed a requirement under section 2152.82, 2152.83, or 2152.84 of the Revised Code subjecting the delinquent child to this section, and a juvenile court has not removed pursuant to section 2152.84 or 2152.85 of the Revised Code the delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(2) The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in section 2950.01 of the Revised Code as that section existed prior to the effective date of this amendment;

(k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

(G)(1) The department of job and family services shall compile, maintain, and update in January and July of each year, a list of all agencies, centers, or homes of a type described in division (A)(2) or (6) of this section that contains the name of each agency, center, or home of that type, the county in which it is located, its address and telephone number, and the name of an administrative officer or employee of the agency, center, or home.

(2) The department of education shall compile, maintain, and update in January and July of each year, a list of all boards of education, schools, or programs of a type described in division (A)(3), (4), or (5) of this section that contains the name of each board of education, school, or program of that type, the county in which it is located, its address and telephone number, the name of the superintendent of the board or of an administrative officer or employee of the school or program, and, in relation to a board of education, the county or counties in which each of its schools is located and the address of each such school.

(3) The Ohio board of regents shall compile, maintain, and update in January and July of each year, a list of all institutions of a type described in division (A)(7) of this section that contains the name of each such institution,

the county in which it is located, its address and telephone number, and the name of its president or other chief administrative officer.

(4) A sheriff required by division (A) or (C) of this section, or authorized by division (D)(2) of this section, to provide notices regarding an offender or delinquent child, or a designee of a sheriff of that type, may request the department of job and family services, department of education, or Ohio board of regents, by telephone, in person, or by mail, to provide the sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom the notices described in divisions (A)(2) to (7) of this section are to be provided. Upon receipt of a request, the department or board shall provide the requesting sheriff or designee with the names, addresses, and telephone numbers of the appropriate persons and entities to whom those notices are to be provided.

(H)(1) Upon the motion of the offender or the prosecuting attorney of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense or child-victim oriented offense for which the offender is subject to community notification under this section, or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings.

The judge promptly shall serve a copy of the order upon the sheriff with whom the offender most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and upon the bureau of criminal identification and investigation.

An order suspending the community notification requirement does not suspend or otherwise alter an offender's duties to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code and does not suspend the victim notification requirement under section 2950.10 of the Revised Code.

(2) A prosecuting attorney, a sentencing judge or that judge's successor in office, and an offender who is subject to the community notification requirement under this section may initially make a motion under division (H)(1) of this section upon the expiration of twenty years after the offender's duty to comply with division (A)(2), (3), or (4) of section 2950.04, division (A)(2), (3), or (4) of section 2950.041 [2950.04.1] and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the offender is subject to community notification. After the initial making of a motion under division (H)(1) of this section, thereafter, the prosecutor, judge, and offender may make a subsequent motion under that division upon the expiration of five years after

the judge has entered an order denying the initial motion or the most recent motion made under that division.

(3) The offender and the prosecuting attorney have the right to appeal an order approving or denying a motion made under division (H)(1) of this section.

(4) Divisions (H)(1) to (3) of this section do not apply to any of the following types of offender:

(a) A person who is convicted of or pleads guilty to a violent sex offense or designated homicide, assault, or kidnapping offense and who, in relation to that offense, is adjudicated a sexually violent predator;

(b) A person who is convicted of or pleads guilty to a sexually oriented offense that is a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either who is sentenced under section 2971.03 of the Revised Code or upon whom a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code;

(c) A person who is convicted of or pleads guilty to a sexually oriented offense that is attempted rape committed on or after January 2, 2007, and who also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code;

(d) A person who is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and who is sentenced for that offense pursuant to that division;

(e) An offender who is in a category specified in division (F)(1)(a), (b), or (c) of this section and who, subsequent to being subjected to community notification, has pleaded guilty to or been convicted of a sexually oriented offense or child-victim oriented offense.

(I) If a person is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a person is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any category specified in division (F)(1)(a), (b), or (c) of this section, the sheriff with whom the offender or delinquent child has most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, within the period of time specified in division (D) of this section, shall provide a written notice containing the information set forth in division (B) of this section to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff.

(J) Each sheriff shall allow a volunteer organization or other organization, company, or individual who wishes to receive the notice described in division (A)(10) of this section regarding a specific offender or delinquent child or notice regarding all offenders and delinquent children who are located in the specified geographical notification area to notify the sheriff by electronic mail or through the sheriff's web site of this election. The sheriff shall promptly inform the bureau of criminal identification and investigation of these requests in accordance with the

forwarding procedures adopted by the attorney general pursuant to section 2950.13 of the Revised Code.

(K) In making a determination under division (H)(1) of this section as to whether to suspend the community notification requirement under this section for an offender, the judge shall consider all relevant factors, including, but not limited to, all of the following:

(1) The offender's age;

(2) The offender's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexually oriented offenses or child-victim oriented offenses;

(3) The age of the victim of the sexually oriented offense or child-victim oriented offense the offender committed;

(4) Whether the sexually oriented offense or child-victim oriented offense the offender committed involved multiple victims;

(5) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or child-victim oriented offense the offender committed or to prevent the victim from resisting;

(6) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sexually oriented offense or a child-victim oriented offense, whether the offender or delinquent child participated in available programs for sex offenders or child-victim offenders;

(7) Any mental illness or mental disability of the offender;

(8) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense the offender committed or the nature of the offender's interaction in a sexual context with the victim of the child-victim oriented offense the offender committed, whichever is applicable, and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(9) Whether the offender, during the commission of the sexually oriented offense or child-victim oriented offense the offender committed, displayed cruelty or made one or more threats of cruelty;

(10) Any additional behavioral characteristics that contribute to the offender's conduct.

(L) As used in this section, "specified geographical notification area" means the geographic area or areas within which the attorney general, by rule adopted under section 2950.13 of the Revised Code, requires the notice described in division (B) of this section to be given to the persons identified in divisions (A)(2) to (8) of this section.

HISTORY: 146 v H 180 (Eff 7-1-97); 147 v H 396 (Eff 1-30-98); 147 v H 565 (Eff 3-30-99); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v S 175 (Eff 5-7-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 150 v H 473, § 1, eff. 4-29-05; 151 v H 15, § 1, eff. 11-23-05; 151 v S 17, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.11.1] § 2950.111 Sheriff or designee may request confirmation of offender or delinquent child's address.

(A) If an offender or delinquent child registers a residence address, provides notice of a change of any

residence address, or verifies a current residence address pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, all of the following apply:

(1) At any time after the registration, provision of the notice, or verification, the sheriff with whom the offender or delinquent child so registered or to whom the offender or delinquent child so provided the notice or verified the current address, or a designee of that sheriff, may contact a person who owns, leases, or otherwise has custody, control, or supervision of the premises at the address provided by the offender or delinquent child in the registration, the notice, or the verification and request that the person confirm or deny that the offender or delinquent child currently resides at that address.

(2) Upon receipt of a request under division (A)(1) of this section, notwithstanding any other provision of law, the person who owns, leases, or otherwise has custody, control, or supervision of the premises, or an agent of that person, shall comply with the request and inform the sheriff or designee who made the request whether or not the offender or delinquent child currently resides at that address.

(3) Section 2950.12 of the Revised Code applies to a person who, in accordance with division (A)(2) of this section, provides information of the type described in that division.

(B) Division (A) of this section applies regarding any public or private residential premises, including, but not limited to, a private residence, a multi-unit residential facility, a halfway house, a homeless shelter, or any other type of residential premises. Division (A) of this section does not apply regarding an offender's registration, provision of notice of a change in, or verification of a school, institution of higher education, or place of employment address pursuant to section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code.

(C) A sheriff or designee of a sheriff may attempt to confirm that an offender or delinquent child who registers a residence address, provides notice of a change of any residence address, or verifies a current residence address as described in division (A) of this section currently resides at the address in question in manners other than the manner provided in this section. A sheriff or designee of a sheriff is not limited in the number of requests that may be made under this section regarding any registration, provision of notice, or verification, or in the number of times that the sheriff or designee may attempt to confirm, in manners other than the manner provided in this section, that an offender or delinquent child currently resides at the address in question.

HISTORY: 150 v S 5, § 1, Eff 7-31-03.

§ 2950.12 Immunity.

Effective until 1-1-08.

(A) Except as provided in division (B) of this section, any of the following persons shall be immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under this chapter or under rules adopted under authority of this chapter:

(1) An officer or employee of the bureau of criminal identification and investigation;

(2) The attorney general, a chief of police, marshal, or other chief law enforcement officer of a municipal corporation, a sheriff, a constable or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the office of the attorney general, the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable;

(3) A prosecutor and an officer or employee of the office of a prosecutor;

(4) A supervising officer and an officer or employee of the adult parole authority of the department of rehabilitation and correction;

(5) A supervising officer and an officer or employee of the department of youth services;

(6) A supervisor and a caseworker or employee of a public children services agency acting pursuant to section 5153.16 of the Revised Code;

(7) A managing officer of a state correctional institution and an officer or employee of the department of rehabilitation and correction;

(8) A person identified in division (A)(2), (3), (4), (5), (6), or (7) of section 2950.11 of the Revised Code or the agent of that person;

(9) A person identified in division (A)(2) of section 2950.111 [2950.11.1] of the Revised Code, regarding the person's provision of information pursuant to that division to a sheriff or a designee of a sheriff.

(B) The immunity described in division (A) of this section does not apply to a person described in divisions (A)(1) to (8) of this section if, in relation to the act or omission in question, any of the following applies:

(1) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(2) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(3) Liability for the act or omission is expressly imposed by a section of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175, Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 2950.12 Immunity.

Effective 1-1-08.

(A) Except as provided in division (B) of this section, any of the following persons shall be immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under this chapter or under rules adopted under authority of this chapter:

(1) An officer or employee of the bureau of criminal identification and investigation;

(2) The attorney general, a chief of police, marshal, or other chief law enforcement officer of a municipal corporation, a sheriff, a constable or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the office of the attorney general, the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable;

(3) A prosecutor and an officer or employee of the office of a prosecutor;

(4) A supervising officer and an officer or employee of the adult parole authority of the department of rehabilitation and correction;

(5) A supervising officer and an officer or employee of the department of youth services;

(6) A supervisor and a caseworker or employee of a public children services agency acting pursuant to section 1513.16 of the Revised Code;

(7) A managing officer of a state correctional institution and an officer or employee of the department of rehabilitation and correction;

(8) A person identified in division (A)(2), (3), (4), (5), (6), or (7) of section 2950.11 of the Revised Code, an organization or person identified in division (A)(10) of that section, or the agent of that person or organization;

(9) A person identified in division (A)(2) of section 2950.111 [2950.11.1] of the Revised Code, regarding the person's provision of information pursuant to that division to a sheriff or a designee of a sheriff.

(B) The immunity described in division (A) of this section does not apply to a person described in divisions (A)(1) to (8) of this section if, in relation to the act or omission in question, any of the following applies:

(1) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(2) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(3) Liability for the act or omission is expressly imposed by a section of the Revised Code.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175, Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.13 Duties of attorney general.

Effective until 1-1-08.

(A) The attorney general shall do all of the following:

(1) No later than July 1, 1997, establish and maintain a state registry of sex offenders and child-victim offenders that is housed at the bureau of criminal identification and investigation and that contains all of the registration, change of residence, school, institution of higher education, or place of employment address, and verification information the bureau receives pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code regarding a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense or a person who is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and all of the information the bureau receives pursuant to section 2950.14 of the Revised Code. For a person who was convicted of or pleaded guilty to the sexually oriented offense or child-victim related offense, the registry also shall indicate whether the person was convicted of or pleaded guilty to the offense in a criminal prosecution or in a serious youthful offender case.

(2) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that contain guidelines necessary for the implementation of this chapter;

(3) In consultation with local law enforcement representatives, adopt rules for the implementation and administration of the provisions contained in section 2950.11 of the Revised Code that pertain to the notification of neighbors of an offender or a delinquent child who has committed a sexually oriented offense that is not a registration-exempt sexually oriented offense and has been adjudicated a sexual predator or determined to be a habitual sex offender, an offender who has committed an aggravated sexually oriented offense, or an offender or delinquent child who has committed a child-victim oriented offense and has been adjudicated a child-victim predator or determined to be a habitual child-victim offender, and rules that prescribe a manner in which victims of either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense committed by an offender or a delinquent child who has been adjudicated a sexual predator or determined to be a habitual sex offender, an offender who has committed an aggravated sexually oriented offense, or an offender or delinquent child who has committed a child-victim oriented offense and has been adjudicated a child-victim predator or determined to be a habitual child-victim offender may make a request that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of section 2950.10 of the Revised Code;

(4) In consultation with local law enforcement representatives and through the bureau of criminal identification and investigation, prescribe the forms to be used by judges and officials pursuant to section 2950.03 of the Revised Code to advise offenders and delinquent children of their duties of filing a notice of intent to reside, registration, notification of a change of residence, school, institution of higher education, or place of employment address and registration of the new, school, institution of higher education, or place of employment address, as applicable, and address verification under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and prescribe the forms to be used by sheriffs relative to those duties of filing a notice of intent to reside, registration, change of residence, school, institution of higher education, or place of employment address notification, and address verification;

(5) Make copies of the forms prescribed under division (A)(4) of this section available to judges, officials, and sheriffs;

(6) Through the bureau of criminal identification and investigation, provide the notifications, the information, and the documents that the bureau is required to provide to appropriate law enforcement officials and to the federal bureau of investigation pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(7) Through the bureau of criminal identification and investigation, maintain the verification forms returned under the address verification mechanism set forth in section 2950.06 of the Revised Code;

(8) In consultation with representatives of the officials, judges, and sheriffs, adopt procedures for officials, judges, and sheriffs to use to forward information, photographs, and fingerprints to the bureau of criminal identification and investigation pursuant to the require-

ments of sections 2950.03, 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(9) In consultation with the director of education, the director of job and family services, and the director of rehabilitation and correction, adopt rules that contain guidelines to be followed by boards of education of a school district, chartered nonpublic schools or other schools not operated by a board of education, preschool programs, child day-care centers, type A family day-care homes, certified type B family day-care homes, and institutions of higher education regarding the proper use and administration of information received pursuant to section 2950.11 of the Revised Code relative to an offender or delinquent child who has been adjudicated a sexual predator or child-victim predator or determined to be a habitual sex offender or habitual child-victim offender, or an offender who has committed an aggravated sexually oriented offense;

(10) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that designate a geographic area or areas within which the notice described in division (B) of section 2950.11 of the Revised Code must be given to the persons identified in divisions (A)(2) to (8) of that section;

(11) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and operate on the internet a sex offender and child-victim offender database that contains information for every offender who has committed either a sexually oriented offense or a child-victim oriented offense and who registers in any county in this state pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code. The bureau shall determine the information to be provided on the database for each offender and shall obtain that information from the information contained in the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section, which information, while in the possession of the sheriff who provided it, is a public record open for inspection as described in section 2950.081 [2950.08.1] of the Revised Code. The information provided for each offender shall include at least the information set forth in division (B) of section 2950.11 of the Revised Code. The database is a public record open for inspection under section 149.43 of the Revised Code, and it shall be searchable by offender name, by county, by zip code, and by school district. The database shall provide a link to the web site of each sheriff who has established and operates on the internet a sex offender and child-victim offender database that contains information for offenders who register in that county pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, with the link being a direct link to the sex offender and child-victim offender database for the sheriff.

(12) Upon the request of any sheriff, provide technical guidance to the requesting sheriff in establishing on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials described in division (A) of section 2950.081 [2950.08.1] of the Revised Code that are public records under that division and that pertain to offenders who register in that county pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and for the public dissemination of information the sheriff receives pursuant to section 2950.14 of the Revised Code;

(13) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and

operate on the internet a database that enables local law enforcement representatives to remotely search by electronic means the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section and any information the bureau receives pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, 2950.06, and 2950.14 of the Revised Code. The database shall enable local law enforcement representatives to obtain detailed information regarding each offender and delinquent child who is included in the registry, including, but not limited to the offender's or delinquent child's name, residence address, place of employment if applicable, motor vehicle license plate number if applicable, victim preference if available, date of most recent release from confinement if applicable, fingerprints, and other identification parameters the bureau considers appropriate. The database is not a public record open for inspection under section 149.43 of the Revised Code and shall be available only to law enforcement representatives as described in this division. Information obtained by local law enforcement representatives through use of this database is not open to inspection by the public or by any person other than a person identified in division (A) of section 2950.08 of the Revised Code.

(B) The attorney general in consultation with local law enforcement representatives, may adopt rules that establish one or more categories of neighbors of an offender or delinquent child who, in addition to the occupants of residential premises and other persons specified in division (A)(1) of section 2950.11 of the Revised Code, must be given the notice described in division (B) of that section.

(C) No person, other than a local law enforcement representative, shall knowingly do any of the following:

(1) Gain or attempt to gain access to the database established and operated by the attorney general, through the bureau of criminal identification and investigation, pursuant to division (A)(13) of this section.

(2) Permit any person to inspect any information obtained through use of the database described in division (C)(1) of this section, other than as permitted under that division.

(D) As used in this section, "local law enforcement representatives" means representatives of the sheriffs of this state, representatives of the municipal chiefs of police and marshals of this state, and representatives of the township constables and chiefs of police of the township police departments or police district police forces of this state.

HISTORY: 146 v H 180 (Eff 7-1-97); 146 v H 72 (Eff 7-1-97); 148 v H 471 (Eff 7-1-2000); 149 v S 3 (Eff 1-1-2002); 149 v H 485, Eff 6-13-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v S 260, § 1, eff. 1-2-07.

§ 2950.13 General duties of attorney general concerning SORN Law.

Effective 1-1-08.

(A) The attorney general shall do all of the following:

(1) No later than July 1, 1997, establish and maintain a state registry of sex offenders and child-victim offenders that is housed at the bureau of criminal identification and investigation and that contains all of the registration, change of residence, school, institution of higher education, or place of employment address, and verification information the bureau receives pursuant to sections

2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code regarding each person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and each person who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, all of the information the bureau receives pursuant to section 2950.14 of the Revised Code, and any notice of an order terminating or modifying an offender's or delinquent child's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code the bureau receives pursuant to section 2152.84, 2152.85, or 2950.15 of the Revised Code. For a person who was convicted of or pleaded guilty to the sexually oriented offense or child-victim related offense, the registry also shall indicate whether the person was convicted of or pleaded guilty to the offense in a criminal prosecution or in a serious youthful offender case. The registry shall not be open to inspection by the public or by any person other than a person identified in division (A) of section 2950.08 of the Revised Code. In addition to the information and material previously identified in this division, the registry shall include all of the following regarding each person who is listed in the registry:

(a) A citation for, and the name of, all sexually oriented offenses or child-victim oriented offenses of which the person was convicted, to which the person pleaded guilty, or for which the person was adjudicated a delinquent child and that resulted in a registration duty, and the date on which those offenses were committed;

(b) The text of the sexually oriented offenses or child-victim oriented offenses identified in division (A)(1)(a) of this section as those offenses existed at the time the person was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing those offenses, or a link to a database that sets forth the text of those offenses;

(c) A statement as to whether the person is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender for the sexually oriented offenses or child-victim oriented offenses identified in division (A)(1)(a) of this section;

(d) The community supervision status of the person, including, but not limited to, whether the person is serving a community control sanction and the nature of any such sanction, whether the person is under supervised release and the nature of the release, or regarding a juvenile, whether the juvenile is under any type of release authorized under Chapter 2152. or 5139. of the Revised Code and the nature of any such release;

(e) The offense and delinquency history of the person, as determined from information gathered or provided under sections 109.57 and 2950.14 of the Revised Code;

(f) The bureau of criminal identification and investigation tracking number assigned to the person if one has been so assigned, the federal bureau of investigation number assigned to the person if one has been assigned and the bureau of criminal identification and investigation is aware of the number, and any other state identification number assigned to the person of which the bureau is aware;

(g) Fingerprints and palmprints of the person;

(h) A DNA specimen, as defined in section 109.573 [109.57.3] of the Revised Code, from the person;

(i) Whether the person has any outstanding arrest warrants;

(j) Whether the person is in compliance with the person's duties under this chapter.

(2) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that contain guidelines necessary for the implementation of this chapter;

(3) In consultation with local law enforcement representatives, adopt rules for the implementation and administration of the provisions contained in section 2950.11 of the Revised Code that pertain to the notification of neighbors of an offender or a delinquent child who has committed a sexually oriented offense or a child-victim oriented offense and is in a category specified in division (F)(1) of that section and rules that prescribe a manner in which victims of a sexually oriented offense or a child-victim oriented offense committed by an offender or a delinquent child who is in a category specified in division (B)(1) of section 2950.10 of the Revised Code may make a request that specifies that the victim would like to be provided the notices described in divisions (A)(1) and (2) of section 2950.10 of the Revised Code;

(4) In consultation with local law enforcement representatives and through the bureau of criminal identification and investigation, prescribe the forms to be used by judges and officials pursuant to section 2950.03 or 2950.032 [2950.03.2] of the Revised Code to advise offenders and delinquent children of their duties of filing a notice of intent to reside, registration, notification of a change of residence, school, institution of higher education, or place of employment address and registration of the new, school, institution of higher education, or place of employment address, as applicable, and address verification under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, and prescribe the forms to be used by sheriffs relative to those duties of filing a notice of intent to reside, registration, change of residence, school, institution of higher education, or place of employment address notification, and address verification;

(5) Make copies of the forms prescribed under division (A)(4) of this section available to judges, officials, and sheriffs;

(6) Through the bureau of criminal identification and investigation, provide the notifications, the information and materials, and the documents that the bureau is required to provide to appropriate law enforcement officials and to the federal bureau of investigation pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code;

(7) Through the bureau of criminal identification and investigation, maintain the verification forms returned under the address verification mechanism set forth in section 2950.06 of the Revised Code;

(8) In consultation with representatives of the officials, judges, and sheriffs, adopt procedures for officials, judges, and sheriffs to use to forward information, photographs, and fingerprints to the bureau of criminal identification and investigation pursuant to the requirements of sections 2950.03, 2950.04, 2950.041 [2950.04.1], 2950.05, 2950.06, and 2950.11 of the Revised Code;

(9) In consultation with the director of education, the director of job and family services, and the director of

rehabilitation and correction, adopt rules that contain guidelines to be followed by boards of education of a school district, chartered nonpublic schools or other schools not operated by a board of education, preschool programs, child day-care centers, type A family day-care homes, certified type B family day-care homes, and institutions of higher education regarding the proper use and administration of information received pursuant to section 2950.11 of the Revised Code relative to an offender or delinquent child who has committed a sexually oriented offense or a child-victim oriented offense and is in a category specified in division (F)(1) of that section;

(10) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that designate a geographic area or areas within which the notice described in division (B) of section 2950.11 of the Revised Code must be given to the persons identified in divisions (A)(2) to (8) and (A)(10) of that section;

(11) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and operate on the internet a sex offender and child-victim offender database that contains information for every offender who has committed a sexually oriented offense or a child-victim oriented offense and registers in any county in this state pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and for every delinquent child who has committed a sexually oriented offense, is a public registry-qualified juvenile offender registrant, and registers in any county in this state pursuant to either such section. The bureau shall not include on the database the identity of any offender's or public registry-qualified juvenile offender registrant's victim, any offender's or public registry-qualified juvenile offender registrant's social security number, the name of any school or institution of higher education attended by any offender or public registry-qualified juvenile offender registrant, the name of the place of employment of any offender or public registry-qualified juvenile offender registrant, any tracking or identification number described in division (A)(1)(f) of this section, or any information described in division (C)(7) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code. The bureau shall provide on the database, for each offender and each public registry-qualified juvenile offender registrant, at least the information specified in divisions (A)(11)(a) to (h) of this section. Otherwise, the bureau shall determine the information to be provided on the database for each offender and public registry-qualified juvenile offender registrant and shall obtain that information from the information contained in the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section, which information, while in the possession of the sheriff who provided it, is a public record open for inspection as described in section 2950.081 [2950.08.1] of the Revised Code. The database is a public record open for inspection under section 149.43 of the Revised Code, and it shall be searchable by offender or public registry-qualified juvenile offender registrant name, by county, by zip code, and by school district. The database shall provide a link to the web site of each sheriff who has established and operates on the internet a sex offender and child-victim offender database that contains information for offenders and public registry-qualified juvenile offender registrants who register in that county pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, with the link being a direct link to the sex offender

and child-victim offender database for the sheriff. The bureau shall provide on the database, for each offender and public registry-qualified juvenile offender registrant, at least the following information:

(a) The information described in divisions (A)(1)(a), (b), (c), and (d) of this section relative to the offender or public registry-qualified juvenile offender registrant;

(b) The address of the offender's or public registry-qualified juvenile offender registrant's school, institution of higher education, or place of employment provided in a registration form;

(c) The information described in division (C)(6) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code;

(d) A chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of tier I sex offender/child-victim offender, tier II sex offender/child-victim offender, and tier III sex offender/child-victim offender;

(e) Fingerprints and palm prints of the offender or public registry-qualified juvenile offender registrant and a DNA specimen from the offender or public registry-qualified juvenile offender registrant;

(f) The information set forth in division (B) of section 2950.11 of the Revised Code;

(g) Any outstanding arrest warrants for the offender or public registry-qualified juvenile offender registrant;

(h) The offender's or public registry-qualified juvenile offender registrant's compliance status with duties under this chapter.

(12) Develop software to be used by sheriffs in establishing on the internet a sex offender and child-victim offender database for the public dissemination of some or all of the information and materials described in division (A) of section 2950.081 [2950.08.1] of the Revised Code that are public records under that division, that are not prohibited from inclusion by division (B) of that section, and that pertain to offenders and public registry-qualified juvenile offender registrants who register in the sheriff's county pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code and for the public dissemination of information the sheriff receives pursuant to section 2950.14 of the Revised Code and, upon the request of any sheriff, provide technical guidance to the requesting sheriff in establishing on the internet such a database;

(13) Through the bureau of criminal identification and investigation, not later than January 1, 2004, establish and operate on the internet a database that enables local law enforcement representatives to remotely search by electronic means the state registry of sex offenders and child-victim offenders described in division (A)(1) of this section and any information and materials the bureau receives pursuant to sections 2950.04, 2950.041 [2950.04.1], 2950.05, 2950.06, and 2950.14 of the Revised Code. The database shall enable local law enforcement representatives to obtain detailed information regarding each offender and delinquent child who is included in the registry, including, but not limited to the offender's or delinquent child's name, aliases, residence address, name and address of any place of employment, school, institution of higher education, if applicable, license plate number of each vehicle identified in division (C)(5) of section 2950.04 or 2950.041 [2950.04.1] of the Revised Code to the extent applicable, victim preference if available, date of most recent release from confinement if applicable, fingerprints, and palmprints, all of the infor-

mation and material described in division (A)(1)(a) to (h) of this section regarding the offender or delinquent child, and other identification parameters the bureau considers appropriate. The database is not a public record open for inspection under section 149.43 of the Revised Code and shall be available only to law enforcement representatives as described in this division. Information obtained by local law enforcement representatives through use of this database is not open to inspection by the public or by any person other than a person identified in division (A) of section 2950.08 of the Revised Code.

(14) Through the bureau of criminal identification and investigation, maintain a list of requests for notice about a specified offender or delinquent child or specified geographical notification area made pursuant to division (J) of section 2950.11 of the Revised Code and, when an offender or delinquent child changes residence to another county, forward any requests for information about that specific offender or delinquent child to the appropriate sheriff;

(15) Through the bureau of criminal identification and investigation, establish and operate a system for the immediate notification by electronic means of the appropriate officials in other states specified in this division each time an offender or delinquent child registers a residence, school, institution of higher education, or place of employment address under section 2950.04 or 2950.041 [2950.04.1] of the revised Code or provides a notice of a change of address or registers a new address under division (A) or (B) of section 2950.05 of the Revised Code. The immediate notification by electronic means shall be provided to the appropriate officials in each state in which the offender or delinquent child is required to register a residence, school, institution of higher education, or place of employment address. The notification shall contain the offender's or delinquent child's name and all of the information the bureau receives from the sheriff with whom the offender or delinquent child registered the address or provided the notice of change of address or registered the new address.

(B) The attorney general in consultation with local law enforcement representatives, may adopt rules that establish one or more categories of neighbors of an offender or delinquent child who, in addition to the occupants of residential premises and other persons specified in division (A)(1) of section 2950.11 of the Revised Code, must be given the notice described in division (B) of that section.

(C) No person, other than a local law enforcement representative, shall knowingly do any of the following:

(1) Gain or attempt to gain access to the database established and operated by the attorney general, through the bureau of criminal identification and investigation, pursuant to division (A)(13) of this section.

(2) Permit any person to inspect any information obtained through use of the database described in division (C)(1) of this section, other than as permitted under that division.

(D) As used in this section, "local law enforcement representatives" means representatives of the sheriffs of this state, representatives of the municipal chiefs of police and marshals of this state, and representatives of the township constables and chiefs of police of the township police departments or police district police forces of this state.

HISTORY: 146 v H 180 (EFF 7-1-97); 146 v H 72 (EFF 7-1-97); 148 v H 471 (EFF 7-1-2000); 149 v S 3 (EFF 1-1-2002); 149 v H 485. EFF

6-13-2002; 150 v S 5, § 1, EFF 7-31-03; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.13.1] § 2950.131 † Conformance to federal regulations, guidelines, or standards.

If, on or after the effective date of this section, the United States attorney general or an office established under the authority of the United States attorney general adopts any regulation, guideline, or standard that interprets or applies the federal Sex Offender Registration and Notification Act, Pub. L. No. 109-249, to require additional sex offender registration and notification than otherwise required by Chapter 2950. of the Revised Code, as amended by this act, or notifies the attorney general of this state that the amendments made by this act are not in substantial compliance with the federal Sex Offender Registration and Notification Act or regulations, guidelines or standards interpreting or applying the federal Sex Offender Registration and Notification Act, the attorney general of this state within one hundred eighty days after notification or the adoption of any regulation, guideline or standard that interprets or applies the federal Sex Offender Registration and Notification Act, shall adopt rules in accordance with Chapter 119. of the Revised Code to require additional sex offender registration or notification so that Ohio's sex offender registration and notification requirements are consistent with, and not less stringent than, the federal Sex Offender Registration and Notification Act and any regulation, guideline or standard that interprets or applies the federal Sex Offender Registration and Notification Act.

HISTORY: 152 v S 10, § 1, eff. 7-1-07.

† As enacted by 152 v S 10.

The effective date is set by § 3 of 152 v S 10.

[§ 2950.13.1] § 2950.131 † Link to educational information on current research about sex offenders and child-victim offenders; notice to offenders regarding correcting information.

(A) By January 1, 2008, the bureau of criminal identification and investigation, with the assistance of the office of criminal justice services, shall include on the internet sex offender and child-victim offender database established and operated pursuant to division (A)(11) of section 2950.13 of the Revised Code a link to educational information for the public on current research about sex offenders and child-victim offenders. Each sheriff who has established on the internet a sex offender and child-victim offender database may include a link to this information on the sheriff's internet database.

(B) By January 1, 2008, the internet sex offender and child-victim offender database established and operated pursuant to division (A)(11) of section 2950.13 of the Revised Code and each sheriff's internet sex offender and child-victim offender database is required to inform offenders and public registry-qualified juvenile offender registrants that they may contact the sheriff of the county in which the offender or delinquent child registered an address if the offender or delinquent child believes that information contained on the internet sex offender and child-victim offender database or sheriff's internet sex

offender and child-victim offender database pertaining to the offender or delinquent child is incorrect.

HISTORY: 152 v S 97, § 1, eff. 1-1-08.

† As enacted by 152 v S 97.

The effective date is set by § 3 of 152 v S 97.

§ 2950.14 Information to be provided to bureau of criminal identification and investigation prior to release; information to be entered on internet database.

Effective until 1-1-08.

(A) Prior to releasing an offender who is under the custody and control of the department of rehabilitation and correction and who has been convicted of or pleaded guilty to committing, either prior to, on, or after January 1, 1997, any sexually oriented offense that is not a registration-exempt sexually oriented offense or any child-victim oriented offense, the department of rehabilitation and correction shall provide all of the information described in division (B) of this section to the bureau of criminal identification and investigation regarding the offender and to the sheriff of the county in which the offender's anticipated future residence is located. Prior to releasing a delinquent child who is in the custody of the department of youth services who has been adjudicated a delinquent child for committing on or after January 1, 2002, any sexually oriented offense that is not a registration-exempt sexually oriented offense or any child-victim oriented offense, and who has been classified a juvenile offender registrant based on that adjudication, the department of youth services shall provide all of the information described in division (B) of this section to the bureau of criminal identification and investigation regarding the delinquent child.

(B) The department of rehabilitation and correction and the department of youth services shall provide all of the following information to the bureau of criminal identification and investigation regarding an offender or delinquent child described in division (A) of this section:

- (1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;
- (2) All identifying factors concerning the offender or delinquent child;
- (3) The offender's or delinquent child's anticipated future residence;
- (4) The offense and delinquency history of the offender or delinquent child;
- (5) Whether the offender or delinquent child was treated for a mental abnormality or personality disorder while under the custody and control of the department;
- (6) Any other information that the bureau indicates is relevant and that the department possesses.

(C) Upon receipt of the information described in division (B) of this section regarding an offender or delinquent child, the bureau immediately shall enter the information into the state registry of sex offenders and child-victim offenders that the bureau maintains pursuant to section 2950.13 of the Revised Code and into the records that the bureau maintains pursuant to division (A) of section 109.57 of the Revised Code. Upon receipt of that information regarding an offender, the bureau immediately shall enter the information on the sex offender and child-victim offender database it establishes and

operates on the internet pursuant to division (A)(11) of section 2950.13 of the Revised Code.

(D) Upon receipt of the information described in division (B) of this section regarding an offender, a sheriff who has established on the internet a sex offender and child-victim offender database for the public dissemination of information regarding such offenders shall enter that information on the database.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v S 260, § 1, eff. 1-2-07.

§ 2950.14 Information to be provided to bureau of criminal identification and investigation prior to release; information to be entered on internet database.

Effective 1-1-08.

(A) Prior to releasing an offender who is under the custody and control of the department of rehabilitation and correction and who has been convicted of or pleaded guilty to committing, either prior to, on, or after January 1, 1997, any sexually oriented offense or any child-victim oriented offense, the department of rehabilitation and correction shall provide all of the information described in division (B) of this section to the bureau of criminal identification and investigation regarding the offender and to the sheriff of the county in which the offender's anticipated future residence is located. Prior to releasing a delinquent child who is in the custody of the department of youth services who has been adjudicated a delinquent child for committing any sexually oriented offense or any child-victim oriented offense, regardless of when the offense was committed, and who has been classified a juvenile offender registrant based on that adjudication, the department of youth services shall provide all of the information described in division (B) of this section to the bureau of criminal identification and investigation regarding the delinquent child.

(B) The department of rehabilitation and correction and the department of youth services shall provide all of the following information to the bureau of criminal identification and investigation regarding an offender or delinquent child described in division (A) of this section:

- (1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;
- (2) All identifying factors concerning, and a physical description of, the offender or delinquent child;
- (3) The offender's or delinquent child's anticipated future residence;
- (4) The offense and delinquency history and the terms and conditions of release of the offender or delinquent child;
- (5) Whether the offender or delinquent child was treated for a mental abnormality or personality disorder while under the custody and control of the department;
- (6) Any other information that the bureau indicates is relevant and that the department possesses.

(C) Upon receipt of the information described in division (B) of this section regarding an offender or delinquent child, the bureau immediately shall enter the information into the state registry of sex offenders and child-victim offenders that the bureau maintains pursuant to section 2950.13 of the Revised Code and into the records that the bureau maintains pursuant to division (A)

of section 109.57 of the Revised Code. Upon receipt of that information regarding an offender, the bureau immediately shall enter the information on the sex offender and child-victim offender database it establishes and operates on the internet pursuant to division (A)(11) of section 2950.13 of the Revised Code.

(D) Upon receipt of the information described in division (B) of this section regarding an offender, a sheriff who has established on the internet a sex offender and child-victim offender database for the public dissemination of information regarding such offenders shall enter that information on the database.

HISTORY: 146 v H 180 (Eff 1-1-97); 147 v H 565 (Eff 3-30-99); 149 v S 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 150 v S 5, § 1, Eff 7-31-03; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.15 Motion requesting court to terminate duty to comply with registration requirements.

Effective 1-1-08.

(A) As used in this section and section 2950.16 of the Revised Code, "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a public registry-qualified juvenile offender registrant.

(B) Pursuant to this section, an eligible offender may make a motion to the court of common pleas or, for a delinquent child, the juvenile court of the county in which the eligible offender resides requesting that the court terminate the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. If the eligible offender is not a resident of this state, the eligible offender may make a motion to the court of common pleas of the county in which the eligible offender has registered pursuant to section 2950.04 or 2950.041 [2950.04.1] of the Revised Code, but if the eligible offender has registered addresses of that nature in more than one county, the eligible offender may make such a motion in the court of only one of those counties. Notwithstanding any state or local rule assigning costs and fees for filing and processing civil and criminal cases, the fee for filing the motion shall be one hundred fifty dollars. This fee shall be applied to any further processing of the motion, including, but not limited to, the costs associated with investigating the motion, notifying relevant parties, scheduling hearings, and recording and reporting the court's determination.

(C)(1) Except as provided in division (C)(2) of this section, an eligible offender who is classified a tier I sex offender/child-victim offender may make a motion under division (B) of this section upon the expiration of ten years after the eligible offender's duty to comply with division (A)(2) or (4) of section 2950.04 or division (A)(2) or (4) of section 2950.041 and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the eligible offender is subject to those provisions.

(2) An eligible offender who is a delinquent child and is classified a public registry-qualified juvenile offender registrant may make a motion under division (B) of this section upon the expiration of twenty-five years after the eligible offender's duty to comply with division (A)(3) or (4) of section 2950.04 and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the eligible offender is subject to those provisions.

(D) An eligible offender who makes a motion under division (B) of this section shall include all of the following with the motion:

(1) A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the eligible offender was convicted, pleaded guilty, or was adjudicated a delinquent child;

(2) Documentation of the date of discharge from supervision or release, whichever is applicable;

(3) Evidence that the eligible offender has completed a sex offender or child-victim offender treatment program certified by the department of rehabilitation and correction or the department of youth services pursuant to section 2950.16 of the Revised Code;

(4) Evidence that the eligible offender has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any subsequent sexually oriented offense, child-victim oriented offense, or other criminal offense, except for a minor misdemeanor traffic offense;

(5) Evidence that the eligible offender has paid any financial sanctions imposed upon the offender pursuant to section 2929.18 or 2929.28 of the Revised Code.

(E) Upon the filing of a motion pursuant to division (B) of this section, the offender or delinquent child shall serve a copy of the motion on the prosecutor who handled the case in which the eligible offender was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense. Upon the filing of the motion, the court shall set a tentative date for a hearing on the motion that is not later than one hundred eighty days from the date the motion is filed unless good cause exists to hold the hearing at a later date and shall notify the eligible offender and the prosecutor of the date, time, and place of the hearing. The court shall then forward a copy of the motion and its supporting documentation to the court's probation department or another appropriate agency to investigate the merits of the motion. The probation department or agency shall submit a written report detailing its investigation to the court within sixty days of receiving the motion and supporting documentation.

Upon receipt of the written report from the probation department or other appropriate agency, the court shall forward a copy of the motion, supporting documentation, and the written report to the prosecutor.

(F)(1) After the prosecutor is served with a copy of the motion as described in division (E) of this section, the prosecutor shall notify the victim of any offense for which the eligible offender is requesting a termination of duties under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. The victim may submit a written statement to the prosecutor regarding any knowledge the victim has of the eligible offender's conduct while subject to the duties imposed by sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code.

(2) At least seven days before the hearing date, the prosecutor may file an objection to the motion with the court and serve a copy of the objection to the motion to the eligible offender or the eligible offender's attorney.

(G) In addition to the evidence that accompanies the motion described in division (D) of this section and the written report submitted pursuant to division (E) of this section, in determining whether to grant a motion made under division (B) of this section, the court may consider any other evidence the court considers relevant, including, but not limited to, evidence of the following while the eligible offender has been subject to the duties imposed under sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code:

(1) Whether the eligible offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege has ever been suspended;

(2) Whether the eligible offender has maintained financial responsibility for a motor vehicle as required by section 4509.101 [4509.10.1] of the Revised Code;

(3) Whether the eligible offender has satisfied any child or spousal support obligations, if applicable;

(4) Whether the eligible offender has paid all local, state, and federal income taxes, and has timely filed all associated income tax returns, as required by local, state, or federal law;

(5) Whether there is evidence that the eligible offender has adequately addressed sex offending or child-victim offending behaviors;

(6) Whether the eligible offender has maintained a residence for a substantial period of time;

(7) Whether the eligible offender has maintained employment or, if the eligible offender has not been employed while under a duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, whether the eligible offender has satisfied the offender's financial obligations through other manners of support such as disability payments, a pension, spousal or child support, or scholarships or grants;

(8) Whether the eligible offender has adequately addressed any drug or alcohol abuse or addiction;

(9) Letters of reference;

(10) Documentation of the eligible offender's service to the community or to specific individuals in need.

(H)(1) The court, without a hearing, may issue an order denying the eligible offender's motion to terminate the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should not be terminated.

(2) If the prosecutor does not file an objection to the eligible offender's application as provided in division (F)(2) of this section, the court, without a hearing, may issue an order that terminates the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should be terminated.

(3) If the court does not issue an order under division (H)(1) or (2) of this section, the court shall hold a hearing to determine whether to grant or deny the motion. At the hearing, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. At the hearing, the eligible offender has the burden of going forward with the evidence and the burden of proof by a preponderance of the evidence. If, after considering the evidence submitted with the motion pursuant to division (D) of this section, the written report submitted pursuant to division (E) of this section, and the factors described in division (G) of this section, the court finds that the eligible offender has satisfied the burden of proof, the court shall issue an order that terminates the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code. If the court finds that the eligible offender has not satisfied the burden of proof, the court shall issue an order denying the motion.

(4)(a) The court shall provide prompt notice of its order issued pursuant to division (H)(1), (2), or (3) of this section to the eligible offender or the eligible offender's attorney.

(b) If the court issues an order terminating the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, the court shall promptly forward a copy of the order to the bureau of criminal identification and investigation. Upon receipt of the order, the bureau shall update all records pertaining to the eligible offender to reflect the termination order. The bureau also shall notify every sheriff with whom the eligible offender has most recently registered under section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code of the termination order.

(c) If the court issues an order terminating the eligible offender's duty to comply with sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code, the court shall promptly forward a copy of the order to any court that sentenced the offender or adjudicated the child a delinquent child for a sexually oriented offense or child-victim oriented offense that is the basis of the termination order. The court that receives this notice shall retain a copy of the order in the eligible offender's original case file.

HISTORY: 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.16 Certification of sex offender and child-victim offender treatment programs.

Effective 1-1-08.

By July 1, 2008, the department of rehabilitation and correction and the department of youth services shall adopt rules pertaining to the certification of sex offender and child-victim offender treatment programs. The rules shall include a requirement that the departments periodically inspect and certify sex offender and child-victim offender treatment programs. The rules shall also include a requirement that the departments maintain a list of certified sex offender and child-victim offender treatment programs that is open to public inspection.

HISTORY: 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

§ 2950.99 Penalties.

Effective until 1-1-08.

(A)(1)(a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, or if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as that offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in this state.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was

violated under the prohibition is a felony of the fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fifth degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor other than a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, change of address, or address verification requirement that was violated under the prohibition or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in this state.

(2) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder, murder, or a felony of the first, second, or third degree for purposes of division (A)(1)(a)(i) of this section, a felony of the fourth or fifth degree or a misdemeanor for purposes of division (A)(1)(a)(ii) of this section, aggravated murder, murder, or a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(b)(i) of this section, a felony of the fifth degree for purposes of division (A)(1)(b)(ii) of this section, a misdemeanor of the first degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor other than

a misdemeanor of the first degree for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or as an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of section 2950.13 of the Revised Code is guilty of a misdemeanor of the first degree.

HISTORY: 130 v 671 (Eff 10-4-63); 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 7-1-97); 149 v S 3, Eff 1-1-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05.

§ 2950.99 Penalties.

Effective 1-1-08.

(A)(1)(a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth

degree or a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(2)(a) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(b) In addition to any penalty or sanction imposed under division (A)(1)(b)(i), (ii), or (iii) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of no less than three years. The definite prison term imposed under this section is not restricted by division (B) of section 2929.14 of the Revised Code and shall not be reduced to less than three years pursuant to Chapter 2967. or any other provision of the Revised Code.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder or murder for purposes of division (A)(1)(a)(i) of this section, a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(a)(ii) of this section, a felony of the fifth degree or a misdemeanor for purposes of division (A)(1)(a)(iii) of this section, aggravated murder or murder for purposes of division (A)(1)(b)(i) of this section, a felony of the first, second, or third degree for purposes of division (A)(1)(b)(ii) of this section, a felony of the fourth or fifth degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of section 2950.13 of the Revised Code is guilty of a misdemeanor of the first degree.

HISTORY: 130 v 671 (Eff 10-4-63); 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 7-1-97); 149 v S 3, Eff 1-1-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05; 152 v S 97, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 97.

The effective date is set by section 4 of H.B. 490.

CHAPTER 2967: PARDON; PAROLE; PROBATION

§ 2967.28 Period of post-release control for certain offenders; sanctions; proceedings upon violation.

(A) As used in this section:

(1) "Monitored time" means the monitored time sanction specified in section 2929.17 of the Revised Code.

(2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(3) "Felony sex offense" means a violation of a section contained in Chapter 2907. of the Revised Code that is a felony.

(B) Each sentence to a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. If a court imposes a sentence including a prison term of a type described in this division on or after the effective date of this amendment, the failure of a sentencing court to notify the offender pursuant to division (B)(3)(c) of section 2929.19 of the Revised Code of this requirement or to include in the judgment of conviction entered on the journal a statement that the offender's sentence includes this requirement does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under this division. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(3)(c) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(1) of section 2929.14 of the Revised Code a statement regarding post-release control. Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:

(1) For a felony of the first degree or for a felony sex offense, five years;

(2) For a felony of the second degree that is not a felony sex offense, three years;

(3) For a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years.

(C) Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (B)(1) or (3) of this section shall include a requirement that the offender be subject to a period of post-release control of up to three years after the offender's release from imprisonment, if the parole board, in accordance with division (D) of this section, determines that a period of post-release control is necessary for that offender. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to the effective date of this amendment, a court

imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(3)(d) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code a statement regarding post-release control.

(D)(1) Before the prisoner is released from imprisonment, the parole board shall impose upon a prisoner described in division (B) of this section, may impose upon a prisoner described in division (C) of this section, and shall impose upon a prisoner described in division (B)(2)(b) of section 5120.031 [5120.03.1] or in division (B)(1) of section 5120.032 [5120.03.2] of the Revised Code, one or more post-release control sanctions to apply during the prisoner's period of post-release control. Whenever the board imposes one or more post-release control sanctions upon a prisoner, the board, in addition to imposing the sanctions, also shall include as a condition of the post-release control that the individual or felon not leave the state without permission of the court or the individual's or felon's parole or probation officer and that the individual or felon abide by the law. The board may impose any other conditions of release under a post-release control sanction that the board considers appropriate, and the conditions of release may include any community residential sanction, community nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to sections 2929.16, 2929.17, and 2929.18 of the Revised Code. Prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board shall review the prisoner's criminal history, all juvenile court adjudications finding the prisoner, while a juvenile, to be a delinquent child, and the record of the prisoner's conduct while imprisoned. The parole board shall consider any recommendation regarding post-release control sanctions for the prisoner made by the office of victims' services. After considering those materials, the board shall determine, for a prisoner described in division (B) of this section, division (B)(2)(b) of section 5120.031 [5120.03.1], or division (B)(1) of section 5120.032 [5120.03.2] of the Revised Code, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances or, for a prisoner described in division (C) of this section, whether a post-release control sanction is necessary and, if so, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances. In the case of a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, the board shall presume that monitored time is the appropriate post-release control sanction unless the board determines that a more restrictive sanction is warranted. A post-release control sanction imposed under this division takes effect upon the prisoner's release from imprisonment.

Regardless of whether the prisoner was sentenced to the prison term prior to, on, or after the effective date of this amendment, prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board shall notify the prisoner that, if the prisoner violates any sanction so imposed or any condition of post-release control described in division (B) of section 2967.131 [2967.13.1] of the Revised Code that is imposed on the prisoner, the

parole board may impose a prison term of up to one-half of the stated prison term originally imposed upon the prisoner.

(2) At any time after a prisoner is released from imprisonment and during the period of post-release control applicable to the releasee, the adult parole authority may review the releasee's behavior under the post-release control sanctions imposed upon the releasee under this section. The authority may determine, based upon the review and in accordance with the standards established under division (E) of this section, that a more restrictive or a less restrictive sanction is appropriate and may impose a different sanction. Unless the period of post-release control was imposed for an offense described in division (B)(1) of this section, the authority also may recommend that the parole board reduce the duration of the period of post-release control imposed by the court. If the authority recommends that the board reduce the duration of control for an offense described in division (B)(2), (B)(3), or (C) of this section, the board shall review the releasee's behavior and may reduce the duration of the period of control imposed by the court. In no case shall the board reduce the duration of the period of control imposed by the court for an offense described in division (B)(1) of this section, and in no case shall the board permit the releasee to leave the state without permission of the court or the releasee's parole or probation officer.

(E) The department of rehabilitation and correction, in accordance with Chapter 119. of the Revised Code, shall adopt rules that do all of the following:

(1) Establish standards for the imposition by the parole board of post-release control sanctions under this section that are consistent with the overriding purposes and sentencing principles set forth in section 2929.11 of the Revised Code and that are appropriate to the needs of releasees;

(2) Establish standards by which the parole board can determine which prisoners described in division (C) of this section should be placed under a period of post-release control;

(3) Establish standards to be used by the parole board in reducing the duration of the period of post-release control imposed by the court when authorized under division (D) of this section, in imposing a more restrictive post-release control sanction than monitored time upon a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, or in imposing a less restrictive control sanction upon a releasee based on the releasee's activities including, but not limited to, remaining free from criminal activity and from the abuse of alcohol or other drugs, successfully participating in approved rehabilitation programs, maintaining employment, and paying restitution to the victim or meeting the terms of other financial sanctions;

(4) Establish standards to be used by the adult parole authority in modifying a releasee's post-release control sanctions pursuant to division (D)(2) of this section;

(5) Establish standards to be used by the adult parole authority or parole board in imposing further sanctions under division (F) of this section on releasees who violate post-release control sanctions, including standards that do the following:

(a) Classify violations according to the degree of seriousness;

(b) Define the circumstances under which formal action by the parole board is warranted;

(c) Govern the use of evidence at violation hearings;
 (d) Ensure procedural due process to an alleged violator;

(e) Prescribe nonresidential community control sanctions for most misdemeanor and technical violations;

(f) Provide procedures for the return of a releasee to imprisonment for violations of post-release control.

(F)(1) Whenever the parole board imposes one or more post-release control sanctions upon an offender under this section, the offender upon release from imprisonment shall be under the general jurisdiction of the adult parole authority and generally shall be supervised by the field services section through its staff of parole and field officers as described in section 5149.04 of the Revised Code, as if the offender had been placed on parole. If the offender upon release from imprisonment violates the post-release control sanction or any conditions described in division (A) of section 2967.131 [2967.13.1] of the Revised Code that are imposed on the offender, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation directly to the adult parole authority or to the officer of the authority who supervises the offender. The authority's officers may treat the offender as if the offender were on parole and in violation of the parole, and otherwise shall comply with this section.

(2) If the adult parole authority determines that a releasee has violated a post-release control sanction or any conditions described in division (A) of section 2967.131 [2967.13.1] of the Revised Code imposed upon the releasee and that a more restrictive sanction is appropriate, the authority may impose a more restrictive sanction upon the releasee, in accordance with the standards established under division (E) of this section, or may report the violation to the parole board for a hearing pursuant to division (F)(3) of this section. The authority may not, pursuant to this division, increase the duration of the releasee's post-release control or impose as a post-release control sanction a residential sanction that includes a prison term, but the authority may impose on the releasee any other residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to sections 2929.16, 2929.17, and 2929.18 of the Revised Code.

(3) The parole board may hold a hearing on any alleged violation by a releasee of a post-release control sanction or any conditions described in division (A) of section 2967.131 [2967.13.1] of the Revised Code that are imposed upon the releasee. If after the hearing the board finds that the releasee violated the sanction or condition, the board may increase the duration of the releasee's post-release control up to the maximum duration authorized by division (B) or (C) of this section or impose a more restrictive post-release control sanction. When appropriate, the board may impose as a post-release control sanction a residential sanction that includes a prison term. The board shall consider a prison term as a post-release control sanction imposed for a violation of post-release control when the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct, or when

the releasee committed repeated violations of post-release control sanctions. The period of a prison term that is imposed as a post-release control sanction under this division shall not exceed nine months, and the maximum cumulative prison term for all violations under this division shall not exceed one-half of the stated prison term originally imposed upon the offender as part of this sentence. The period of a prison term that is imposed as a post-release control sanction under this division shall not count as, or be credited toward, the remaining period of post-release control.

If an offender is imprisoned for a felony committed while under post-release control supervision and is again released on post-release control for a period of time determined by division (F)(4)(d) of this section, the maximum cumulative prison term for all violations under this division shall not exceed one-half of the total stated prison terms of the earlier felony, reduced by any prison term administratively imposed by the parole board, plus one-half of the total stated prison term of the new felony.

(4) Any period of post-release control shall commence upon an offender's actual release from prison. If an offender is serving an indefinite prison term or a life sentence in addition to a stated prison term, the offender shall serve the period of post-release control in the following manner:

(a) If a period of post-release control is imposed upon the offender and if the offender also is subject to a period of parole under a life sentence or an indefinite sentence, and if the period of post-release control ends prior to the period of parole, the offender shall be supervised on parole. The offender shall receive credit for post-release control supervision during the period of parole. The offender is not eligible for final release under section 2967.16 of the Revised Code until the post-release control period otherwise would have ended.

(b) If a period of post-release control is imposed upon the offender and if the offender also is subject to a period of parole under an indefinite sentence, and if the period of parole ends prior to the period of post-release control, the offender shall be supervised on post-release control. The requirements of parole supervision shall be satisfied during the post-release control period.

(c) If an offender is subject to more than one period of post-release control, the period of post-release control for all of the sentences shall be the period of post-release control that expires last, as determined by the parole board. Periods of post-release control shall be served concurrently and shall not be imposed consecutively to each other.

(d) The period of post-release control for a releasee who commits a felony while under post-release control for an earlier felony shall be the longer of the period of post-release control specified for the new felony under division (B) or (C) of this section or the time remaining under the period of post-release control imposed for the earlier felony as determined by the parole board.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 111 (Eff 3-17-98); 148 v S 107 (Eff 3-23-2000); 149 v H 327 (Eff 7-8-2002); 149 v H 510; Eff 3-31-2003; 151 v H 137, § 1, eff. 7-11-06.

See provisions of § 5 of 151 v H 137 following RC § 2929.191. The effective date is set by § 7 of 151 v H 137.

OHIO RULES OF CRIMINAL PROCEDURE

Complete with amendments through July 15, 2007

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APPENDIX OF FORMS

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

(A) **Applicability.** These rules prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction, with the exceptions stated in division (C) of this rule.

(B) **Purpose and construction.** These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.

(C) **Exceptions.** These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) upon extradition and rendition of fugitives, (3) in cases covered by the Uniform Traffic Rules, (4) upon the application and enforcement of peace bonds, (5) in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure, (6) upon forfeiture of property for violation of a statute of this state, or (7) upon the collection of fines and penalties. Where any statute or rule provides for procedure by a general or specific reference to the statutes governing procedure in criminal actions, the procedure shall be in accordance with these rules.

History: Amended, eff 7-1-75; 7-1-96.

RULE 2. Definitions

As used in these rules:

(A) "Felony" means an offense defined by law as a felony.

(B) "Misdemeanor" means an offense defined by law as a misdemeanor.

(C) "Serious offense" means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.

(D) "Petty offense" means a misdemeanor other than a serious offense.

(E) "Judge" means judge of the court of common pleas, juvenile court, municipal court, or county court, or the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.

(F) "Magistrate" means any person appointed by a court pursuant to Crim. R. 19. "Magistrate" does not include an official included within the definition of magistrate contained in section 2931.01 of the Revised Code, or a mayor's court magistrate appointed pursuant to section 1905.05 of the Revised Code.

(G) "Prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, the law director, city solicitor, or other officer who prosecutes a criminal case on behalf of the state or a city, village, township, or other political subdivision, and the assistant or assistants of any of them. As used in Crim. R. 6, "prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, and the assistant or assistants of either of them.

(H) "State" means this state, a county, city, village, township, other political subdivision, or any other entity of this state that may prosecute a criminal action.

(I) "Clerk of court" means the duly elected or appointed clerk of any court of record or the deputy clerk, and the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.

(J) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

History: Amended, eff 7-1-76; 7-1-90.

RULE 3. Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.

RULE 4. Warrant or Summons; Arrest

(A) Issuance.

(1) **Upon complaint.** If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. The testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment.

The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to ensure the defendant's appearance.

(2) **By law enforcement officer with warrant.** In misdemeanor cases where a warrant has been issued to a law enforcement officer, the officer, unless the issuing

authority includes a prohibition against it in the warrant, may issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to ensure the defendant's appearance. The officer issuing the summons shall note on the warrant and the return that the warrant was executed by issuing summons, and shall also note the time and place the defendant shall appear. No alias warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(3) **By law enforcement officer without a warrant.** In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, the officer may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance. The officer issuing the summons shall file, or cause to be filed, a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(B) **Multiple issuance; sanction.** More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue.

(C) Warrant and summons: form.

(1) **Warrant.** The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty, a description of the offense charged in the complaint, whether the warrant is being issued before the defendant has appeared or was scheduled to appear, and the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

(a) If the warrant is issued after the defendant has made an initial appearance or has failed to appear at an initial appearance, the warrant shall command that the defendant be arrested and either of the following:

(i) That the defendant shall be required to post a sum of cash or secured bail bond with the condition that the defendant appear before the issuing court at a time and date certain;

(ii) That the defendant shall be held without bail until brought before the issuing court without unnecessary delay.

(b) If the warrant is issued before the defendant has appeared or is scheduled to appear, the warrant shall so indicate and the bail provisions of Crim. R. 46 shall apply.

(2) **Summons.** The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear at a stated time and place and inform the defendant that he or she may be arrested if he or she fails to appear at the time and place stated in the summons. A copy of the complaint shall be attached to the summons, except where an officer issues summons in lieu of making an arrest without a warrant, or where an officer issues summons after arrest without a warrant.

(D) **Warrant or summons: execution or service; return.**

(1) **By whom.** Warrants shall be executed and summons served by any officer authorized by law.

(2) **Territorial limits.** Warrants may be executed or summons may be served at any place within this state.

(3) **Manner.** Except as provided in division (A)(2) of this rule, warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

Summons may be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by certified mail with a return receipt requested. When service of summons is made by certified mail it shall be served by the clerk in the manner prescribed by Civil Rule 4.1(1). A summons to a corporation shall be served in the manner provided for service upon corporations in Civil Rules 4 through 4.2 and 4.6(A) and (B), except that the waiver provisions of Civil Rule 4(D) shall not apply. Summons issued under division (A)(2) of this rule in lieu of executing a warrant by arrest shall be served by personal or residence service. Summons issued under division (A)(3) of this rule in lieu of arrest and summons issued after arrest under division (F) of this rule shall be served by personal service only.

(4) **Return.** The officer executing a warrant shall make return of the warrant to the issuing court before whom the defendant is brought pursuant to Crim. R. 5. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and cancelled by a judge of that court.

When the copy of the summons has been served, the person serving summons shall endorse that fact on the summons and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, the person serving summons shall endorse that fact and the reasons for the failure of service on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service.

(E) Arrest.

(1) Arrest upon warrant.

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall apply Crim. R. 46.

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in division (F) of this rule, where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court

at a time and date certain, or bring the arrested person without unnecessary delay before the court that issued the warrant.

(c) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs in any county other than the county from which the warrant was issued or in an adjoining county, the following sequence of procedures shall be followed:

(i) Where the warrant provides for the posting of bail, the arrested person shall be permitted to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain.

(ii) The arrested person may in writing waive the procedures in division (E)(1)(c)(iii) of this rule after having been informed in writing and orally by a law enforcement officer of those procedures, and consenting to being removed to the warrant issuing court without further delay. This waiver shall contain a representation by a law enforcement officer that the waiver was read to the arrested person and that the arrested person signed the waiver in the officer's presence.

(iii) Where the warrant is silent as to the posting of bail, requires that the arrested person be held without bail, the arrested person chooses not to post bail, or the arrested person chooses not to waive the procedures contained in division (E)(1) of this rule, the arrested person shall, except as provided in division (F) of this rule, be brought without unnecessary delay before a court of record therein, having jurisdiction over such an offense, and the arrested person shall not be removed from that county until the arrested person has been given a reasonable opportunity to consult with an attorney, or individual of the arrested person's choice, and to post bail to be determined by the judge or magistrate of that court not inconsistent with the directions of the issuing court as contained in the warrant or after consultation with the issuing court. If the warrant is silent as to the posting of bail or holding the arrested person without bail, the court may permit the arrested person to post bail, hold the arrested person without bail, or consult with the warrant issuing court on the issue of bail.

(d) If the arrested person is not released, the arrested person shall then be removed from the county and brought before the court issuing the warrant, without unnecessary delay. If the arrested person is released, the release shall be on condition that the arrested person appear in the issuing court at a time and date certain.

(2) **Arrest without warrant.** Where a person is arrested without a warrant the arresting officer shall, except as provided in division (F), bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested. Thereafter the court shall proceed in accordance with Crim. R. 5.

(F) **Release after arrest.** In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was arrested

without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

History: Amended, eff 7-1-75; 7-1-90; 7-1-98.

RULE 4.1. Optional Procedure in Minor Misdemeanor Cases

(A) **Procedure in minor misdemeanor cases.** Notwithstanding Rule 3, Rule 5(A), Rule 10, Rule 11(A), Rule 11(E), Rule 22, Rule 43(A), and Rule 44, a court may establish the following procedure for all or particular minor misdemeanors other than offenses covered by the Uniform Traffic Rules.

(B) **Definition of minor misdemeanor.** A minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred fifty dollars. With respect to offenses committed prior to January 1, 2004, a minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred dollars.

(C) **Form of citation.** In minor misdemeanor cases a law enforcement officer may issue a citation. The citation shall: contain the name and address of the defendant; describe the offense charged; give the numerical designation of the applicable statute or ordinance; state the name of the law enforcement officer who issued the citation; and order the defendant to appear at a stated time and place.

The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within that stated time, appear personally at the office of the clerk of court and upon signing a plea of guilty and a waiver of trial pay a stated fine and stated costs, if any. The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within a stated time, sign the guilty plea and waiver of trial provision of the citation, and mail the citation and a check or money order for the total amount of the fine and costs to the violations bureau. The citation shall inform the defendant that he may be arrested if he fails to appear either at the clerk's office or at the time and place stated in the citation.

(D) **Duty of law enforcement officer.** A law enforcement officer who issues a citation shall complete and sign the citation form, serve a copy of the completed form upon the defendant and, without unnecessary delay, swear to and file the original with the court.

(E) **Fine schedule.** The court shall establish a fine schedule which shall list the fine for each minor misdemeanor, and state the court costs. The fine schedule shall be prominently posted in the place where violation fines are paid.

(F) **Procedure upon failure to appear.** When a defendant fails to appear, the court may issue a supplemental citation, or a summons or warrant under Rule 4. Supplemental citations shall be in the form prescribed by subdivision (C), but shall be issued and signed by the clerk and served in the same manner as a summons under Rule 4.

(G) **Procedure where defendant does not enter a waiver.** Where a defendant appears but does not sign a guilty plea and waiver of trial, the court shall proceed in accordance with Rule 5.

History: Amended, eff 7-1-78; 7-1-04.

RULE 5. Initial Appearance, Preliminary Hearing

(A) **Procedure upon initial appearance.** When a defendant first appears before a judge or magistrate, the judge or magistrate shall permit the accused or his counsel to read the complaint or a copy thereof, and shall inform the defendant:

(1) Of the nature of the charge against him;

(2) That he has a right to counsel and the right to a reasonable continuance in the proceedings to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel;

(3) That he need make no statement and any statement made may be used against him;

(4) Of his right to a preliminary hearing in a felony case, when his initial appearance is not pursuant to indictment;

(5) Of his right, where appropriate, to jury trial and the necessity to make demand therefore in petty offense cases.

In addition, if the defendant has not been admitted to bail for a bailable offense, the judge or magistrate shall admit the defendant to bail as provided in these rules.

In felony cases the defendant shall not be called upon to plead either at the initial appearance or at a preliminary hearing.

In misdemeanor cases the defendant may be called upon to plead at the initial appearance. Where the defendant enters a plea the procedure established by Crim. R. 10 and Crim. R. 11 applies.

(B) **Preliminary hearing in felony cases; procedure.**

(1) In felony cases a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas. If the defendant does not waive the preliminary hearing, the judge or magistrate shall schedule a preliminary hearing within a reasonable time, but in any event not later than ten consecutive days following arrest or service of summons if the defendant is in custody and not later than fifteen consecutive days following arrest or service of summons if he is not in custody. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this division may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(2) At the preliminary hearing the prosecuting attorney may state orally the case for the state, and shall then proceed to examine witnesses and introduce exhibits for the state. The defendant and the judge or magistrate have full right of cross-examination, and the defendant has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trial generally.

(3) At the conclusion of the presentation of the state's case, defendant may move for discharge for failure of proof, and may offer evidence on his own behalf. If the defendant is not represented by counsel, the court shall advise him, prior to the offering of evidence on behalf of the defendant:

(a) That any such evidence, if unfavorable to him in any particular, may be used against him at later trial.

(b) That he may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence.

(c) That he may refuse to make any statement, and such refusal may not be used against him at trial.

(d) That any statement he makes may be used against him at trial.

(4) Upon conclusion of all the evidence and the statement, if any, of the accused, the court shall do one of the following:

(a) Find that there is probable cause to believe the crime alleged or another felony has been committed and that the defendant committed it, and bind the defendant over to the court of common pleas of the county or any other county in which venue appears.

(b) Find that there is probable cause to believe that a misdemeanor was committed and that the defendant committed it, and retain the case for trial or order the defendant to appear for trial before an appropriate court.

(c) Order the accused discharged.

(5) Any finding requiring the accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision and the discharge of defendant shall not be a bar to further prosecution.

(6) In any case in which the defendant is ordered to appear for trial for any offense other than the one charged the court shall cause a complaint charging such offense to be filed.

(7) Upon the conclusion of the hearing and finding, the court or the clerk of such court, shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail including any bail deposit, if any, filed, to the clerk of the court in which defendant is to appear. Such transcript shall contain an itemized account of the costs accrued.

History: Amended, eff 7-1-75; 7-1-76; 7-1-82; 7-1-90.

RULE 6. The Grand Jury

(A) **Summoning grand juries.** The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by him, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreman, plus not more than five alternates.

(B) **Objections to grand jury and to grand jurors.**

(1) **Challenges.** The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of jurors or an individual juror on the ground that the grand jury or individual juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) **Motion to dismiss.** A motion to dismiss the indictment may be based on objections to the array or on

the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) **Foreman and deputy foreman.** The court may appoint any qualified elector or one of the jurors to be foreman and one of the jurors to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record with the clerk of court, but the record shall not be made public except on order of the court. During the absence or disqualification of the foreman, the deputy foreman shall act as foreman.

(D) **Who may be present.** The prosecuting attorney, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(E) **Secrecy of proceedings and disclosure.** Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) **Finding and return of indictment.** An indictment may be found only upon the concurrence of seven or more jurors. When so found the foreman or deputy foreman shall sign the indictment as foreman or deputy foreman. The indictment shall be returned by the foreman or deputy foreman to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to Rule 46 and seven jurors do not concur in finding an indictment, the foreman shall so report to the court forthwith.

(G) **Discharge and excuse.** A grand jury shall serve until discharged by the court. A grand jury may serve for four months, but the court upon a showing of good cause by the prosecuting attorney may order a grand jury to serve more than four months but not more than nine months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another eligible person in place of the juror excused.

(H) **Alternate grand jurors.** The court may order that not more than five grand jurors, in addition to the regular grand jury, be called, impanelled and sit as alternate grand jurors. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

RULE 7. The Indictment and the Information

(A) **Use of indictment or information.** A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

Where an indictment is waived, the offense may be prosecuted by information, unless an indictment is filed within fourteen days after the date of waiver. If an information or indictment is not filed within fourteen days after the date of waiver, the defendant shall be discharged and the complaint dismissed. This division shall not prevent subsequent prosecution by information or indictment for the same offense.

A misdemeanor may be prosecuted by indictment or information in the court of common pleas, or by complaint in the juvenile court, as defined in the Rules of Juvenile Procedure, and in courts inferior to the court of common pleas. An information may be filed without leave of court.

(B) **Nature and contents.** The indictment shall be signed, in accordance with Crim. R. 6 (C) and (F) and contain a statement that the defendant has committed a public offense specified in the indictment. The information shall be signed by the prosecuting attorney or in the name of the prosecuting attorney by an assistant prosecuting attorney and shall contain a statement that the defendant has committed a public offense specified in the information. The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged. It may be alleged in a single count that the means by which the defendant committed the offense are

unknown or that the defendant committed it by one or more specified means. Each count of the indictment or information shall state the numerical designation of the statute that the defendant is alleged to have violated. Error in the numerical designation or omission of the numerical designation shall not be ground for dismissal of the indictment or information, or for reversal of a conviction, if the error or omission did not prejudicially mislead the defendant.

(C) **Surplusage.** The court on motion of the defendant or the prosecuting attorney may strike surplusage from the indictment or information.

(D) **Amendment of indictment, information, or complaint.** The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. If any amendment is made to the substance of the indictment, information, or complaint, or to cure a variance between the indictment, information, or complaint and the proof, the defendant is entitled to a discharge of the jury on the defendant's motion, if a jury has been impanelled, and to a reasonable continuance, unless it clearly appears from the whole proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which the amendment is made, or that the defendant's rights will be fully protected by proceeding with the trial, or by a postponement thereof to a later day with the same or another jury. Where a jury is discharged under this division, jeopardy shall not attach to the offense charged in the amended indictment, information, or complaint. No action of the court in refusing a continuance or postponement under this division is reviewable except after motion to grant a new trial therefore is refused by the trial court, and no appeal based upon such action of the court shall be sustained nor reversal had unless, from consideration of the whole proceedings, the reviewing court finds that a failure of justice resulted.

(E) **Bill of particulars.** When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial, or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charge and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

History: Amended, eff 7-1-93; 7-1-00.

RULE 8. Joinder of Offenses and Defendants

(A) **Joinder of offenses.** Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(B) **Joinder of defendants.** Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the

same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

RULE 9. Warrant or Summons Upon Indictment or Information

(A) **Issuance.** Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46 and is indicted for the same offense for which he was bound over pursuant to Rule 5. In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.

Upon like request or direction, the clerk shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to any officer authorized by law to execute or serve it. If a defendant fails to appear in response to summons, a warrant shall issue.

(B) Form of warrant and summons.

(1) **Warrant.** The form of the warrant shall be as provided in Rule 4(C)(1) except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant which shall command that the defendant be arrested and brought before the court issuing the warrant without unnecessary delay.

(2) **Summons.** The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear before the court at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the indictment or information shall be attached to the summons.

(C) Execution or service; return.

(1) **Execution or service.** Warrants shall be executed or summons served as provided in Rule 4(D) and the arrested person shall be treated in accordance with Rule 4(E)(1).

(2) **Return.** The officer executing a warrant shall make return thereof to the court.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, he shall endorse that fact and the reasons therefore on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

History: Amended, eff 7-1-75.

RULE 10. Arraignment

(A) **Arraignment procedure.** Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto. The defendant may in open court

waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead.

(B) **Presence of defendant.** The defendant must be present, except that the court, with the written consent of the defendant and the approval of the prosecuting attorney, may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

(C) **Explanation of rights.** When a defendant not represented by counsel is brought before a court and called upon to plead, the judge or magistrate shall cause him to be informed and shall determine that he understands all of the following:

(1) He has a right to retain counsel even if he intends to plead guilty, and has a right to a reasonable continuance in the proceedings to secure counsel.

(2) He has a right to counsel, and the right to a reasonable continuance in the proceeding to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel.

(3) He has a right to bail, if the offense is bailable.

(4) He need make no statement at any point in the proceeding, but any statement made can and may be used against him.

(D) **Joint arraignment.** If there are multiple defendants to be arraigned, the judge or magistrate may by general announcement advise them of their rights as prescribed in this rule.

History: Amended, eff 7-1-90.

RULE 11. Pleas, Rights Upon Plea

(A) **Pleas.** A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) **Effect of guilty or no contest pleas.** With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim. R. 32.

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses. In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(E) Misdemeanor cases involving petty offenses. In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first informing the defendant of the effect of the pleas of guilty, no contest, and not guilty.

The counsel provisions of Crim. R. 44(B) and (C) apply to division (E) of this rule.

(F) Negotiated plea in felony cases. When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) Refusal of court to accept plea. If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity. The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

History: Amended, eff 7-1-76; 7-1-80; 7-1-98.

RULE 12. Pleadings and Motions Before Trial: Defenses and Objections

(A) Pleadings and motions. Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(B) Filing with the court defined. The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) the complaint, if permitted by local rules to be filed electronically, shall comply with Crim. R. 3.

(2) any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(3) a provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(4) any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Such motions shall be filed in the trial court only.

(4) Requests for discovery under Crim. R. 16;

(5) Requests for severance of charges or defendants under Crim. R. 14.

(D) **Motion date.** All pretrial motions except as provided in Crim. R. 7(E) and 16(F) shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier. The court in the interest of justice may extend the time for making pretrial motions.

(E) **Notice by the prosecuting attorney of the intention to use evidence.**

(1) At the discretion of the prosecuting attorney. At the arraignment or as soon thereafter as is practicable, the prosecuting attorney may give notice to the defendant of the prosecuting attorney's intention to use specified evidence at trial, in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under division (C)(3) of this rule.

(2) At the request of the defendant. At the arraignment or as soon thereafter as is practicable, the defendant, in order to raise objections prior to trial under division (C)(3) of this rule, may request notice of the prosecuting attorney's intention to use evidence in chief at trial, which evidence the defendant is entitled to discover under Crim. R. 16.

(F) **Ruling on motion.** The court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means.

A motion made pursuant to divisions (C)(1) to (C)(5) of this rule shall be determined before trial. Any other motion made pursuant to division (C) of this rule shall be determined before trial whenever possible. Where the court defers ruling on any motion made by the prosecuting attorney before trial and makes a ruling adverse to the prosecuting attorney after the commencement of trial, and the ruling is appealed pursuant to law with the certification required by division (K) of this rule, the court shall stay the proceedings without discharging the jury or dismissing the charges.

Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(G) **Return of tangible evidence.** Where a motion to suppress tangible evidence is granted, the court upon request of the defendant shall order the property returned to the defendant if the defendant is entitled to possession of the property. The order shall be stayed pending appeal by the state pursuant to division (K) of this rule.

(H) **Effect of failure to raise defenses or objections.** Failure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court pursuant to division (D) of this rule, or prior to any extension of time made by the court, shall constitute waiver of the defenses or objections, but the court for good cause shown may grant relief from the waiver.

(I) **Effect of plea of no contest.** The plea of no contest does not preclude a defendant from asserting

upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence.

(J) **Effect of determination.** If the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time not exceeding fourteen days, pending the filing of a new indictment, information, or complaint. Nothing in this rule shall affect any statute relating to periods of limitations. Nothing in this rule shall affect the state's right to appeal an adverse ruling on a motion under divisions (C)(1) or (2) of this rule, when the motion raises issues that were formerly raised pursuant to a motion to quash, a plea in abatement, a demurrer, or a motion in arrest of judgment.

(K) **Appeal by state.** When the state takes an appeal as provided by law from an order suppressing or excluding evidence, the prosecuting attorney shall certify that both of the following apply:

(1) the appeal is not taken for the purpose of delay;

(2) the ruling on the motion or motions has rendered the state's proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed.

The appeal from an order suppressing or excluding evidence shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the trial court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal taken under this rule shall be prosecuted diligently.

If the defendant previously has not been released, the defendant shall, except in capital cases, be released from custody on his or her own recognizance pending appeal when the prosecuting attorney files the notice of appeal and certification.

This appeal shall take precedence over all other appeals.

If an appeal pursuant to this division results in an affirmance of the trial court, the state shall be barred from prosecuting the defendant for the same offense or offenses except upon a showing of newly discovered evidence that the state could not, with reasonable diligence, have discovered before filing of the notice of appeal.

History: Amended, eff 7-1-75; 7-1-80; 7-1-95; 7-1-98; 7-1-01.

RULE 12.1. Notice of Alibi

Whenever a defendant in a criminal case proposes to offer testimony to establish an alibi on his behalf, he shall, not less than seven days before trial, file and serve upon the prosecuting attorney a notice in writing of his intention to claim alibi. The notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant for the purpose of proving such alibi, unless the court determines that in the interest of justice such evidence should be admitted.

RULE 13. Trial Together of Indictments or Informations or Complaints

The court may order two or more indictments or informations or both to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

The court may order two or more complaints to be tried together, if the offenses or the defendants could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.

RULE 14. Relief from Prejudicial Joinder

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1)(a) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

When two or more persons are jointly indicted for a capital offense, each of such persons shall be tried separately, unless the court orders the defendants to be tried jointly, upon application by the prosecuting attorney or one or more of the defendants, and for good cause shown.

RULE 15. Deposition

(A) **When taken.** If it appears probable that a prospective witness will be unable to attend or will be prevented from attending a trial or hearing, and if it further appears that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information, or complaint shall upon motion of the defense attorney or the prosecuting attorney and notice to all the parties, order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

If a witness is committed for failure to give bail or to appear to testify at a trial or hearing, the court on written motion of the witness and notice to the parties, may direct that his deposition be taken. After the deposition is completed, the court may discharge the witness.

(B) **Notice of taking.** The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or fix the place of deposition.

(C) **Attendance of defendant.** The defendant shall have the right to attend the deposition. If he is confined the person having custody of the defendant shall be ordered by the court to take him to the deposition. The defendant may waive his right to attend the deposition,

provided he does so in writing and in open court, is represented by counsel, and is fully advised of his right to attend by the court at a recorded proceeding.

(D) **Counsel.** Where a defendant is without counsel the court shall advise him of his right to counsel and assign counsel to represent him unless the defendant waives counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that all deposition expenses, including but not limited to travel and subsistence of the defendant's attorney for attendance at such examination together with a reasonable attorney fee, in addition to the compensation allowed for defending the defendant, and the expenses of the prosecuting attorney in the taking of such deposition, shall be paid out of public funds upon the certificate of the court making such order. Waiver of counsel shall be as prescribed in Rule 44(C).

(E) **How taken.** Depositions shall be taken in the manner provided in civil cases. The prosecution and defense shall have the right, as at trial, to full examination of witnesses. A deposition taken under this rule shall be filed in the court in which the action is pending.

(F) **Use.** At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: that the witness is dead; or, that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of refreshing the recollection, or contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, any party may offer other parts.

(G) **Objections to admissibility.** Objections to receiving in evidence a deposition or a part thereof shall be made as provided in civil actions.

RULE 16. Discovery and Inspection

(A) **Demand for discovery.** Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) **Disclosure of evidence by the prosecuting attorney.**

(1) **Information subject to disclosure.**

(a) **Statement of defendant or co-defendant.** Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

(b) **Defendant's prior record.** Upon motion of the

defendant the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

(c) **Documents and tangible objects.** Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and which are material to the preparation of his defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant.

(d) **Reports of examination and tests.** Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, available to or within the possession, custody or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

(e) **Witness names and addresses; record.** Upon motion of the defendant, the court shall order the prosecuting attorney to furnish to the defendant a written list of the names and addresses of all witnesses whom the prosecuting attorney intends to call at trial, together with any record of prior felony convictions of any such witness, which record is within the knowledge of the prosecuting attorney. Names and addresses of witnesses shall not be subject to disclosure if the prosecuting attorney certifies to the court that to do so may subject the witness or others to physical or substantial economic harm or coercion. Where a motion for discovery of the names and addresses of witnesses has been made by a defendant, the prosecuting attorney may move the court to perpetuate the testimony of such witnesses in a hearing before the court, in which hearing the defendant shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the state's case in chief, in the event the witness has become unavailable through no fault of the state.

(f) **Disclosure of evidence favorable to defendant.** Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection.

(g) **In camera inspection of witness' statement.** Upon completion of a witness' direct examination at trial, the court on motion of the defendant shall conduct an in camera inspection of the witness' written or recorded statement with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist, the statement shall be given to the defense attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the defense attorney and he shall not be permitted to cross-examine or comment thereon.

Whenever the defense attorney is not given the entire statement, it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) **Information not subject to disclosure.** Except as provided in subsections (B)(1)(a), (b), (d), (f), and (g), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the prosecuting attorney or his agents in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses to state agents.

(3) **Grand jury transcripts.** The discovery or inspection of recorded proceedings of a grand jury shall be governed by Rule 6(E) and subsection (B)(1)(a) of this rule.

(4) **Witness list; no comment.** The fact that a witness' name is on a list furnished under subsections (B)(1)(b) and (f), and that such witness is not called shall not be commented upon at the trial.

(C) **Disclosure of evidence by the defendant.**

(1) **Information subject to disclosure.**

(a) **Documents and tangible objects.** If on request or motion the defendant obtains discovery under subsection (B)(1)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) **Reports of examinations and tests.** If on request or motion the defendant obtains discovery under subsection (B)(1)(d), the court shall, upon motion of the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, available to or within the possession or control of the defendant, and which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when such results or reports relate to his testimony.

(c) **Witness names and addresses.** If on request or motion the defendant obtains discovery under subsection (B)(1)(e), the court shall, upon motion of the prosecuting attorney, order the defendant to furnish the prosecuting attorney a list of the names and addresses of the witnesses he intends to call at the trial. Where a motion for discovery of the names and addresses of witnesses has been made by the prosecuting attorney, the defendant may move the court to perpetuate the testimony of such witnesses in a hearing before the court in which hearing the prosecuting attorney shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the defendant's case in chief in the event the witness has become unavailable through no fault of the defendant.

(d) **In camera inspection of witness' statement.** Upon completion of the direct examination, at trial, of a witness other than the defendant, the court on motion of the prosecuting attorney shall conduct an in camera inspection of the witness' written or recorded statement obtained by the defense attorney or his agents with the defense attorney and prosecuting attorney present and

participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist the statement shall be given to the prosecuting attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the prosecuting attorney, and he shall not be permitted to cross-examine or comment thereon.

Whenever the prosecuting attorney is not given the entire statement it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) **Information not subject to disclosure.** Except as provided in subsections (C)(1)(b) and (d), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the defense attorney or his agents in connection with the investigation or defense of the case, or of statements made by witnesses or prospective witnesses to the defense attorney or his agents.

(3) **Witness list; no comment.** The fact that a witness' name is on a list furnished under subsection (C)(1)(c), and that the witness is not called shall not be commented upon at the trial.

(D) **Continuing duty to disclose.** If, subsequent to compliance with a request or order pursuant to this rule, and prior to or during trial, a party discovers additional matter which would have been subject to discovery or inspection under the original request or order, he shall promptly make such matter available for discovery or inspection, or notify the other party or his attorney or the court of the existence of the additional matter, in order to allow the court to modify its previous order, or to allow the other party to make an appropriate request for additional discovery or inspection.

(E) **Regulation of discovery.**

(1) **Protective orders.** Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party the court may permit a party to make such showing, or part of such showing, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) **Time, place and manner of discovery and inspection.** An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted, and may prescribe such terms and conditions as are just.

(3) **Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

(F) **Time of motions.** A defendant shall make his motion for discovery within twenty-one days after arraignment or seven days before the date of trial, which-

ever is earlier, or at such reasonable time later as the court may permit. The prosecuting attorney shall make his motion for discovery within seven days after defendant obtains discovery or three days before trial, whichever is earlier. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.

RULE 17. Subpoena

(A) For attendance of witnesses; form; issuance.

Every subpoena issued by the clerk shall be under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in and file a copy thereof with the clerk before service.

(B) **Defendants unable to pay.** The court shall order at any time that a subpoena be issued for service on a named witness upon an *ex parte* application of a defendant upon a satisfactory showing that the presence of the witness is necessary to an adequate defense and that the defendant is financially unable to pay the witness fees required by subdivision (D). If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be taxed as costs.

(C) **For production of documentary evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein; but the court, upon motion made promptly and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that the books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time they are offered in evidence, and may, upon their production, permit them or portions thereof to be inspected by the parties or their attorneys.

(D) **Service.** A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, marshal, or a deputy of any, by a municipal or township policeman, by an attorney at law or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by reading it to him in person or by leaving it at his usual place of residence, and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return thereof with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service, or otherwise.

(E) **Subpoena for taking depositions; place of examination.** When the attendance of a witness before an official authorized to take depositions is required, the subpoena shall be issued by such person and shall command the person to whom it is directed to attend and

give testimony at a time and place specified therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible objects which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 16.

A person whose deposition is to be taken may be required to attend an examination in the county wherein he resides or is employed or transacts his business, in person, or at such other convenient place as is fixed by an order of court.

(F) **Subpoena for a hearing or trial.** At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.

(G) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court or officer issuing the subpoena.

RULE 17.1. Pretrial Conference

At any time after the filing of an indictment, information or complaint the court may, upon its own motion or the motion of any party, order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and defendant's counsel. The court shall not conduct pretrial conferences in any case in which a term of imprisonment is a possible penalty unless the defendant is represented by counsel or counsel has been waived pursuant to Crim. R. 44. In any case in which the defendant is not represented by counsel, any pretrial conference shall be conducted in open court and shall be recorded as provided in Crim. R. 22.

History: Amended, eff 7-1-00.

RULE 18. Venue and Change of Venue

(A) **General venue provision.** The venue of a criminal case shall be as provided by law.

(B) **Change of venue; procedure upon change of venue.** Upon the motion of any party or upon its own motion the court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held, when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.

(1) **Time of motion.** A motion under this rule shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier, or at such reasonable time later as the court may permit.

(2) **Clerk's obligations upon change of venue.** Where a change of venue is ordered the clerk of the court in which the cause is pending shall make copies of all of the papers in the action which, with the original complaint, indictment, or information, he shall transmit to the clerk of the court to which the action is sent for trial, and the trial and all subsequent proceedings shall be conducted as if the action had originated in the latter court.

(3) **Additional counsel for prosecuting attorney.** The prosecuting attorney of the political subdivision in which the action originated shall take charge of and try the case. The court to which the action is sent may on application appoint one or more attorneys to assist the prosecuting attorney in the trial, and allow the appointed attorneys reasonable compensation.

(4) **Appearance of defendant, witnesses.** Where a change of venue is ordered and the defendant is in custody, a warrant shall be issued by the clerk of the court in which the action originated, directed to the person having custody of the defendant commanding him to bring the defendant to the jail of the county to which the action is transferred, there to be kept until discharged. If the defendant on the date of the order changing venue is not in custody, the court in the order changing venue shall continue the conditions of release and direct the defendant to appear in the court to which the venue is changed. The court shall recognize the witnesses to appear before the court in which the accused is to be tried.

(5) **Expenses.** The reasonable expenses of the prosecuting attorney incurred in consequence of a change of venue, compensation of counsel appointed pursuant to Rule 44, the fees of the clerk of the court to which the venue is changed, the sheriff or bailiff, and of the jury shall be allowed and paid out of the treasury of the political subdivision in which the action originated.

RULE 19. Magistrates

(A) **Appointment.** A court other than a mayor's court may appoint one or more magistrates who shall be attorneys at law admitted to practice in Ohio.

(B) **Compensation.** The compensation of magistrates shall be fixed by the court, and no part of the compensation shall be taxed as costs.

(C) **Authority.**

(1) **Scope.** To assist courts of record and pursuant to reference under Crim. R. 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Conduct initial appearances and preliminary hearings pursuant to Crim. R. 5.

(b) Conduct arraignments pursuant to Crim. R. 10.

(c) Receive pleas, in accordance with Crim R. 11, only as follows:

(ii) In felony and misdemeanor cases, accept and enter not guilty pleas.

(ii) In misdemeanor cases, accept and enter guilty and no contest pleas, determine guilt or innocence, receive statements in explanation and in mitigation of sentence, and recommend a penalty to be imposed. If imprisonment is a possible penalty for the offense charged, the matter may be referred only with the unanimous consent of the parties, in writing or on the record in open court.

(d) Conduct pretrial conferences pursuant to Crim. R. 17.1.

(e) Conduct proceedings to establish bail pursuant to Crim. R. 46.

(f) Hear and decide the following motions:

(i) Any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is not a possible penalty.

(ii) Upon the unanimous consent of the parties in writing or on the record in open court, any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is a possibility.

(g) Conduct proceedings upon application for the issuance of a temporary protection order as authorized by law.

(h) Conduct the trial of any misdemeanor case that will not be tried to a jury. If the offense charged is an offense for which imprisonment is a possible penalty, the matter may be referred only with unanimous consent of the parties in writing or on the record in open court.

(i) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) **Regulation of proceedings.** In performing the responsibilities described in Crim. R. 19(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

(b) Ruling upon the admissibility of evidence in misdemeanor cases in accordance with division (C)(1)(f) of this rule;

(c) Putting witnesses under oath and examining them;

(d) When necessary to obtain the presence of an alleged contemnor in cases involving direct or indirect contempt of court, issuing attachment for the alleged contemnor and setting the type, amount, and any conditions of bail pursuant to Crim. R. 46;

(e) Imposing, subject to Crim. R. 19(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

(D) Proceedings in Matters Referred to Magistrates

(1) Reference by court of record.

(a) **Purpose and method.** A court of record may, for one or more of the purposes described in Crim. R. 19(C)(1), refer a particular case or matter of a category of cases or matters to a magistrate by a specific or general order of reference or by a rule.

(b) **Limitation.** A court of record may limit a reference by specifying or limiting the magistrate's powers, including, but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) Magistrate's order; motion to set aside magistrate's order.

(a) Magistrate's order.

(i) **Nature of order.** Subject to the terms of the relevant reference, a magistrate may enter pretrial orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) **Form, filing, and service of magistrate's order.** A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) **Motion to set aside magistrate's order.** Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the

effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

(3) Magistrate's decision; objections to magistrate's decision.

(a) Magistrate's decision.

(i) **When required.** Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under Crim. R. 19(D)(1).

(ii) **Findings of fact and conclusions of law.** Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) **Form; filing; and service of magistrate's decision.** A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R. 19(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Crim. R. 19(D)(3)(b).

(b) Objections to magistrate's decision.

(i) **Time for filing.** A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Crim. R. 19(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) **Specificity of objection.** An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

(iii) **Objection to magistrate's factual finding; transcript or affidavit.** An objection to a factual finding, whether or not specifically designated as a finding of fact under Crim. R. 19(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(iv) **Waiver of right to assign adoption by court as error on appeal.** Except for a claim of plain error, a party shall not assign on appeal the court's adoption of any

factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Crim. R. 19(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Crim. R. 19(D)(3)(b).

(4) Action of court on magistrate's decision and on any objection to magistrate's decision; entry of judgment or interim order by court.

(a) **Action of court required.** A magistrate's decision is not effective unless adopted by the court.

(b) **Action on magistrate's decision.** Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate. No sentence recommended by a magistrate shall be enforced until the court has entered judgment.

(c) **If no objections are filed.** If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

(d) **Action on objections.** If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) **Entry of Judgment or interim order by court.** A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) **Judgment.** The court may enter a judgment either during the fourteen days permitted by Crim. R. 19(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Crim. R. 19(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) **Interim order.** The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. An interim order shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A), and be served pursuant to Civ. R. 58(B).

(5) **Extension of time.** For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

(6) **Disqualification of a magistrate.** Disqualification of a magistrate for bias or other cause is within the

discretion of the court and may be sought by motion filed with the court.

(7) **Recording of proceedings before a magistrate.** Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

(8) **Contempt in the presence of a magistrate.**

(a) **Contempt Order.** Contempt sanctions under Crim. R. 19 (C)(2)(e) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

(b) **Filing and provision of copies of contempt order.** A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) **Review of contempt order by court; bail.** The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

History: Effective 7-1-90; amended, eff 7-1-95; 7-1-00; 7-1-06.

RULE 20. Reserved.

RULE 21. Transfer From Common Pleas Court for Trial

(A) **When permitted.** Where an indictment or information charging only misdemeanors is filed in the court of common pleas, such court may retain the case for trial or the administrative judge may, within fourteen days after the indictment or information is filed with the clerk of the court of common pleas, transfer it to the court from which the bindover to the grand jury was made or to the court of record of the jurisdiction in which venue appears.

(B) **Proceedings on transfer.** When a transfer is ordered, the clerk of the court of common pleas, within three days, shall transmit to the clerk of the court to which the case is transferred, certified copies of the indictment, information, and all other papers in the case, and any bail taken, and the prosecution shall continue in that court.

History: Amended, eff 7-1-04.

RULE 22. Recording of Proceedings

In serious offense cases all proceedings shall be recorded.

In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.

Proceedings may be recorded in shorthand, or stenotype, or by any other adequate mechanical, electronic or video recording device.

RULE 23. Trial by Jury or by the Court

(A) **Trial by jury.** In serious offense cases the defendant before commencement of the trial may knowingly, intelligently and voluntarily waive in writing his right to trial by jury. Such waiver may also be made during trial with the approval of the court and the consent of the prosecuting attorney. In petty offense cases, where there is a right of jury trial, the defendant shall be tried by the court unless he demands a jury trial. Such demand must

be in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto.

(B) **Number of jurors.** In felony cases juries shall consist of twelve.

In misdemeanor cases juries shall consist of eight.

If a defendant is charged with a felony and with a misdemeanor or, if a felony and a misdemeanor involving different defendants are joined for trial, the jury shall consist of twelve.

(C) **Trial without a jury.** In a case tried without a jury the court shall make a general finding.

History: Amended, eff 7-1-80.

RULE 24. Trial Jurors

(A) **Brief introduction of case.** To assist prospective jurors in understanding the general nature of the case, the court, in consultation with the parties, may give jurors a brief introduction to the case.

(B) **Examination of prospective jurors.** Any person called as a prospective juror for the trial of any cause shall be examined under oath or upon affirmation as to the prospective juror's qualifications. The court may permit the attorney for the defendant, or the defendant if appearing *pro se*, and the attorney for the state to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the state and defense to supplement the examination by further inquiry. Nothing in this rule shall limit the court's discretion, with timely notice to the parties at anytime prior to trial, to allow the examination of all prospective jurors in the array prior to any challenges for cause or peremptory challenges.

(C) **Challenge for cause.** A person called as a juror may be challenged for the following causes:

(1) That the juror has been convicted of a crime which by law renders the juror disqualified to serve on a jury.

(2) That the juror is a chronic alcoholic, or drug dependent person.

(3) That the juror was a member of the grand jury that found the indictment in the case.

(4) That the juror served on a petit jury drawn in the same cause against the same defendant, and the petit jury was discharged after hearing the evidence or rendering a verdict on the evidence that was set aside.

(5) That the juror served as a juror in a civil case brought against the defendant for the same act.

(6) That the juror has an action pending between him or her and the State of Ohio or the defendant.

(7) That the juror or the juror's spouse is a party to another action then pending in any court in which an attorney in the cause then on trial is an attorney, either for or against the juror.

(8) That the juror has been subpoenaed in good faith as a witness in the case.

(9) That the juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an

impartial verdict according to the law and the evidence submitted to the jury at the trial.

(10) That the juror is related by consanguinity or affinity within the fifth degree to the person alleged to be injured or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted; or to the defendant.

(11) That the juror is the person alleged to be injured or attempted to be injured by the offense charged, or the person on whose complaint the prosecution was instituted, or the defendant.

(12) That the juror is the employer or employee, or the spouse, parent, son, or daughter of the employer or employee, or the counselor, agent, or attorney, of any person included in division (B)(11) of this rule.

(13) That English is not the juror's native language, and the juror's knowledge of English is insufficient to permit the juror to understand the facts and the law in the case.

(14) That the juror is otherwise unsuitable for any other cause to serve as a juror.

The validity of each challenge listed in division (B) of this rule shall be determined by the court.

(D) **Peremptory challenges.** In addition to challenges provided in division (C) of this rule, if there is one defendant, each party peremptorily may challenge three prospective jurors in misdemeanor cases, four prospective jurors in felony cases other than capital cases, and six prospective jurors in capital cases. If there is more than one defendant, each defendant peremptorily may challenge the same number of prospective jurors as if the defendant was the sole defendant.

In any case where there are multiple defendants, the prosecuting attorney peremptorily may challenge a number of prospective jurors equal to the total peremptory challenges allowed all defendants. In case of the consolidation of any indictments, informations, or complaints for trial, the consolidated cases shall be considered, for purposes of exercising peremptory challenges, as though the defendants or offenses had been joined in the same indictment, information, or complaint.

(E) **Manner of exercising peremptory challenges.** Peremptory challenges may be exercised after the minimum number of jurors allowed by the Rules of Criminal Procedure has been passed for cause and seated on the panel. Peremptory challenges shall be exercised alternately, with the first challenge exercised by the state. The failure of a party to exercise a peremptory challenge constitutes a waiver of that challenge, but does not constitute a waiver of any subsequent challenge. However, if all parties, alternately and in sequence, fail to exercise a peremptory challenge, the joint failure constitutes a waiver of all peremptory challenges.

A prospective juror peremptorily challenged by either party shall be excused and another prospective juror shall be called who shall take the place of the prospective juror excused and be sworn and examined as other prospective jurors. The other party, if that party has peremptory challenges remaining, shall be entitled to challenge any prospective juror then seated on the panel.

Nothing in this rule shall limit the court's discretion to allow challenges under this division or division (D) of this rule to be made outside the hearing of prospective jurors.

(F) **Challenge to array.** The prosecuting attorney or the attorney for the defendant may challenge the array of petit jurors on the ground that it was not selected, drawn or summoned in accordance with law. A challenge to the

array shall be made before the examination of the jurors pursuant to division (A) of this rule and shall be tried by the court.

No array of petit jurors shall be set aside, nor shall any verdict in any case be set aside because the jury commissioners have returned such jury or any juror in any informal or irregular manner, if in the opinion of the court the irregularity is unimportant and insufficient to vitiate the return.

(G) Alternate jurors.

(1) **Non-capital cases.** The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors. Except in capital cases, an alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each party is entitled to one peremptory challenge in addition to those otherwise allowed if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternative jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this rule may not be used against an alternate juror.

(2) **Capital cases.** The procedure designated in division (F)(1) of this rule shall be the same in capital cases, except that any alternate juror shall continue to serve if more than one deliberation is required. If an alternate juror replaces a regular juror after a guilty verdict, the court shall instruct the alternate juror that the juror is bound by that verdict. No alternate juror shall be substituted during any deliberation. Any alternate juror shall be discharged after the trial jury retires to consider the penalty.

(H) Control of juries.

(1) **Before submission of case to jury.** Before submission of a case to the jury, the court, upon its own motion or the motion of a party, may restrict the separation of jurors or may sequester the jury.

(2) After submission of case to jury.

(a) **Misdemeanor cases.** After submission of a misdemeanor case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors.

(b) **Non-capital felony cases.** After submission of a non-capital felony case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors during any period of court adjournment or may require the jury to remain under the supervision of an officer of the court.

(c) **Capital cases.** After submission of a capital case to the jury, the jury shall remain under the supervision of an officer of the court until a verdict is rendered or the jury is discharged by the court.

(3) **Separation in emergency.** Where the jury is sequestered or after a capital case is submitted to the jury, the court may, in an emergency and upon giving cautionary instructions, allow temporary separation of jurors.

(4) **Duties of supervising officer.** Where jurors are required to remain under the supervision of an officer of the court, the court shall make arrangements for their care, maintenance and comfort.

When the jury is in the care of an officer of the court and until the jury is discharged by the court, the officer may inquire whether the jury has reached a verdict, but shall not:

(a) Communicate any matter concerning jury conduct to anyone except the judge or;

(b) Communicate with the jurors or permit communications with jurors, except as allowed by court order.

(I) **Taking of notes by jurors.** The court, after providing appropriate cautionary instructions, may permit jurors who wish to do so to take notes during a trial. If the court permits the taking of notes, notes taken by a juror may be carried into deliberations by that juror. The court shall require that all juror notes be collected and destroyed promptly after the jury renders a verdict.

(J) **Juror questions to witnesses.** The court may permit jurors to propose questions for the court to ask of the witnesses. If the court permits jurors to propose questions, the court shall use procedures that minimize the risk of prejudice, including all of the following:

(1) Require jurors to propose any questions to the court in writing;

(2) Retain a copy of each proposed question for the record;

(3) Instruct the jurors that they shall not display or discuss a proposed question with other jurors;

(4) Before reading a question to a witness, provide counsel with an opportunity to object to each question on the record and outside the hearing of the jury;

(5) Read the question, either as proposed or rephrased, to the witness;

(6) Permit counsel to reexamine the witness regarding a matter addressed by a juror question;

(7) If a question proposed by a juror is not asked, instruct the jurors that they should not draw any adverse inference from the court's refusal to ask any question proposed by a juror.

History: Amended, eff 7-1-75; 7-1-02; 7-1-05; 7-1-06.

RULE 25. Disability of a Judge

(A) **During trial.** If for any reason the judge before whom a jury trial has commenced is unable to proceed with the trial, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may proceed with and finish the trial, upon certifying in the record that he has familiarized himself with the record of the trial. If such other judge is satisfied that he cannot adequately familiarize himself with the record, he may in his discretion grant a new trial.

(B) **After verdict or finding of guilt.** If for any reason the judge before whom the defendant has been tried is unable to perform the duties of the court after a verdict or finding of guilt, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may perform those duties. If such other judge is satisfied that he cannot perform those duties because he did not preside at the trial, he may in his discretion grant a new trial.

RULE 26. Substitution of Photographs for Physical Evidence

Physical property, other than contraband, as defined by statute, under the control of a Prosecuting Attorney for use as evidence in a hearing or trial should be returned to the owner at the earliest possible time. To facilitate the early return of such property, where appropriate, and by court order, photographs, as defined in Evid. R. 1001(2), may be taken of the property and introduced as evidence in the hearing or trial. The admission of such photographs is subject to the relevancy requirements of Evid. R. 401, Evid. R. 402, Evid. R. 403, the authentication requirements of Evid. R. 901, and the best evidence requirements of Evid. R. 1002.

History: Effective, 7-1-81.

RULE 27. Proof of Official Record; Judicial Notice: Determination of Foreign Law

The proof of official records provisions of Civil Rule 44, and the judicial notice and determination of foreign law provisions of Civil Rule 44.1 apply in criminal cases.

RULE 28. Reserved.

RULE 29. Motion for Acquittal

(A) **Motion for judgment of acquittal.** The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

(B) **Reservation of decision on motion.** If a motion for a judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict, or after it returns a verdict of guilty, or after it is discharged without having returned a verdict.

(C) **Motion after verdict or discharge of jury.** If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of such motion that a similar motion has been made prior to the submission of the case to the jury.

RULE 30. Instructions

(A) **Instructions; error; record.** At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Copies shall be furnished to all other parties at the time of making the requests. The court shall inform counsel of its proposed action on the

requests prior to counsel's arguments to the jury and shall give the jury complete instructions after the arguments are completed. The court also may give some or all of its instructions to the jury prior to counsel's arguments. The court shall reduce its final instructions to writing or make an audio, electronic, or other recording of those instructions, provide at least one written copy or recording of those instructions to the jury for use during deliberations, and preserve those instructions for the record.

On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(B) **Cautionary instructions.** At the commencement and during the course of the trial, the court may give the jury cautionary and other instructions of law relating to trial procedure, credibility and weight of the evidence, and the duty and function of the jury and may acquaint the jury generally with the nature of the case.

History: Amended, eff 7-1-75; 7-1-82; 7-1-92; 7-1-05.

RULE 31. Verdict

(A) **Return.** The verdict shall be unanimous. It shall be in writing, signed by all jurors concurring therein, and returned by the jury to the judge in open court.

(B) **Several defendants.** If there are two or more defendants the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(C) **Conviction of lesser offense.** The defendant may be found not guilty of the offense charged but guilty of an attempt to commit it if such an attempt is an offense at law. When the indictment, information, or complaint charges an offense including degrees, or if lesser offenses are included within the offense charged, the defendant may be found not guilty of the degree charged but guilty of an inferior degree thereof, or of a lesser included offense.

(D) **Poll of jury.** When a verdict is returned and before it is accepted the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

RULE 32. Sentence

(A) **Imposition of sentence.** Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court shall also advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

History: Amended, eff 7-1-92; 7-1-98; 7-1-04.

RULE 32.1. Withdrawal of Guilty Plea

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

History: Amended, eff 7-1-98.

RULE 32.2. Presentence Investigation

In felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.

History: Amended, eff 7-1-76; 7-1-98.

RULE 32.3. Revocation of Community Release

(A) Hearing. The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which action is proposed. The defendant may be admitted to bail pending hearing.

(B) Counsel. The defendant shall have the right to be represented by retained counsel and shall be so advised. Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being

fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel. Where a defendant convicted of a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant.

(C) Confinement in petty offense cases. If confinement after conviction was precluded by Crim. R. 44(B), revocation of probation shall not result in confinement.

If confinement after conviction was not precluded by Crim. R. 44(B), revocation of probation shall not result in confinement unless, at the revocation hearing, there is compliance with Crim. R. 44(B).

(D) Waiver of counsel. Waiver of counsel shall be as prescribed in Crim. R. 44(C).

History: Amended, eff 7-1-98.

RULE 33. New Trial

(A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict is not sustained by sufficient evidence or is contrary to law. If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

(B) Motion for new trial; form, time. Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the

decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

(C) **Affidavits required.** The causes enumerated in subsection (A)(2) and (3) must be sustained by affidavit showing their truth, and may be controverted by affidavit.

(D) **Procedure when new trial granted.** When a new trial is granted by the trial court, or when a new trial is awarded on appeal, the accused shall stand trial upon the charge or charges of which he was convicted.

(E) **Invalid grounds for new trial.** No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of:

(1) An inaccuracy or imperfection in the indictment, information, or complaint, provided that the charge is sufficient to fairly and reasonably inform the defendant of all the essential elements of the charge against him.

(2) A variance between the allegations and the proof thereof, unless the defendant is misled or prejudiced thereby;

(3) The admission or rejection of any evidence offered against or for the defendant, unless the defendant was or may have been prejudiced thereby;

(4) A misdirection of the jury, unless the defendant was or may have been prejudiced thereby;

(5) Any other cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial.

(F) **Motion for new trial not a condition for appellate review.** A motion for a new trial is not a prerequisite to obtain appellate review.

RULE 34. Arrest of Judgment

The court on motion of the defendant shall arrest judgment if the indictment, information, or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fourteen days after verdict, or finding of guilty, or after plea of guilty or no contest, or within such further time as the court may fix during the fourteen day period.

When the judgment is arrested, the defendant shall be discharged, and his position with respect to the prosecution is as if the indictment, information, or complaint had not been returned or filed.

RULE 35. Post-Conviction Petition

(A) A petition for post-conviction relief pursuant to section 2953.21 of the Revised Code shall contain a case history, statement of facts, and separately identified grounds for relief. Each ground for relief shall not exceed three pages in length. (See recommended Form XV in Appendix of Forms.) A petition may be accompanied by an attachment of exhibits or other supporting materials. A trial court may extend the page limits provided in this rule, request further briefing on any ground for relief presented, or direct the petitioner to file a supplemental petition in the recommended form.

(B) The clerk of court immediately shall send a copy of the petition to the prosecuting attorney. Upon order of the trial court, the clerk of court shall duplicate all or any part of the record that the trial court requires.

(C) The trial court shall file its ruling upon a petition for post-conviction relief, including findings of fact and conclusions of law if required by law, not later than one hundred eighty days after the petition is filed.

History: Effective 7-1-97.

RULE 36. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.

RULE 37. Reserved.

RULE 38. Reserved.

RULE 39. Reserved.

RULE 40. Reserved.

RULE 41. Search and Seizure

(A) **Authority to issue warrant.** A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction, upon the request of a prosecuting attorney or a law enforcement officer.

(B) **Property which may be seized with a warrant.** A warrant may be issued under this rule to search for and seize any: (1) evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(C) **Issuance and contents.** A warrant shall issue under this rule only on an affidavit or affidavits sworn to before a judge of a court of record and establishing the grounds for issuing the warrant. The affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. If the judge is satisfied that probable cause for the search exists, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses he may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed and made part of the affidavit. The warrant shall be directed to a law enforcement officer. It shall command the officer to search, within three days, the person or place named for the property specified. The warrant

shall be served in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall designate a judge to whom it shall be returned.

(D) **Execution and return with inventory.** The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(E) **Return of papers to clerk.** The judge before whom the warrant is returned shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk.

(F) **Definition of property and daytime.** The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

RULE 42. Reserved.

RULE 43. Presence of the Defendant

(A) **Defendant's presence.** The defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(B) **Defendant excluded because of disruptive conduct.** Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with his continued presence, the hearing or trial may proceed in his absence, and judgment and sentence may be pronounced as if he were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

RULE 44. Assignment of Counsel

(A) **Counsel in serious offenses.** Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a

court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel.

(B) **Counsel in petty offenses.** Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel.

(C) **Waiver of counsel.** Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing.

(D) **Assignment procedure.** The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.

RULE 45. Time

(A) **Time: computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in computation.

(B) **Time: enlargement.** When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefore is made before expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion permit the act to be done after expiration of the specified period, if the failure to act on time was the result of excusable neglect or would result in injustice to the defendant. The court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34 except to the extent and under the conditions stated in them.

(C) **Time: unaffected by expiration of term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(D) **Time: for motions; affidavits.** A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof, shall be served not later than seven days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Opposing affidavits may be served not less than one day before the hearing, unless the court permits them to be served at a later time.

(E) **Time: additional time after service by mail.** Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or

other paper upon him, and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses to service of summons under Rule 4 and Rule 9.

RULE 46. Bail

(A) **Types and amounts of bail.** Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

(1) The personal recognizance of the accused or an unsecured bail bond;

(2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

(3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

(B) **Conditions of bail.** The court may impose any of the following conditions of bail:

(1) Place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Place the person under a house arrest, electronic monitoring, or work release program;

(4) Regulate or prohibit the person's contact with the victim;

(5) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

(6) Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail;

(7) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

(C) **Factors.** In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

(D) **Appearance pursuant to summons.** When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.

(E) **Amendments.** A court, at any time, may order additional or different types, amounts, or conditions of bail.

(F) **Information need not be admissible.** Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court

of law. Statements or admissions of the defendant made at a bail proceeding shall not be received as substantive evidence in the trial of the case.

(G) **Bond schedule.** Each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions (B) and (C)(5) of this rule. Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card. No credit card transaction shall be permitted when a service charge is made against the court or clerk unless allowed by law.

(H) **Continuation of bonds.** Unless otherwise ordered by the court pursuant to division (E) of this rule, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void.

(I) **Failure to appear; breach of conditions.** Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

(J) **Justification of sureties.** Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond. No licensed attorney at law shall be a surety.

History: Amended, eff 7-1-90; 7-1-94; 7-1-98; 7-1-06.

The provisions of § 3 of 151 v H 29 read as follows:

SECTION 3. The General Assembly acknowledges the Supreme Court's authority to prescribe rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution. Recognizing the dangers posed to victims of domestic violence and other crimes of violence when the alleged perpetrators are not physically restrained, even though they may be under bond or subject to orders of protection, the General Assembly respectfully urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the resolution of cases involving domestic violence.

RULE 47. Motions

An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

RULE 48. Dismissal

(A) **Dismissal by the state.** The state may by leave of court and in open court file an entry of dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate.

(B) **Dismissal by the court.** If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.

RULE 49. Service and Filing of Papers

(A) **Service: when required.** Written notices, requests for discovery, designation of record on appeal, written motions other than those heard *ex parte*, and similar papers, shall be served upon each of the parties.

(B) **Service: how made.** Whenever under these rules or by court order service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon the party shall be made in the manner provided in Civil Rule 5(B).

(C) **Filing.** All papers required to be served upon a party shall be filed simultaneously with or immediately after service. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and the manner of service and shall be signed and filed in the manner provided in Civil Rule 5(D).

RULE 50. Calendars

Criminal cases shall be given precedence over civil matters and proceedings.

RULE 51. Exceptions Unnecessary

An exception, at any stage or step of the case or matter, is unnecessary to lay a foundation for review, whenever a matter has been called to the attention of the court by objection, motion, or otherwise, and the court has ruled thereon.

RULE 52. Harmless Error and Plain Error

(A) **Harmless error.** Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) **Plain error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

RULE 53. Reserved.

RULE 54. Amendment of Incorporated Civil Rules

An amendment to or rescission of any provision of the Ohio Rules of Civil Procedure which has been incorpo-

rated by reference in these rules, shall, without the necessity of further action, be incorporated by reference in these rules unless the amendment or rescission specifies otherwise, effective on the effective date of the amendment or rescission.

RULE 55. Records

(A) **Criminal appearance docket.** The clerk shall keep a criminal appearance docket. Upon the commencement of a criminal action the clerk shall assign each action a number. This number shall be placed on the first page, and every continuation page, of the appearance docket which concerns the particular action. In addition this number and the names of the parties shall be placed on the case file and every paper filed in the action.

At the time the action is commenced the clerk shall enter in the appearance docket the names, except as provided in Rule 6(E), of the parties in full, the names of counsel and index the action by the name of each defendant. Thereafter the clerk shall chronologically note in the appearance docket all: process issued and returns, pleas and motions, papers filed in the action, orders, verdicts and judgments. The notations shall be brief but shall show the date of filing and the substance of each order, verdict and judgment.

An action is commenced for purposes of this rule by the earlier of, (a) the filing of a complaint, uniform traffic ticket, citation, indictment, or information with the clerk, or (b) the receipt by the clerk of the court of common pleas of a bind over order under Rule 5(B)(4)(a).

(B) **Files.** All papers filed in a case shall be filed in a separate file folder and on or after July 1, 1986 shall not exceed 8 inches x 11 inches in size and without backing or cover.

(C) **Other books and records.** The clerk shall keep such other books and records as required by law and as the supreme court or other court may from time to time require.

(D) **Applicability to courts not of record.** In courts not of record the notations required by subdivision (A) shall be placed on a separate sheet or card kept in the file folder.

History: Amended, eff 7-1-85.

RULE 56. Reserved.

RULE 57. Rule of court; procedure not otherwise specified

(A) Rule of court.

(1) The expression "rule of court" as used in these rules means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and is filed with the Supreme Court.

(2) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(B) **Procedure not otherwise specified.** If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these

rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

History: Amended, eff 7-1-94.

RULE 58. Forms

The forms contained in the Appendix of Forms which the supreme court from time to time may approve are illustrative and not mandatory.

RULE 59. Effective date

(A) **Effective date of rules.** These rules shall take effect on July 1, 1973, except for rules or portions of rules for which a later date is specified, which shall take effect on such later date. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(B) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 10, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(C) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 9, 1976 shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(D) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 12, 1978, and on April 28, 1978, shall take effect on July 1, 1978. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(E) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 14, 1980, shall take effect on July 1, 1980. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(F) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 14, 1981, and on April 29, 1981, shall take effect on July 1, 1981. They govern all proceedings in actions brought after they take effect and also all further

proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(G) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 14, 1982 shall take effect on July 1, 1982. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(H) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on December 24, 1984 and January 8, 1985 shall take effect on July 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(I) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 12, 1990 and further revised and submitted on April 16, 1990, shall take effect on July 1, 1990. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(J) **Effective date of amendments.** The amendments filed by the Supreme Court with the General Assembly on January 14, 1992 and further revised and filed on April 30, 1992, shall take effect on July 1, 1992. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(K) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 8, 1993 and further filed on April 30, 1993 shall take effect on July 1, 1993. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(L) **Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 14, 1994 shall take effect on July 1, 1994. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(M) **Effective date of amendments.** The amendments to rules 12 and 19 filed by the Supreme Court with the General Assembly on January 11, 1995 and refiled on April 25, 1995 shall take effect on July 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(N) **Effective date of amendments.** The amendments to Rule 1 filed by the Supreme Court with the General Assembly on January 5, 1996 and refiled on April 26, 1996 shall take effect on July 1, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(O) **Effective date of amendments.** The amendments to Rule 35 filed by the Supreme Court with the General Assembly on January 10, 1997 and refiled on April 24, 1997 shall take effect on July 1, 1997. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(P) **Effective date of amendments.** The amendments to Rules 4, 11, 12, 32, 32.1, 32.2, 32.3, and 46 filed by the Supreme Court with the General Assembly on January 15, 1998 and further revised and refiled on April 30, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Q) **Effective date of amendments.** The amendments to Criminal Rules 7, 17.1, and 19 filed by the Supreme Court with the General Assembly on January 13, 2000 and refiled on April 27, 2000 shall take effect on July 1, 2000. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(R) **Effective date of amendments.** The amendments to Criminal Rule 12 filed by the Supreme Court with the General Assembly on January 12, 2001, and refiled on April 26, 2001, shall take effect on July 1, 2001. They govern all proceedings in actions brought after they take

effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(S) **Effective date of amendments.** The amendments to Criminal Rule 24 filed by the Supreme Court with the General Assembly on January 11, 2002, and refiled on April 18, 2002, shall take effect on July 1, 2002. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(T) **Effective date of amendments.** The amendments to Criminal Rules 4.1, 21, and 32, filed by the Supreme Court with the General Assembly on January 7, 2004 and refiled on April 28, 2004 shall take effect on July 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(U) **Effective date of amendments.** The amendments to Criminal Rules 24 and 30 filed by the Supreme Court with the General Assembly on Jan. 14, 2005 and revised and refiled on April 20, 2005 shall take effect on July 1, 2005. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(V) **Effective date of amendments.** The amendments to Criminal Rules 19, 24, and 46 filed by the Supreme Court with the General Assembly on January 12, 2006 shall take effect on July 1, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

History: Amended, eff 7-1-75; 7-1-76; 7-1-78; 7-1-80; 7-1-81; 7-1-82; 7-1-85; 7-1-90; 7-1-92; 7-1-93; 7-1-94; 7-1-95; 7-1-96; 7-1-97; 7-1-98; 7-1-00; 7-1-01; 7-1-02; 7-1-04; 7-1-05; 7-1-06.

RULE 60. Title

These rules shall be known as the Ohio Rules of Criminal Procedure and may be cited as "Criminal Rules" or "Crim. R. ____."

APPENDIX OF FORMS

(See Crim. R. 58)

The forms which follow are intended for illustration only. They are limited in number, their being no attempt to furnish a complete manual of forms.

Although the forms are for illustrative purposes, they have been drafted to conform to the policies expressed in the Criminal Rules.

In the illustrations, the Franklin County Court of Common Pleas and the Franklin County Municipal Court identifications have each been used with the forms to show the adjustments required at the two levels of adjudication.

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| I. Complaint | IX. Prosecuting attorney's request for issuance of summons upon/indictment/information |
| II. Complaint by prosecuting attorney upon affidavit | X. Prosecuting attorney's request for issuance of warrant upon/indictment/information |
| III. Direction to issue summons | XI. Warrant upon/indictment/information |
| IV. Clerk's memorandum of determination to issue summons upon complaint | XII. Summons in lieu of arrest without warrant, and complaint upon such summons |
| V. Prosecuting attorney's request for issuance of summons upon complaint | XIII. Summons after arrest without warrant, and complaint upon each such summons |
| VI. Summons upon/complaint/indictment/information | XIV. Minor misdemeanor citation |
| VII. Warrant on complaint | XV. Uniform petition form |
| VIII. Clerk's memorandum of determination to issue summons upon indictment | |

FORM I

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/)
) NO. _____
v.)
) COMPLAINT
_____)
name) (Rule 4)
_____)
address)

Complainant being duly sworn states that _____ C.D. _____
at _____, County, Ohio on or about _____ defendant
19____, _____ place _____
_____ state the essential facts

_____ in violation of _____
_____ state the numerical designation of the applicable statute or ordinance

A.B. _____
Complainant
Sworn to and subscribed before me by _____ on
_____, 19 _____

/ Judge / Clerk / Deputy Clerk /
Franklin County Municipal Court
or

Notary Public,
My Commission expires _____, 19 _____
/ Franklin County / State of Ohio /

FORM II

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/) NO. _____)
)
v.) COMPLAINT BY)
) PROSECUTING ATTORNEY)
) UPON AFFIDAVIT)
_____))
name))
_____))
) (Rule 4)
_____))
address))
_____)

Complainant prosecuting attorney being duly sworn states that _____
 _____ name of affiant
 has filed an affidavit, a copy of which is attached hereto, stating that _____
 _____ C.D. _____ at _____, County, Ohio on or
 about _____, 19 _____, _____ place _____
 _____ state the essential facts

Upon this affidavit complainant states that _____ C.D. _____ on or
about the above date and at the above place did violate _____ defendant _____
_____ state the numerical designation _____
_____ of the applicable statute or ordinance _____.

A.B.
Complainant, Title

Sworn to and subscribed before me by _____ A.B.
on _____, 19 _____

/ Judge / Clerk / Deputy Clerk /
Franklin County Municipal Court

or

Notary Public,
My Commission expires _____, 19 _____
/ Franklin County / State of Ohio /

FORM III

/ FRANKLIN COUNTY MUNICIPAL COURT /
/ COURT OF COMMON PLEAS /
FRANKLIN COUNTY, OHIO

State of Ohio	)	
/City of Columbus/	)	
	)	NO. _____
v.	)	
	)	DIRECTION TO ISSUE SUMMONS
_____	)	
name	)	(Rules 4 and 9)
	)	
_____	)	
address	)	

TO _____
/ Clerk / Deputy Clerk /

Issue summons to an appropriate officer and direct him to make / personal service /
residence service / certified mail service / upon _____ C.D. _____ at / the address
defendant

stated in the caption of this direction./ _____

_____ /
fill in address if different from caption

Special instructions for server: _____

/ Judge / Officer Designated by Judge(s) /
Franklin County Municipal Court

or

Judge
Court of Common Pleas
Franklin County, Ohio

FORM IV

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio	)	
/City of Columbus/	)	
	)	NO. _____
v.	)	
	)	CLERK'S MEMORANDUM
_____	)	OF DETERMINATION TO ISSUE
name	)	SUMMONS UPON COMPLAINT
	)	
_____	)	(Rule 4)
address	)	

It appearing that summons will reasonably assure the appearance of _____ C.D.
defendant
summons shall issue:

/ to an appropriate officer and such officer shall be directed to make / personal service /
residence service /.

/ by certified mail /

Service shall be at / the address stated in the caption of this notice / _____
_____ fill in address if different from caption

Special instructions for server: _____

/ Clerk / Deputy Clerk /
Franklin County Municipal Court

FORM V

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio	)	
/City of Columbus/	)	NO. _____
	)	
v.	)	PROSECUTING ATTORNEY'S
_____	)	REQUEST FOR ISSUANCE OF
name	)	SUMMONS UPON COMPLAINT
	)	
_____	)	(Rule 4)
address	)	

TO _____
/ Clerk / Deputy Clerk /

A complaint has been filed against _____ C.D. _____
defendant

Issue summons to an appropriate officer and direct him to make / personal service /
residence service / certified mail service / upon defendant at / the address stated in the
caption of this request. / _____
_____ /
fill in address if different from caption

Special instructions for server: _____

Prosecuting Attorney, Title

FORM VI

/ FRANKLIN COUNTY MUNICIPAL COURT /
/ COURT OF COMMON PLEAS /
FRANKLIN COUNTY, OHIO

State of Ohio	)	
/City of Columbus/	)	NO _____
	)	
v.	)	SUMMONS UPON / COMPLAINT /
	)	INDICTMENT / INFORMATION /
_____	)	
name	)	
	)	
	)	
_____	)	(Rules 4 and 9)
address	)	
	)	

TO _____ C.D. _____
defendant

A / complaint / indictment / information /, a copy of which is attached hereto, has been
filed in the / Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio
43215, / Franklin County Court of Common Pleas, 410 South High Street, Columbus,
Ohio 43215, / charging that you: _____
describe the offense

and state the numerical designation of the applicable statute or ordinance

You are hereby summoned and ordered to appear at _____
_____, / Franklin County Municipal Court, 120 West Gay
time, day, date, room
Street, Columbus, Ohio 43215. / Franklin County Court of Common Pleas, 410 South
High Street, Columbus, Ohio 43215. /

If you fail to appear at the time and place stated above you may be arrested.

/ Judge / Officer Designated by Judge(s) /
/ Clerk / Deputy Clerk /
Franklin County Municipal Court
(or)

/ Judge / Clerk / Deputy Clerk /
Court of Common Pleas
Franklin County, Ohio

NOTICE TO DEFENDANT: For information regarding your duty to appear call
_____ fill in phone number(s)

**CLERK'S INSTRUCTIONS TO SERVING OFFICER
FOR PERSONAL OR RESIDENCE SERVICE**

TO _____
officer other than clerk authorized to serve summons

Make / personal service / residence service / upon _____ defendant

at / the address stated in the caption of the summons. / _____

fill in address for service if different from caption of summons

Special instructions for server: _____

/ Clerk / Deputy Clerk /

.....

**CLERK'S INSTRUCTIONS FOR
CERTIFIED MAIL SERVICE**

TO _____ clerk

Make certified mail service upon _____
defendant

at / the address stated in the caption of the summons. / _____

fill in address for service if different from caption of summons

Special instructions for server: _____

/ Clerk / Deputy Clerk /

RECEIPT OF SUMMONS BY
SERVING AUTHORITY

First Receipt

Received this summons on _____, 19____,
at _____ o'clock ____m.

Officer

By _____
Title

Subsequent Receipt

Received this summons on _____, 19____,
at _____ o'clock ____m.

Officer

By _____
Title

RETURN OF SERVICE OF SUMMONS
(PERSONAL)

Fees
Mileage \$ _____

Total \$ _____

I received this summons on _____, 19 _____,
at _____ o'clock, _____m., and made personal
service of it upon _____
_____ fill in name
by locating / him/her / and tendering a copy of the
summons, a copy of the / complaint / indictment
/ information / and accompanying documents, on
_____, 19 _____.

Serving Officer, Title
Date return made: _____, 19 _____

• • • • •

RETURN OF SERVICE OF SUMMONS
(RESIDENCE)

Fees
Mileage \$ _____

Total \$ _____

I received this summons on _____, 19 _____,
at _____ o'clock, _____m., and made residence
service of it upon _____
_____ fill in name
by leaving, at / his/her / usual place of residence with
_____ a person of suitable
_____ fill in name
age and discretion then residing therein, a copy of
the summons, a copy of the / complaint / indictment
/ information / and accompanying documents, on
_____, 19 _____.

Serving Officer, Title
Date return made: _____, 19 _____

RETURN OF SERVICE OF SUMMONS
(FAILURE OF SERVICE)

Fees
Mileage \$ _____

Total \$ _____

I received this summons on _____, 19 _____,
at _____ o'clock, _____ m., with instructions to
make / personal service / residence service / upon
_____ fill in name
and I was unable to serve a copy of the summons upon
/ him/her / for the following reasons: _____

Serving Officer, Title
Date return made: _____, 19 _____

• • • • •

RETURN OF SERVICE OF SUMMONS
(FAILURE OF SERVICE)

Fees
Mileage \$ _____

Total \$ _____

I received this summons on _____, 19 _____,
at _____ o'clock, _____ m., with instructions to
make / personal service / residence service / upon
_____ fill in name
and I was unable to serve a copy of the summons upon
/ him/her / for the following reasons: _____

Serving Officer, Title
Date return made: _____, 19 _____

FORM VII

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio)
/City of Columbus/)
) NO. _____
v.)
)
) WARRANT ON COMPLAINT
name)
)
) (Rule 4)
address)

TO _____
officer authorized to execute a warrant

A complaint, a copy of which is attached hereto, has been filed in this court charging _____

describe the offense and state the numerical designation of the applicable statute or ordinance _____

You are ordered to arrest _____ C.D. _____ and bring / him/her / before
defendant
this court without unnecessary delay.

You / may / may not / issue summons in lieu of arrest under Rule 4(A)(2) or issue
summons after arrest under Rule 4(F) because _____
state specific reasons if issuance of summons

_____ restricted

Special instructions to executing officer: _____

/ Judge / Officer Designated by Judge(s) /
/ Clerk / Deputy Clerk /
Franklin County Municipal Court

SUMMONS ENDORSEMENT

See NOTE: Use only in appropriate case

This warrant was executed / by arrest and / by issuing the following summons:

TO C.D.
defendant

You are hereby summoned and ordered to appear at _____
time, day, date, room
Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215.

If you fail to appear at the time and place stated above you may be arrested.

Issuing Officer, Title
See Rule 4(A)(2), Rule 4(F) and Return
Forms

NOTICE TO DEFENDANT: For information regarding your duty to appear call _____

 fill in telephone number(s)

• • • • •

RECEIPT OF WARRANT BY EXECUTING AUTHORITY

First Receipt

Received this warrant on _____, 19____, at _____ o'clock _____ m.

Officer _____
By _____
Title _____

Subsequent Receipt

Received this / alias / warrant on _____, 19____, at _____ o'clock ____m.

Officer _____
By _____
Title _____

RETURN OF EXECUTED WARRANT

Fees
Mileage \$ _____

Total \$ _____

1. Execution By Arrest

I received this warrant on _____, 19 _____,
at _____ o'clock _____ m. On _____, 19 _____,
I arrested _____ and gave / him/
her / a copy of this warrant with complaint attached
and brought / him/her / to _____
state the place

Arresting Officer, Title

Fees
Mileage \$ _____

Total \$ _____

2. Execution By Issuance Of Summons Under Rule
4(A)(2) By Executing Officer

I received this warrant on _____, 19 _____, at
_____ o'clock _____ m. On _____, 19 _____, I
executed this warrant by issuing _____ C.D.
a summons by / personal service / residence service /
which ordered / him/her / to appear at _____
time, day, date
_____, Franklin County Municipal Court,
room

120 West Gay Street, Columbus, Ohio, 43215. The sum-
mons was endorsed upon the warrant and accompanied
by a copy of the complaint.

Arresting Officer, Title

Fees
Mileage \$ _____

Total \$ _____

3. Execution By Arrest And Issuance Of Summons Under Rule 4(F) By Arresting Officer

I received this warrant on _____, 19 _____, at _____ o'clock _____m. On _____, 19 _____, I arrested _____ C.D. _____ and after arrest I issued _____ C.D. _____ a summons by personal service which ordered / him/her / to appear at _____, Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio, 43215. The summons was endorsed upon the warrant and accompanied by a copy of the complaint.

Arresting-Issuing Officer, Title

4. Execution By Arrest And Issuance Of Summons Under Rule 4(F) By Superior Of Arresting Officer

On _____, 19 _____, _____ C.D. _____ was arrested by _____ name of arresting officer _____ and I issued _____ C.D. _____ a summons by personal service which ordered / him/her / to appear at _____ time, day, date, room _____ Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. The summons was endorsed upon the warrant and accompanied by a copy of the complaint.

Arresting-Issuing Officer, Title

RETURN OF UNEXECUTED WARRANT

Fees

Mileage \$

Total \$

I received this warrant on _____, 19 ____, at
____ o'clock, ____m. On _____, 19 ____, I
attempted to execute this warrant but was unable to
to so because _____
state specific reason or reasons and

additional information regarding defendant's whereabouts

Executing Officer, Title

RETURN OF UNEXECUTED WARRANT

Fees

Mileage \$

Total \$

I received this warrant on _____, 19 ____, at
____ o'clock, ____m. On _____, 19 ____, I
attempted to execute this warrant but was unable to
to so because _____
state specific reason or reasons and

additional information regarding defendant's whereabouts

Executing Officer, Title

FORM VIII

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio	)	
	)	NO _____
v.	)	
	)	CLERK'S MEMORANDUM OF
_____	)	DETERMINATION TO ISSUE
name	)	SUMMONS UPON INDICTMENT
	)	
_____	)	(Rule 9)
address	)	

It appearing that defendant _____ was released pursuant to
name
Rule 46 by the _____ on the same offense for which / he/she
bind-over court
/ was indicted in this court, summons shall issue: / to an appropriate officer and such officer shall be
directed to make / personal service / residence service /
/ by certified mail service /

Service shall be at / the address stated in the caption of this notice / _____
_____ fill in address if different from caption
Special instructions for server: _____

/ Clerk / Deputy Clerk /
Court of Common Pleas
Franklin County, Ohio

FORM IX

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio	)	
	)	NO. _____
v.	)	
	)	PROSECUTING ATTORNEY'S
_____	)	REQUEST FOR ISSUANCE OF
name	)	SUMMONS UPON/INDICTMENT
	)	/INFORMATION/
_____	)	
address	)	(Rule 9)
	)	

TO _____
/ Clerk / Deputy Clerk /

C.D. _____ has been named a defendant in an / indictment re-
defendant
turned by the grand jury / information filed by the prosecuting attorney. / Issue summons
to an appropriate officer and direct him to make / personal service / residence service /
certified mail service / upon defendant at / the address stated in the caption of this re-
quest / _____
fill in address if different from caption

Special instructions for server: _____

Prosecuting Attorney, Title

FORM X

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio	)	
	)	NO. _____
v.	)	
	)	PROSECUTING ATTORNEY'S
_____	)	REQUEST FOR ISSUANCE OF
name	)	WARRANT UPON
_____	)	/INDICTMENT/INFORMATION/
address	)	
_____	)	(Rule 9)

TO: _____
/ Clerk / Deputy Clerk /

_____ C.D. _____ has been named a defendant in an / indictment re-
defendant
turned by the grand jury / information filed by the prosecuting attorney./

Issue a warrant to an appropriate officer and direct him to execute it upon _____
_____ C.D. _____ / at the address stated in the caption of this request./
defendant
_____/

fill in address if different from caption

Special instructions for executing officer: _____

Prosecuting Attorney, Title

FORM XI

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

State of Ohio

v.

name

address

)

)

) NO. _____

)

) WARRANT UPON/INDICTMENT/
INFORMATION/

)

) (Rule 9)

)

TO _____ officer authorized to execute warrant

An / indictment / information /, a copy of which is attached hereto has been filed in the Franklin County Court of Common Pleas, 410 South High Street, Columbus, Ohio 43215, charging _____ C.D. _____ with: _____ defendant

_____ describe the offense and state the numerical designation of the applicable statute

You are ordered to arrest _____ C.D. _____ and bring him before this court without unnecessary delay.

Special instructions to executing officer: _____

/ Judge / Clerk / Deputy Clerk /
Court of Common Pleas
Franklin County, Ohio

RECEIPT OF WARRANT
BY EXECUTING AUTHORITY

First Receipt

Received this warrant on _____, 19____, at _____ o'clock ____m.

Officer
By _____
Title

Subsequent Receipt

Received this warrant on _____, 19____, at _____ o'clock ____m.

Officer
By _____
Title

.....

RETURN OF EXECUTED WARRANT

Fees
Mileage \$ _____

Total \$ _____

I received this warrant on _____, 19____, at _____ o'clock ____m. On _____, 19____, I arrested _____, gave / him/her a copy of this warrant with / indictment / information / attached and brought / him/her / to _____ state the place

Arresting Officer, Title

RETURN OF UNEXECUTED WARRANT

Fees
Mileage \$
Total \$

I received this warrant on _____, 19 _____,
at _____ o'clock, _____m. On _____, 19 _____,
I attempted to execute this warrant but was unable to
do so because _____
state specific reason or reasons and

additional information regarding defendant's

whereabouts

Executing Officer, Title

• • • • •

RETURN OF UNEXECUTED WARRANT

Fees
Mileage \$
Total \$

I received this warrant on _____, 19 _____,
at _____ o'clock, _____m. On _____, 19 _____,
I attempted to execute this warrant but was unable to
do so because _____
state specific reason or reasons and

additional information regarding defendant's

whereabouts

Executing Officer, Title

FORM XII

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio	)	
/City of Columbus/	)	SUMMONS NO. _____
	)	
v.	)	CASE NO. _____
	)	
_____	)	SUMMONS IN LIEU OF ARREST
name of defendant	)	WITHOUT WARRANT, AND
_____	)	COMPLAINT UPON SUCH
address	)	SUMMONS
_____	)	
age	)	(Rule 4 (A) (3))
	)	

TO DEFENDANT:

SUMMONS

In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear / at _____
time, day, date, room
Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. / before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215 at the time and place ordered by that court. / If you fail to appear at this time and place you may be arrested.

This summons served personally on the defendant on _____, 19____.

COMPLAINT

On _____, 19____, at _____
place
you _____
describe the offense charged and state the numerical
designation of the applicable statute or ordinance

Signature of Issuing-Charging
Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

Issuing-Charging Law Enforcement Officer

Sworn to and subscribed before me by _____
on _____, 19____.

/ Judge / Clerk / Deputy Clerk
Franklin County Municipal Court

or

Notary Public
My Commission Expires _____, 19____.
/ Franklin County / State of Ohio /

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call _____
fill in telephone number(s)

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call _____
fill in telephone number(s)

FORM XIII

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio	)	SUMMONS NO. _____
/City of Columbus/	)	
	)	CASE NO. _____
v.	)	
	)	SUMMONS AFTER ARREST
_____	)	WITHOUT WARRANT, AND
name of defendant	)	COMPLAINT UPON EACH SUCH
_____	)	SUMMONS
address	)	
_____	)	(Rule 4 (F))
age	)	

TO DEFENDANT:

SUMMONS

In lieu of continued custody upon a misdemeanor you are summoned and ordered to appear / at _____
time, day, date, room
Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215. / before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215 at the time and place ordered by that court. / If you fail to appear at this time and place you may be rearrested.

This summons served personally on the defendant on _____, 19____.

COMPLAINT

On _____, 19____, at _____
place

you _____
describe the offense charged and state the numerical
designation of the applicable statute or ordinance

Signature of Issuing-Charging
Law Enforcement Officer

Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

Issuing-Charging Law Enforcement Officer

Sworn to and subscribed before me by _____
on _____, 19____.

/ Judge / Clerk / Deputy Clerk
Franklin County Municipal Court

or

Notary Public
My Commission Expires _____, 19____.
/ Franklin County / State of Ohio /

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call _____
fill in telephone number(s)

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call _____
fill in telephone number(s)

FORM XIV

FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO

State of Ohio
/City of Columbus/

Citation No. _____
Case No. _____

v.

MINOR MISDEMEANOR
CITATION

name of defendant

(Rule 4.1)

address

age

TO DEFENDANT:

On _____, 19_____, at _____
date place

You _____
describe the offense charged and state the
numerical designation of the applicable statute or ordinance

You are ordered to appear at _____
time, day, date, room

Franklin County Municipal Court, 120 West Gay Street, Columbus, Ohio 43215, / before the Franklin
County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place ordered by
that court. /

If you wish to contest this matter you must appear at the above time and place. In lieu of appearing at
the above time and place you may, within the time stated above, appear personally at 120 West Gay Street,
Columbus, Ohio 43215, Room 120, sign the guilty plea and waiver of trial which appear in this form, and
pay a fine of \$ _____ and court costs of \$ _____ .

If you fail to appear at the time and place stated above you may be arrested.

This citation was served personally on the defendant.

Signature of Issuing Law Enforcement
Officer

Being duly sworn the issuing law enforcement officer states that he has read the citation and that it is true.

Issuing Officer

Sworn to and subscribed before me by _____
on _____, 19____.

/ Judge / Clerk / Deputy Clerk /

or

Notary Public,
My Commission expires _____, 19____
Franklin County / State of Ohio /

NOTICE TO DEFENDANT: The officer is not required to swear to your copy of the citation and complaint. He swears to citation in the copy he files with the court. You may obtain a copy of the sworn citation before hearing time. You will be given a copy of the sworn citation before or at the hearing. For information regarding your duty to appear call

fill in telephone number(s)

NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: The appearance, guilty plea, waiver and payment provisions of this form do not apply to you. You must appear before the Franklin County Juvenile Court, 50 East Mound Street, Columbus, Ohio 43215, at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This citation will be filed with the Juvenile Court. The citation may be used as a juvenile complaint. You may obtain a copy of the sworn citation from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn citation before or at the Juvenile Court hearing. For information regarding your duty to appear at Juvenile Court call _____

_____ fill in telephone number(s)

GUILTY PLEA, WAIVER OF TRIAL, PAYMENT OF FINE AND COSTS

I, the undersigned defendant, do hereby enter my written plea of guilty to the offense charged in this citation. I realize that by signing this guilty plea I admit my guilt of the offense charged and waive my right to contest the offense in a trial before the court. I plead guilty to the offense charged in the citation.

FINE _____

Signature of Defendant

COST _____

address

TOTAL _____

Signature And Title Of Person Taking Guilty
Plea, Waiver And Payment

RECEIPT NO. _____

FORM XV

UNIFORM PETITION FORM

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

CASE NOS.: _____

JUDGE: _____

STATE OF OHIO
Plaintiff-Respondent

-vs-

POST-CONVICTION PETITION

Defendant-Petitioner

I. CASE HISTORY

TRIAL:

Charge (include specifications)

Disposition

Date Sentenced: _____

Name of Attorney: _____

Was this conviction the result of a (circle one):

Guilty Plea

No Contest Plea

Trial

If the conviction resulted in a trial, what was the length of the trial?

Appeal to Court of Appeals

Number or citation _____

Disposition _____

Name of Attorney _____

Appeal to Supreme Court of Ohio

Number or citation _____

Disposition _____

Name of Attorney _____

HAS A POST-CONVICTION PETITION BEEN FILED BEFORE IN THIS CASE?

YES

NO

If YES, attach a copy of the Petition and the Judgment Entry showing how it was disposed.

IF THIS IS NOT THE FIRST POST-CONVICTION PETITION, OR IT IS FILED OUTSIDE THE
TIME LIMITS PROVIDED BY LAW, STATE THE REASONS WHY THE COURT SHOULD CONSIDER
THIS PETITION: _____

OTHER RELEVANT CASE HISTORY: _____

II. STATEMENT OF FACTS

III. GROUNDS FOR RELIEF

(each ground not to exceed three pages)

Ground for relief 1:

Attached exhibit numbers which support ground for relief:

Legal authority (constitutional provisions, statutes, cases, rules, etc.) in support of ground for relief: _____

(name)

TITLE 31: DOMESTIC RELATIONS — CHILDREN

CHAPTER 3101: MARRIAGE

§ 3101.01 Persons who may be joined in marriage; minor to obtain consent; public policy of state concerning same-sex marriage and extension of certain benefits to nonmarital relationships.

(A) Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage. A marriage may only be entered into by one man and one woman. A minor shall first obtain the consent of the minor's parents, surviving parent, parent who is designated the residential parent and legal custodian of the minor by a court of competent jurisdiction, guardian, or any one of the following who has been awarded permanent custody of the minor by a court exercising juvenile jurisdiction:

- (1) An adult person;
- (2) The department of job and family services or any child welfare organization certified by the department;
- (3) A public children services agency.

(B) For the purposes of division (A) of this section, a minor shall not be required to obtain the consent of a parent who resides in a foreign country, has neglected or abandoned the minor for a period of one year or longer immediately preceding the minor's application for a marriage license, has been adjudged incompetent, is an inmate of a state mental or correctional institution, has been permanently deprived of parental rights and responsibilities for the care of the minor and the right to have the minor live with the parent and to be the legal custodian of the minor by a court exercising juvenile jurisdiction, or has been deprived of parental rights and responsibilities for the care of the minor and the right to have the minor live with the parent and to be the legal custodian of the minor by the appointment of a guardian of the person of the minor by the probate court or by another court of competent jurisdiction.

(C)(1) Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state.

(2) Any marriage entered into by persons of the same sex in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.

(3) The recognition or extension by the state of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against the strong public policy of this state. Any public act, record, or judicial proceeding of this state, as defined in section 9.82 of the Revised Code, that extends the specific statutory benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes is void ab initio. Nothing in division (C)(3) of this section shall be construed to do either of the following:

- (a) Prohibit the extension of specific benefits other

wise enjoyed by all persons, married or unmarried, to nonmarital relationships between persons of the same sex or different sexes, including the extension of benefits conferred by any statute that is not expressly limited to married persons, which includes but is not limited to benefits available under Chapter 4117. of the Revised Code;

- (b) Affect the validity of private agreements that are otherwise valid under the laws of this state.

(4) Any public act, record, or judicial proceeding of any other state, country, or other jurisdiction outside this state that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.

HISTORY: RS § 6384; S&C 855; 67 v 6; GC § 8001-1; 110 v 126; 114 v 320(476), § 2; 121 v 557(570); 124 v 178; Bureau of Code Revision, 10-1-53; 133 v S 49 (Eff 8-13-69); 141 v H 428 (Eff 12-23-86); 143 v S 3 (Eff 4-11-91); 145 v H 571 (Eff 10-6-94); 147 v H 408 (Eff 10-1-97); 148 v H 471. Eff 7-1-2000; 150 v H 272, § 1, eff. 5-7-04.

The provisions of § 3 of H.B. 272 (150 v —) read as follows:

SECTION 3. In enacting new division (C) of section 3101.01 of the Revised Code in this act, all the following apply:

(A) The General Assembly declares and reaffirms the state of Ohio's historical commitment to the institution of marriage as a union between a man and a woman as husband and wife.

(B) The General Assembly declares its intent to define marriage and clarify that relationships that are intended as substitutes for marriage, including but not limited to 'civil unions' as provided for in Vt. Stat. Ann. tit. 15, § 1202 (2003), will not be recognized in this state. It is not the intent of the General Assembly to prohibit the extension of specific benefits otherwise enjoyed by all persons, married or unmarried, to relationships between persons of the same sex or different sexes.

(C) The General Assembly declares its intent not to make substantive changes in the law of this state that is in effect on the day prior to the effective date of this act with respect to the validity of marriages heretofore occurring within this state.

The effective date is set by section 12(A) of HB 471.

§ 3101.04 Consent of juvenile court.

When the juvenile court files a consent to marriage pursuant to the juvenile rules, the probate court may thereupon issue a license, notwithstanding either or both the contracting parties for the marital relation are under the minimum age prescribed in section 3101.01 of the Revised Code. The license shall not issue until section 3101.05 of the Revised Code has been complied with, and until such child has been born, or it is found beyond doubt by the juvenile court that the minor female is pregnant and intends to have the child.

HISTORY: GC § 8001-4; 106 v 17; 114 v 320(476); 119 v 297; 121 v 557(571); 124 v 178; Bureau of Code Revision, 10-1-53; 134 v H 551 (Eff 6-22-72); 135 v H 233 (Eff 9-23-74); 146 v H 274. Eff 8-8-96.

CHAPTER 3103: HUSBAND AND WIFE

§ 3103.03 Support obligations of married persons and of parents of minor child.

- (A) Each married person must support the person's self and spouse out of the person's property or by the

person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able. The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding section 3109.01 of the Revised Code and to the extent provided in section 3119.86† of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessities for the support of the spouse and recover the reasonable value of the necessities supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessities for the support of the minor child and recover the reasonable value of the necessities supplied from the parent who neglected to support the minor child.

(E) If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 1109.75†† of the Revised Code, then the duty of support owed to a spouse pursuant to this section does not include an obligation to pay for the funeral expenses of the deceased spouse. This division does not preclude a surviving spouse from assuming by contract the obligation to pay for the funeral expenses of the deceased spouse.

HISTORY: RS § 3110; 84 v 132; GC § 8002-3; 124 v 178; Bureau of Code Revision, 10-1-53; 135 v S 1 (Eff 1-1-74); 143 v H 346 (Eff 5-31-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 146 v H 538, § 10 (Eff 1-1-97); 147 v H 352 (Eff 1-1-98); 148 v S 180. Eff 3-22-2001.

† Division (B), was 3119.86 intended?

†† Division (E), was RC § 1111.19 intended?

CHAPTER 3107: ADOPTION

§ 3107.06 Who must consent.

For child born prior to January 1, 1997.

Unless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:

- (A) The mother of the minor;
- (B) The father of the minor, if the minor was conceived or born while the father was married to the mother, if the minor is his child by adoption, or if the minor has been established to be his child by a court proceeding;
- (C) Any person or agency having permanent custody of the minor or authorized by court order to consent;
- (D) The juvenile court that has jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not authorized by law or court order to consent to the adoption;

(E) The minor, if more than twelve years of age, unless the court, finding that it is in the best interest of the minor, determines that the minor's consent is not required.

(F) Subject to division (B) of section 3107.07 of the Revised Code, the putative father, if he:

- (1) Is alleged to be the father of the minor in proceedings brought under sections 3111.01 to 3111.19 of the Revised Code at any time before the placement of the minor in the home of the petitioner;
- (2) Has acknowledged the child in a writing sworn to before a notary public at any time before the placement of the minor in the home of the petitioner;
- (3) Has signed the birth certificate of the child as an informant as provided in section 3705.09 of the Revised Code;
- (4) Has filed an objection to the adoption with the agency having custody of the minor or the department of human services at any time before the placement of the minor in the home of the petitioner, or with the probate court or the department of human services within thirty days of the filing of a petition to adopt the minor or its placement in the home of the petitioner, whichever occurs first.

HISTORY: 136 v H 156 (Eff 1-1-77); 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 142 v H 790. Eff 3-16-89.

Partly analogous to former RC § 3107.06 (GC § 8004-6; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53; 126 v 394; 129 v 498; 130 v 679; 133 v S 49; 136 v S 145), repealed, 136 v H 156, eff 1-1-77. Also see now RC § 3107.07 — 3107.08.2.

The effective date is set by section 4 of the act.

§ 3107.06 Who must consent.

For child born on or after January 1, 1997.

Unless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:

- (A) The mother of the minor;
- (B) The father of the minor, if any of the following apply:
 - (1) The minor was conceived or born while the father was married to the mother;
 - (2) The minor is his child by adoption;
 - (3) Prior to the date the petition was filed, it was determined by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative proceeding in another state that he has a parent and child relationship with the minor;
 - (4) He acknowledged paternity of the child and that acknowledgment has become final pursuant to section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code.
- (C) The putative father of the minor;
- (D) Any person or agency having permanent custody of the minor or authorized by court order to consent;
- (E) The juvenile court that has jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not authorized by law or court order to consent to the adoption;

(F) The minor, if more than twelve years of age, unless the court, finding that it is in the best interest of the minor, determines that the minor's consent is not required.

HISTORY: 136 v H 156 (Eff 1-1-77); 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 142 v H 790 (Eff 3-16-89); 146 v H 419 (Eff 9-18-96); 146 v H 274 (Eff 9-18-96); 147 v H 352 (Eff 1-1-98); 148 v S 180. Eff 3-22-2001.

The version of RC § 3107.06 set out preceding this version as amended by HB 419 (146 v —) and HB 274 (146 v —) is to be used in instances of children born prior to January 1, 1997, as noted in section 5 of HB 419.

Partly analogous to former RC § 3107.06 (GC § 8004-6; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53; 126 v 394; 129 v 498; 130 v 679; 133 v S 49; 136 v S 145), repealed, 136 v H 156, eff 1-1-77. Also see now RC § 3107.07 — 3107.08.2.

The provisions of § 5 of HB 419 (146 v —) read as follows:

SECTION 5. The amendment made by this act to sections 3107.06 and 3107.07 of the Revised Code concerning a putative father, as defined in section 3107.01 of the Revised Code, consenting to his child's adoption apply only if the child is born on or after January 1, 1997. Whether a putative father's consent to the adoption of his child born prior to January 1, 1997, is required shall be determined in accordance with sections 3107.06 and 3107.07 of the Revised Code as those sections exist immediately prior to their amendment by this act.

[PUTATIVE FATHERS]

§ 3107.07 Who need not consent.

For child born prior to January 1, 1997.

Consent to adoption is not required of any of the following:

(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.

(B) The putative father of a minor if the putative father fails to file an objection with the court, the department of human services, or the agency having custody of the minor as provided in division (F)(4) of section 3107.06 of the Revised Code, or files an objection with the court, department, or agency and the court finds, after proper service of notice and hearing, that he is not the father of the minor, or that he has willfully abandoned or failed to care for and support the minor, or abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or its placement in the home of the petitioner, whichever occurs first;

(C) A parent who has relinquished his right to consent under section 5103.15 of the Revised Code;

(D) A parent whose parental rights have been terminated by order of a juvenile court under Chapter 2151. of the Revised Code;

(E) A legal guardian or guardian ad litem of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of his written reasons for withholding con-

sent, is found by the court to be withholding his consent unreasonably;

(F) Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably;

(G) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse;

(H) Any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to the United States pursuant to section 101 (b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101 (b)(1)(F), as amended or reenacted.

HISTORY: 136 v H 156 (Eff 1-1-77); 137 v H 1 (Eff 8-26-77); 138 v S 205 (Eff 3-23-81); 141 v H 428. Eff 12-23-86.

Analogous to former RC § 3107.06.

Not analogous to former RC § 3107.07 (GC § 8004-7; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53), repealed, 136 v H 156, § 2, eff 1-1-77.

§ 3107.07 Who need not consent.

For child born on or after January 1, 1997.

Consent to adoption is not required of any of the following:

(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.

(B) The putative father of a minor if either of the following applies:

(1) The putative father fails to register as the minor's putative father with the putative father registry established under section 3107.062 [3107.06.2] of the Revised Code not later than thirty days after the minor's birth;

(2) The court finds, after proper service of notice and hearing, that any of the following are the case:

(a) The putative father is not the father of the minor;

(b) The putative father has willfully abandoned or failed to care for and support the minor;

(c) The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

(C) Except as provided in section 3107.071 [3107.07.1] of the Revised Code, a parent who has entered into a voluntary permanent custody surrender

agreement under division (B) of section 5103.15 of the Revised Code;

(D) A parent whose parental rights have been terminated by order of a juvenile court under Chapter 2151. of the Revised Code;

(E) A parent who is married to the petitioner and supports the adoption;

(F) The father, or putative father, of a minor if the minor is conceived as the result of the commission of rape by the father or putative father and the father or putative father is convicted of or pleads guilty to the commission of that offense. As used in this division, "rape" means a violation of section 2907.02 of the Revised Code or a similar law of another state.

(G) A legal guardian or guardian ad litem of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;

(H) Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;

(I) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse;

(J) Any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to the United States pursuant to section 101(b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101(b)(1)(F), as amended or reenacted.

(K) Except as provided in divisions (G) and (H) of this section, a juvenile court, agency, or person given notice of the petition pursuant to division (A)(1) of section 3107.11 of the Revised Code that fails to file an objection to the petition within fourteen days after proof is filed pursuant to division (B) of that section that the notice was given;

(L) Any guardian, custodian, or other party who has temporary custody of the child.

HISTORY: 136 v H 156 (Eff 1-1-77); 137 v H 1 (Eff 8-26-77); 138 v S 205 (Eff 3-23-81); 141 v H 428 (Eff 12-23-86); 146 v H 419 (Eff 9-18-96); 146 v H 274 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 176. Eff 10-29-99.

Analogous to former RC § 3107.06.

Not analogous to former RC § 3107.07 (GC § 8004-7; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53), repealed, 136 v H 156, § 2, eff 1-1-77.

See provisions, § 5 of HB 419 (146 v —), following RC § 3107.06.

The version of RC § 3107.07 set out preceding this version as amended by HB 176 (148 v —) is to be used in instances of children born prior to January 1, 1997. See Publisher's Note following RC § 3107.06.

§ 3107.08 Execution of consent.

(A) The required consent to adoption may be executed at any time after seventy-two hours after the birth of a minor, and shall be executed in the following manner:

(1) If by the person to be adopted, in the presence of the court;

(2) If by a parent of the person to be adopted, in accordance with section 3107.081 [3107.08.1] of the Revised Code;

(3) If by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments;

(4) If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments;

(5) If by a juvenile court, by appropriate order.

(B) A consent which does not name or otherwise identify the prospective adoptive parent is valid if it contains a statement by the person giving consent that it was voluntarily executed irrespective of disclosure of the name or other identification of the prospective adoptive parent.

HISTORY: 136 v H 156 (Eff 1-1-77); 146 v H 419. Eff 9-18-96.

For section analogous to former RC § 3107.08 (GC § 8004-8; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53; 136 v S 145), repealed, 136 v H 156, § 2, eff 1-1-77, see now RC § 3107.14.

The effective date is set by section 3 of HB 419.

[§ 3107.08.3] § 3107.083 Components of form signed by parent; materials to be given to parent; rules specifying documents required to be filed.

Not later than ninety days after June 20, 1996, the director of job and family services shall do all of the following:

(A)(1) For a parent of a child who, if adopted, will be an adopted person as defined in section 3107.45 of the Revised Code, prescribe a form that has the following six components:

(a) A component the parent signs under section 3107.071 [3107.07.1], 3107.081 [3107.08.1], or 5103.151 [5103.15.1] of the Revised Code to indicate the requirements of section 3107.082 [3107.08.2] or 5103.152 [5103.15.2] of the Revised Code have been met. The component shall be as follows:

"Statement Concerning Ohio Law and Adoption Materials

By signing this component of this form, I acknowledge that it has been explained to me, and I understand, that, if I check the space on the next component of this form that indicates that I authorize the release, the adoption file maintained by the Ohio Department of Health, which contains identifying information about me at the time of my child's birth, will be released, on request, to the adoptive parent when the adoptee is at least age eighteen but younger than age twenty-one and to the adoptee when he or she is age twenty-one or older. It has also been explained to me, and I understand, that I may prohibit the release of identifying information about me contained in the adoption file by checking the space on the next component of this form that indicates that I do not authorize the release of the identifying information. It has additionally been explained to me, and I understand, that I may change my mind regarding the decision I make on the next component of this form at any time and as many times as I desire by signing, dating, and having filed with the Ohio Department of Health a denial of release form or authorization of release form prescribed and

provided by the Department of Health and providing the Department two items of identification.

By signing this component of this form, I also acknowledge that I have been provided a copy of written materials about adoption prepared by the Ohio Department of Job and Family Services, the adoption process and ramifications of consenting to adoption or entering into a voluntary permanent custody surrender agreement have been discussed with me, and I have been provided the opportunity to review the materials and ask questions about the materials and discussion.

Signature of biological parent:

Signature of witness:

Date:

(b) A component the parent signs under section 3107.071 [3107.07.1], 3107.081 [3107.08.1], or 5103.151 [5103.15.1] of the Revised Code regarding the parent's decision whether to allow identifying information about the parent contained in an adoption file maintained by the department of health to be released to the parent's child and adoptive parent pursuant to section 3107.47 of the Revised Code. The component shall be as follows:

"Statement Regarding Release of Identifying Information

The purpose of this component of this form is to allow a biological parent to decide whether to allow the Ohio Department of Health to provide an adoptee and adoptive parent identifying information about the adoptee's biological parent contained in an adoption file maintained by the Department. Please check one of the following spaces:

..... YES, I authorize the Ohio Department of Health to release identifying information about me, on request, to the adoptive parent when the adoptee is at least age eighteen but younger than age twenty-one and to the adoptee when he or she is age twenty-one or older.

..... NO, I do not authorize the release of identifying information about me to the adoptive parent or adoptee.

Signature of biological parent:

Signature of witness:

Date:

(c) A component the parent, if the mother of the child, completes and signs under section 3107.071 [3107.07.1], 3107.081 [3107.08.1], or 5103.151 [5103.15.1] of the Revised Code to indicate, to the extent of the mother's knowledge, all of the following:

(i) Whether the mother, during her pregnancy, was a recipient of the medical assistance program established under Chapter 5111. of the Revised Code or other public health insurance program and, if so, the dates her eligibility began and ended;

(ii) Whether the mother, during her pregnancy, was covered by private health insurance and, if so, the dates the coverage began and ended, the name of the insurance provider, the type of coverage, and the identification number of the coverage;

(iii) The name and location of the hospital, freestanding birth center, or other place where the mother gave birth and, if different, received medical care immediately after giving birth;

(iv) The expenses of the obstetrical and neonatal care;

(v) Whether the mother has been informed that the adoptive parent or the agency or attorney arranging the adoption are to pay expenses involved in the adoption, including expenses the mother has paid and expects to

receive or has received reimbursement, and, if so, what expenses are to be or have been paid and an estimate of the expenses;

(vi) Any other information related to expenses the department determines appropriate to be included in this component.

(d) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent materials, other than photographs of the parent, that the parent requests be given to the child or adoptive parent pursuant to section 3107.68 of the Revised Code.

(e) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent photographs of the parent pursuant to section 3107.68 of the Revised Code.

(f) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent the first name of the parent pursuant to section 3107.68 of the Revised Code.

(2) State at the bottom of the form that the parent is to receive a copy of the form the parent signed.

(3) Provide copies of the form prescribed under this division to probate and juvenile courts, public children services agencies, private child placing agencies, private noncustodial agencies, attorneys, and persons authorized to take acknowledgments.

(B)(1) For a parent of a child who, if adopted, will become an adopted person as defined in section 3107.39 of the Revised Code, prescribe a form that has the following five components:

(a) A component the parent signs under section 3107.071 [3107.07.1], 3107.081 [3107.08.1], or 5103.151 [5103.15.1] of the Revised Code to attest that the requirement of division (A) of section 3107.082 [3107.08.2] or division (A) of section 5103.152 [5103.15.2] of the Revised Code has been met;

(b) A component the parent, if the mother of the child, completes and signs under section 3107.071 [3107.07.1], 3107.081 [3107.08.1], or 5103.151 [5103.15.1] of the Revised Code to indicate, to the extent of the mother's knowledge, all of the following:

(i) Whether the mother, during her pregnancy, was a recipient of the medical assistance program established under Chapter 5111. of the Revised Code or other public health insurance program and, if so, the dates her eligibility began and ended;

(ii) Whether the mother, during her pregnancy, was covered by private health insurance and, if so, the dates the coverage began and ended, the name of the insurance provider, the type of coverage, and the identification number of the coverage;

(iii) The name and location of the hospital, freestanding birth center, or other place where the mother gave birth and, if different, received medical care immediately after giving birth;

(iv) The expenses of the obstetrical and neonatal care;

(v) Whether the mother has been informed that the adoptive parent or the agency or attorney arranging the adoption are to pay expenses involved in the adoption, including expenses the mother has paid and expects to receive or has received reimbursement for, and, if so, what expenses are to be or have been paid and an estimate of the expenses;

(vi) Any other information related to expenses the department determines appropriate to be included in the component.

(c) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent materials, other than photographs of the parent, that the parent requests be given to the child or adoptive parent pursuant to section 3107.68 of the Revised Code.

(d) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent photographs of the parent pursuant to section 3107.68 of the Revised Code.

(e) A component the parent may sign to authorize the agency or attorney arranging the adoption to provide to the child or adoptive parent the first name of the parent pursuant to section 3107.68 of the Revised Code.

(2) State at the bottom of the form that the parent is to receive a copy of the form the parent signed.

(3) Provide copies of the form prescribed under this division to probate and juvenile courts, public children services agencies, private child placing agencies, private noncustodial agencies, and attorneys.

(C) Prepare the written materials about adoption that are required to be given to parents under division (A) of section 3107.082 [3107.08.2] and division (A) of section 5103.152 [5103.15.2] of the Revised Code. The materials shall provide information about the adoption process, including ramifications of a parent consenting to a child's adoption or entering into a voluntary permanent custody surrender agreement. The materials also shall include referral information for professional counseling and adoption support organizations. The director shall provide the materials to assessors.

(D) Adopt rules in accordance with Chapter 119. of the Revised Code specifying the documents that must be filed with a probate court under divisions (B) and (D) of section 3107.081 [3107.08.1] of the Revised Code and a juvenile court under divisions (C) and (E) of section 5103.151 [5103.15.1] of the Revised Code.

HISTORY: 146 v H 419 (Eff 6-20-96); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 3107.11 Hearing on petition; who is entitled to notice.

(A) After the filing of a petition to adopt an adult or a minor, the court shall fix a time and place for hearing the petition. The hearing may take place at any time more than thirty days after the date on which the minor is placed in the home of the petitioner. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the court to all of the following:

(1) Any juvenile court, agency, or person whose consent to the adoption is required by this chapter but who has not consented;

(2) A person whose consent is not required as provided by division (A), (G), (H), or (I) of section 3107.07 of the Revised Code and has not consented;

(3) Any guardian, custodian, or other party who has temporary custody or permanent custody of the child.

Notice shall not be given to a person whose consent is not required as provided by division (B), (C), (D), (E), (F), or (J) of section 3107.07, or section 3107.071 [3107.07.1], of the Revised Code. Second notice shall not be given to a juvenile court, agency, or person whose consent is not required as provided by division (K) of section 3107.07 of the Revised Code because the court,

agency, or person failed to file an objection to the petition within fourteen days after proof was filed pursuant to division (B) of this section that a first notice was given to the court, agency, or person pursuant to division (A)(1) of this section.

(B) All notices required under this section shall be given as specified in the Rules of Civil Procedure. Proof of the giving of notice shall be filed with the court before the petition is heard.

HISTORY: 136 v H 156 (Eff 1-1-77); 137 v H 832 (Eff 3-13-79); 141 v H 428 (Eff 12-23-86); 146 v H 419 (Eff 9-18-96); 147 v H 484 (Eff 3-18-99); 148 v H 176. Eff 10-29-99.

Analogous to former RC § 3107.04.

For section analogous to former RC § 3107.11 (GC § 8004-11; 120 v 434; 121 v 448; 124 v 178; Bureau of Code Revision, 10-1-53; 130 v 681), repealed, 136 v H 156, eff 1-1-77, see now RC § 3107.14.

§ 3107.14 Presence of petitioner and adoptee at hearing; continuance; final decree or interlocutory order; dismissal of petition.

(A) The petitioner and the person sought to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.

(B) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition, and may examine the petitioners separate and apart from each other.

(C) If, at the conclusion of the hearing, the court finds that the required consents have been obtained or excused and that the adoption is in the best interest of the person sought to be adopted as supported by the evidence, it may issue, subject to division (C)(1) of section 2151.86, section 3107.064 [3107.06.4], and division (E) of section 3107.09 of the Revised Code, and any other limitations specified in this chapter, a final decree of adoption or an interlocutory order of adoption, which by its own terms automatically becomes a final decree of adoption on a date specified in the order, which, except as provided in division (B) of section 3107.13 of the Revised Code, shall not be less than six months or more than one year from the date of issuance of the order, unless sooner vacated by the court for good cause shown. In determining whether the adoption is in the best interest of the person sought to be adopted, the court shall not consider the age of the petitioner if the petitioner is old enough to adopt as provided by section 3107.03 of the Revised Code.

In an interlocutory order of adoption, the court shall provide for observation, investigation, and a further report on the adoptive home during the interlocutory period.

(D) If the requirements for a decree under division (C) of this section have not been satisfied or the court vacates an interlocutory order of adoption, or if the court finds that a person sought to be adopted was placed in the home of the petitioner in violation of law, the court shall dismiss the petition and may determine the agency or person to have temporary or permanent custody of the person, which may include the agency or person that had custody prior to the filing of the petition or the petitioner, if the court finds it is in the best interest of the person as supported by the evidence, or if the person is a minor, the court may certify the case to the juvenile court of the

county where the minor is then residing for appropriate action and disposition.

(E) The issuance of a final decree or interlocutory order of adoption for an adult adoption under division (A)(4) of section 3107.02 of the Revised Code shall not disqualify that adult for services under section 2151.82 or 2151.83 of the Revised Code.

HISTORY: 136 v H 156 (Eff 1-1-77); 140 v H 84 (Eff 3-19-85); 146 v H 419 (Eff 9-18-96); 147 v H 446 (Eff 8-5-98); 148 v H 448. Eff 10-5-2000; 151 v S 238, § 1, eff. 9-21-06.

Analogous to former RC §§ 3107.08-3107.12.

For section analogous to former RC § 3107.14 (GC § 8004-14; 120 v 434; 124 v 178; Bureau of Code Revision, 10-1-53; 130 v 681), repealed, 136 v H 156, § 2, eff 1-1-77, see now RC § 3107.17.

[§ 3107.16.1] § 3107.161 Determination of best interest of child in contested adoption; burden of proof; status of child.

(A) As used in this section, "the least detrimental available alternative" means the alternative that would have the least long-term negative impact on the child.

(B) When a court makes a determination in a contested adoption concerning the best interest of a child, the court shall consider all relevant factors including, but not limited to, all of the following:

(1) The least detrimental available alternative for safeguarding the child's growth and development;

(2) The age and health of the child at the time the best interest determination is made and, if applicable, at the time the child was removed from the home;

(3) The wishes of the child in any case in which the child's age and maturity makes this feasible;

(4) The duration of the separation of the child from a parent;

(5) Whether the child will be able to enter into a more stable and permanent family relationship, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements;

(6) The likelihood of safe reunification with a parent within a reasonable period of time;

(7) The importance of providing permanency, stability, and continuity of relationships for the child;

(8) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

(9) The child's adjustment to the child's current home, school, and community;

(10) The mental and physical health of all persons involved in the situation;

(11) Whether any person involved in the situation has been convicted of, pleaded guilty to, or accused of any criminal offense involving any act that resulted in a child being abused or neglected; whether the person, in a case in which a child has been adjudicated to be an abused or neglected child, has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether the person has been convicted of, pleaded guilty to, or accused of a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the person's family or household; and whether the person has been convicted of, pleaded guilty to, or accused of any offense involving a victim who at the time of the com-

mission of the offense was a member of the person's family or household and caused physical harm to the victim in the commission of the offense.

(C) A person who contests an adoption has the burden of providing the court material evidence needed to determine what is in the best interest of the child and must establish that the child's current placement is not the least detrimental available alternative.

HISTORY: 146 v H 419 (Eff 9-18-96); 146 v S 292. Eff 11-6-96.

CHAPTER 3109: CHILDREN

§ 3109.04 Allocation of parental rights and responsibilities for care of children; shared parenting.

(A) In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, upon hearing the testimony of either or both parents and considering any mediation report filed pursuant to section 3109.052 [3109.05.2] of the Revised Code and in accordance with sections 3127.01 to 3127.53 of the Revised Code, the court shall allocate the parental rights and responsibilities for the care of the minor children of the marriage. Subject to division (D)(2) of this section, the court may allocate the parental rights and responsibilities for the care of the children in either of the following ways:

(1) If neither parent files a pleading or motion in accordance with division (G) of this section, if at least one parent files a pleading or motion under that division but no parent who filed a pleading or motion under that division also files a plan for shared parenting, or if at least one parent files both a pleading or motion and a shared parenting plan under that division but no plan for shared parenting is in the best interest of the children, the court, in a manner consistent with the best interest of the children, shall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child, and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children.

(2) If at least one parent files a pleading or motion in accordance with division (G) of this section and a plan for shared parenting pursuant to that division and if a plan for shared parenting is in the best interest of the children and is approved by the court in accordance with division (D)(1) of this section, the court may allocate the parental rights and responsibilities for the care of the children to both parents and issue a shared parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the children in accordance with the approved plan for shared parenting. If the court issues a shared parenting order under this division and it is necessary for the purpose of receiving public assistance, the court shall designate which one of the parents' residences is to serve as the child's home. The child support obligations of the parents under a shared parenting order issued under this division shall be determined in accordance with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

(B)(1) When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children. In determining the child's best interest for purposes of making its allocation of the parental rights and responsibilities for the care of the child and for purposes of resolving any issues related to the making of that allocation, the court, in its discretion, may and, upon the request of either party, shall interview in chambers any or all of the involved children regarding their wishes and concerns with respect to the allocation.

(2) If the court interviews any child pursuant to division (B)(1) of this section, all of the following apply:

(a) The court, in its discretion, may and, upon the motion of either parent, shall appoint a guardian ad litem for the child.

(b) The court first shall determine the reasoning ability of the child. If the court determines that the child does not have sufficient reasoning ability to express the child's wishes and concern with respect to the allocation of parental rights and responsibilities for the care of the child, it shall not determine the child's wishes and concerns with respect to the allocation. If the court determines that the child has sufficient reasoning ability to express the child's wishes or concerns with respect to the allocation, it then shall determine whether, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation. If the court determines that, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation, it shall not determine the child's wishes and concerns with respect to the allocation and shall enter its written findings of fact and opinion in the journal. If the court determines that it would be in the best interests of the child to determine the child's wishes and concerns with respect to the allocation, it shall proceed to make that determination.

(c) The interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview.

(3) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the child's wishes and concerns regarding the allocation of parental rights and responsibilities concerning the child. No court, in determining the child's best interest for purposes of making its allocation of the parental rights and responsibilities for the care of the child or for purposes of resolving any issues related to the making of that allocation, shall accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes and concerns regarding those matters.

(C) Prior to trial, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations shall be made available to either parent or the parent's counsel of record not less than five days

before trial, upon written request. The report shall be signed by the investigator, and the investigator shall be subject to cross-examination by either parent concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

If the court determines that either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being a neglected child, that either parent previously has been determined to be the perpetrator of the neglectful act that is the basis of an adjudication that a child is a neglected child, or that there is reason to believe that either parent has acted in a manner resulting in a child being a neglected child, the court shall consider that fact against naming that parent the residential parent and against granting a shared parenting decree. When the court allocates parental rights and responsibilities for the care of children or determines whether to grant shared parenting in any proceeding, it shall consider whether either parent or any member of the household of either parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any sexually oriented offense or other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that either parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any sexually oriented offense or other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it may designate that parent as the residential parent and may issue a shared parenting decree or order only if it determines that it is in the best interest of the child to name that parent the residential parent or to issue a shared parenting decree or order and it makes specific written findings of fact to support its determination.

(D)(1)(a) Upon the filing of a pleading or motion by either parent or both parents, in accordance with division (G) of this section, requesting shared parenting and the filing of a shared parenting plan in accordance with that division, the court shall comply with division (D)(1)(a)(i), (ii), or (iii) of this section, whichever is applicable:

(i) If both parents jointly make the request in their pleadings or jointly file the motion and also jointly file the plan, the court shall review the parents' plan to determine if it is in the best interest of the children. If the court determines that the plan is in the best interest of the children, the court shall approve it. If the court determines that the plan or any part of the plan is not in the best interest of the children, the court shall require the

parents to make appropriate changes to the plan to meet the court's objections to it. If changes to the plan are made to meet the court's objections, and if the new plan is in the best interest of the children, the court shall approve the plan. If changes to the plan are not made to meet the court's objections, or if the parents attempt to make changes to the plan to meet the court's objections, but the court determines that the new plan or any part of the new plan still is not in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motion requesting shared parenting of the children and proceed as if the request in the pleadings or the motion had not been made. The court shall not approve a plan under this division unless it determines that the plan is in the best interest of the children.

(ii) If each parent makes a request in the parent's pleadings or files a motion and each also files a separate plan, the court shall review each plan filed to determine if either is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that neither filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections, or may select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the requests in the pleadings or the motions had not been made. If the court approves a plan under this division, either as originally filed or with submitted changes, or if the court rejects the portion of the parents' pleadings or denies their motions requesting shared parenting under this division and proceeds as if the requests in the pleadings or the motions had not been made, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. Division (D)(1)(b) of this section applies in relation to the approval or disapproval of a plan under this division.

(iii) If each parent makes a request in the parent's pleadings or files a motion but only one parent files a plan, or if only one parent makes a request in the parent's pleadings or files a motion and also files a plan, the court in the best interest of the children may order the other parent to file a plan for shared parenting in accordance with division (G) of this section. The court shall review each plan filed to determine if any plan is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that no filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan

and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny the parents' motion or reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the request or requests or the motion or motions had not been made. If the court approves a plan under this division, either as originally filed or with submitted changes, or if the court rejects the portion of the pleadings or denies the motion or motions requesting shared parenting under this division and proceeds as if the request or requests or the motion or motions had not been made, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. Division (D)(1)(b) of this section applies in relation to the approval or disapproval of a plan under this division.

(b) The approval of a plan under division (D)(1)(a)(ii) or (iii) of this section is discretionary with the court. The court shall not approve more than one plan under either division and shall not approve a plan under either division unless it determines that the plan is in the best interest of the children. If the court, under either division, does not determine that any filed plan or any filed plan with submitted changes is in the best interest of the children, the court shall not approve any plan.

(c) Whenever possible, the court shall require that a shared parenting plan approved under division (D)(1)(a)(i), (ii), or (iii) of this section ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact with any parent would not be in the best interest of the child.

(d) If a court approves a shared parenting plan under division (D)(1)(a)(i), (ii), or (iii) of this section, the approved plan shall be incorporated into a final shared parenting decree granting the parents the shared parenting of the children. Any final shared parenting decree shall be issued at the same time as and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities for the care of the children arose.

No provisional shared parenting decree shall be issued in relation to any shared parenting plan approved under division (D)(1)(a)(i), (ii), or (iii) of this section. A final shared parenting decree issued under this division has immediate effect as a final decree on the date of its issuance, subject to modification or termination as authorized by this section.

(2) If the court finds, with respect to any child under eighteen years of age, that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child, it may commit the child to a relative of the child or certify a copy of its findings, together with as much of the record and the further information, in narrative form or otherwise, that it

considers necessary or as the juvenile court requests, to the juvenile court for further proceedings, and, upon the certification, the juvenile court has exclusive jurisdiction.

(E)(1)(a) The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:

(i) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.

(ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.

(iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

(b) One or both of the parents under a prior decree allocating parental rights and responsibilities for the care of children that is not a shared parenting decree may file a motion requesting that the prior decree be modified to give both parents shared rights and responsibilities for the care of the children. The motion shall include both a request for modification of the prior decree and a request for a shared parenting order that complies with division (G) of this section. Upon the filing of the motion, if the court determines that a modification of the prior decree is authorized under division (E)(1)(a) of this section, the court may modify the prior decree to grant a shared parenting order, provided that the court shall not modify the prior decree to grant a shared parenting order unless the court complies with divisions (A) and (D)(1) of this section and, in accordance with those divisions, approves the submitted shared parenting plan and determines that shared parenting would be in the best interest of the children.

(2) In addition to a modification authorized under division (E)(1) of this section:

(a) Both parents under a shared parenting decree jointly may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree. Modifications under this division may be made at any time. The modifications to the plan shall be filed jointly by both parents with the court, and the court shall include them in the plan, unless they are not in the best interest of the children. If the modifications are not in the best interests of the children, the court, in its discretion, may reject the modifications or make modifications to the proposed modifications or the plan that are in the best interest of the children. Modifications jointly submitted by both parents under a shared parenting decree shall be effective, either as originally filed or as modified by the court, upon their inclusion by the court in the plan. Modifications to the plan made by the court shall be effective upon their inclusion by the court in the plan.

(b) The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

(c) The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(i) of this section upon the request of one or both of the parents or whenever it determines that shared parenting is not in the best interest of the children. The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(ii) or (iii) of this section if it determines, upon its own motion or upon the request of one or both parents, that shared parenting is not in the best interest of the children. If modification of the terms of the plan for shared parenting approved by the court and incorporated by it into the final shared parenting decree is attempted under division (E)(2)(a) of this section and the court rejects the modifications, it may terminate the final shared parenting decree if it determines that shared parenting is not in the best interest of the children.

(d) Upon the termination of a prior final shared parenting decree under division (E)(2)(c) of this section, the court shall proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children under the standards applicable under divisions (A), (B), and (C) of this section as if no decree for shared parenting had been granted and as if no request for shared parenting ever had been made.

(F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

(a) The wishes of the child's parents regarding the child's care;

(b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

(c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

(f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;

(g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;

(h) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any

act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in section 3119.23 of the Revised Code, and all of the following factors:

(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;

(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;

(d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;

(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.

(3) When allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition.

(G) Either parent or both parents of any children may file a pleading or motion with the court requesting the court to grant both parents shared parental rights and responsibilities for the care of the children in a proceeding held pursuant to division (A) of this section. If a pleading or motion requesting shared parenting is filed, the parent or parents filing the pleading or motion also shall file with the court a plan for the exercise of shared parenting by both parents. If each parent files a pleading or motion requesting shared parenting but only one parent files a plan or if only one parent files a pleading or motion requesting shared parenting and also files a plan, the other parent as ordered by the court shall file with the court a plan for the exercise of shared parenting by both parents. The plan for shared parenting shall be filed with the petition for dissolution of marriage, if the question of parental rights and responsibilities for the care of the

children arises out of an action for dissolution of marriage, or, in other cases, at a time at least thirty days prior to the hearing on the issue of the parental rights and responsibilities for the care of the children. A plan for shared parenting shall include provisions covering all factors that are relevant to the care of the children, including, but not limited to, provisions covering factors such as physical living arrangements, child support obligations, provision for the children's medical and dental care, school placement, and the parent with which the children will be physically located during legal holidays, school holidays, and other days of special importance.

(H) If an appeal is taken from a decision of a court that grants or modifies a decree allocating parental rights and responsibilities for the care of children, the court of appeals shall give the case calendar priority and handle it expeditiously.

(I) Upon receipt of an order to active military service in the uniformed services, a parent who is subject to an order allocating parental rights and responsibilities or in relation to whom an action to allocate parental rights and responsibilities is pending and who is ordered to active military service shall notify the other parent who is subject to the order or in relation to whom the case is pending of the order to active military service within three days of receiving the military service order. Either parent may apply to the court for a hearing to expedite an allocation or modification proceeding. The application shall include the date on which the active military service begins.

The court shall schedule a hearing upon receipt of the application and hold the hearing not later than thirty days after receipt of the application, except that the court shall give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

The court shall not modify a prior decree allocating parental rights and responsibilities unless the court determines that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child. The court may consider active military service in the uniformed services in determining whether a change in circumstances exists under this section and shall make specific written findings of fact to support any modification under this division.

Upon application by either parent, the court may modify a prior decree allocating parental rights and responsibilities after the parent's active military service has been terminated, hearing testimony and making specific written findings of fact to support the modification.

Nothing in this division shall prevent a court from issuing a temporary order allocating or modifying parental rights and responsibilities for the duration of the parent's active military service.

(J) As used in this section:

(1) "Abused child" has the same meaning as in section 2151.031 [2151.03.1] of the Revised Code.

(2) "Active military service" means the performance of active military duty by a member of the uniformed services for a period of more than thirty days.

(3) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(4) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(5) "Uniformed services" means the United States armed forces, army national guard and air national guard when engaged in active duty for training, or the commissioned corps of the United States public health service.

(K) As used in the Revised Code, "shared parenting" means that the parents share, in the manner set forth in the plan for shared parenting that is approved by the court under division (D)(1) and described in division (L)(6) of this section, all or some of the aspects of physical and legal care of their children.

(L) For purposes of the Revised Code:

(1) A parent who is granted the care, custody, and control of a child under an order that was issued pursuant to this section prior to April 11, 1991, and that does not provide for shared parenting has "custody of the child" and "care, custody, and control of the child" under the order, and is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child under the order.

(2) A parent who primarily is allocated the parental rights and responsibilities for the care of a child and who is designated as the residential parent and legal custodian of the child under an order that is issued pursuant to this section on or after April 11, 1991, and that does not provide for shared parenting has "custody of the child" and "care, custody, and control of the child" under the order, and is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child under the order.

(3) A parent who is not granted custody of a child under an order that was issued pursuant to this section prior to April 11, 1991, and that does not provide for shared parenting is the "parent who is not the residential parent," the "parent who is not the residential parent and legal custodian," or the "noncustodial parent" of the child under the order.

(4) A parent who is not primarily allocated the parental rights and responsibilities for the care of a child and who is not designated as the residential parent and legal custodian of the child under an order that is issued pursuant to this section on or after April 11, 1991, and that does not provide for shared parenting is the "parent who is not the residential parent," the "parent who is not the residential parent and legal custodian," or the "non-custodial parent" of the child under the order.

(5) Unless the context clearly requires otherwise, if an order is issued by a court pursuant to this section and the order provides for shared parenting of a child, both parents have "custody of the child" or "care, custody, and control of the child" under the order, to the extent and in the manner specified in the order.

(6) Unless the context clearly requires otherwise and except as otherwise provided in the order, if an order is issued by a court pursuant to this section and the order provides for shared parenting of a child, each parent, regardless of where the child is physically located or with whom the child is residing at a particular point in time, as specified in the order, is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

(7) Unless the context clearly requires otherwise and except as otherwise provided in the order, a designation in the order of a parent as the residential parent for the purpose of determining the school the child attends, as the custodial parent for purposes of claiming the child as a dependent pursuant to section 152(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as

amended, or as the residential parent for purposes of receiving public assistance pursuant to division (A)(2) of this section, does not affect the designation pursuant to division (L)(6) of this section of each parent as the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

(M) The court shall require each parent of a child to file an affidavit attesting as to whether the parent, and the members of the parent's household, have been convicted of or pleaded guilty to any of the offenses identified in divisions (C) and (F)(1)(h) of this section.

HISTORY: RS § 3140-1; 90 v 186; GC § 8005-4; 100 v 97; 121 v 557; 124 v 178(195); Bureau of Code Revision, 10-1-53; 131 v 688 (Eff 11-11-65); 135 v H 233 (Eff 9-23-74); 135 v H 740 (Eff 9-30-74); 136 v H 1 (Eff 6-13-75); 136 v H 370 (Eff 8-1-75); 137 v S 135 (Eff 10-25-77); 139 v H 71 (Eff 8-27-81); 139 v S 39 (Eff 3-15-82); 140 v H 93 (Eff 3-19-84); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 3 (Eff 4-11-91); 145 v S 115 (Eff 10-12-93); 145 v H 415 (Eff 11-9-94); 148 v S 180, Eff 3-22-2001; 150 v S 185, § 1, eff. 4-11-05; 151 v S 260, § 1, eff. 1-2-07; 152 v H 119, § 101.01, eff. 6-30-07.

The effective date is set by § 815.03 of 152 v H 119.

§ 3109.05 Child support.

(A)(1) In a divorce, dissolution of marriage, legal separation, or child support proceeding, the court may order either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall comply with Chapter 3119. of the Revised Code.

(2) The court, in accordance with Chapter 3119. of the Revised Code, shall include in each support order made under this section the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court, and the court shall include in the support order a requirement that all support payments be made through the office of child support in the department of job and family services.

(3) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

(B) The juvenile court has exclusive jurisdiction to enter the orders in any case certified to it from another court.

(C) If any person required to pay child support under an order made under division (A) of this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt and, on or after July 1, 1992, shall assess interest on any unpaid amount of child support pursuant to section 3123.17 of the Revised Code.

(D) The court shall not authorize or permit the es-crow, impoundment, or withholding of any child support payment ordered under this section or any other section of the Revised Code because of a denial of or interference with a right of parenting time granted to a parent in an order issued under this section or section 3109.051 [3109.05.1] or 3109.12 of the Revised Code or companionship or visitation granted in an order issued

under this section, section 3109.051 [3109.05.1], 3109.11, 3109.12, or any other section of the Revised Code, or as a method of enforcing the specific provisions of any such order dealing with parenting time or visitation.

HISTORY: RS § 3140-1; 90 v 186; GC § 8005-5; 100 v 97; 121 v 557; 124 v 178(195); Bureau of Code Revision, 10-1-53; 134 v H 544 (Eff 1-20-72); 134 v H 163 (Eff 2-17-72); 135 v H 233 (Eff 9-23-74); 139 v H 71 (Eff 8-27-81); 139 v H 694 (Eff 11-15-81); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 142 v H 231 (Eff 10-5-87); 142 v H 708 (Eff 4-19-88); 143 v H 15 (Eff 5-31-90); 143 v H 591 (Eff 4-12-90); 143 v H 514 (Eff 1-1-91); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 115 (Eff 10-12-93); 145 v H 173 (Eff 12-31-93); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180. Eff 3-22-2001.

[§ 3109.05.1] § 3109.051 Order granting parenting time or companionship or visitation rights.

(A) If a divorce, dissolution, legal separation, or annulment proceeding involves a child and if the court has not issued a shared parenting decree, the court shall consider any mediation report filed pursuant to section 3109.052 [3109.05.2] of the Revised Code and, in accordance with division (C) of this section, shall make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child and includes in the journal its findings of fact and conclusions of law. Whenever possible, the order or decree permitting the parenting time shall ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact by either parent with the child would not be in the best interest of the child. The court shall include in its final decree a specific schedule of parenting time for that parent. Except as provided in division (E)(6) of section 3113.31 of the Revised Code, if the court, pursuant to this section, grants parenting time to a parent or companionship or visitation rights to any other person with respect to any child, it shall not require the public children services agency to provide supervision of or other services related to that parent's exercise of parenting time or that person's exercise of companionship or visitation rights with respect to the child. This section does not limit the power of a juvenile court pursuant to Chapter 2151. of the Revised Code to issue orders with respect to children who are alleged to be abused, neglected, or dependent children or to make dispositions of children who are adjudicated abused, neglected, or dependent children or of a common pleas court to issue orders pursuant to section 3113.31 of the Revised Code.

(B)(1) In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent, if all of the following apply:

(a) The grandparent, relative, or other person files a motion with the court seeking companionship or visitation rights.

(b) The court determines that the grandparent, relative, or other person has an interest in the welfare of the child.

(c) The court determines that the granting of the companionship or visitation rights is in the best interest of the child.

(2) A motion may be filed under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.

(C) When determining whether to grant parenting time rights to a parent pursuant to this section or section 3109.12 of the Revised Code or to grant companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, when establishing a specific parenting time or visitation schedule, and when determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider any mediation report that is filed pursuant to section 3109.052 [3109.05.2] of the Revised Code and shall consider all other relevant factors, including, but not limited to, all of the factors listed in division (D) of this section. In considering the factors listed in division (D) of this section for purposes of determining whether to grant parenting time or visitation rights, establishing a specific parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, and resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. If the court interviews any child concerning the child's wishes and concerns regarding those parenting time or visitation matters, the interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview. No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding those parenting time or visitation matters. A court, in considering the factors listed in division (D) of this section for purposes of determining whether to grant any parenting time or visitation rights, establishing a parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, or resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, shall not accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes or concerns regarding those parenting time or visitation matters.

(D) In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this

section or section 3109.11 or 3109.12 of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:

(1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

(2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;

(3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;

(4) The age of the child;

(5) The child's adjustment to home, school, and community;

(6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

(7) The health and safety of the child;

(8) The amount of time that will be available for the child to spend with siblings;

(9) The mental and physical health of all parties;

(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

(11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding;

whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

(E) The remarriage of a residential parent of a child does not affect the authority of a court under this section to grant parenting time rights with respect to the child to the parent who is not the residential parent or to grant reasonable companionship or visitation rights with respect to the child to any grandparent, any person related by consanguinity or affinity, or any other person.

(F)(1) If the court, pursuant to division (A) of this section, denies parenting time to a parent who is not the residential parent or denies a motion for reasonable companionship or visitation rights filed under division (B) of this section and the parent or movant files a written request for findings of fact and conclusions of law, the court shall state in writing its findings of fact and conclusions of law in accordance with Civil Rule 52.

(2) On or before July 1, 1991, each court of common pleas, by rule, shall adopt standard parenting time guidelines. A court shall have discretion to deviate from its standard parenting time guidelines based upon factors set forth in division (D) of this section.

(G)(1) If the residential parent intends to move to a residence other than the residence specified in the parenting time order or decree of the court, the parent shall file a notice of intent to relocate with the court that issued the order or decree. Except as provided in divisions (G)(2), (3), and (4) of this section, the court shall send a copy of the notice to the parent who is not the residential parent. Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule for the child.

(2) When a court grants parenting time rights to a parent who is not the residential parent, the court shall determine whether that parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that that parent has

not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is given the parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(3) If a court, prior to April 11, 1991, issued an order granting parenting time rights to a parent who is not the residential parent and did not require the residential parent in that order to give the parent who is granted the parenting time rights notice of any change of address and if the residential parent files a notice of relocation pursuant to division (G)(1) of this section, the court shall determine if the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that the parent who is granted the parenting time rights has not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is granted parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of

the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(4) If a parent who is granted parenting time rights pursuant to this section or any other section of the Revised Code is authorized by an order issued pursuant to this section or any other court order to receive a copy of any notice of relocation that is filed pursuant to division (G)(1) of this section or pursuant to court order, if the residential parent intends to move to a residence other than the residence address specified in the parenting time order, and if the residential parent does not want the parent who is granted the parenting time rights to receive a copy of the relocation notice because the parent with parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, the residential parent may file a motion with the court requesting that the parent who is granted the parenting time rights not receive a copy of any notice of relocation. Upon the filing of the motion, the court shall schedule a hearing on the motion and give both parents notice of the date, time, and location of the hearing. If the court determines that the parent who is granted the parenting time rights has been so convicted or has been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that the parent who is granted the parenting time rights will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section or that the residential parent is no longer required to give that parent a copy of any notice of relocation unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination. If it does not so find, it shall dismiss the motion.

(H)(1) Subject to section 3125.16 and division (F) of section 3319.321 [3319.32.1] of the Revised Code, a parent of a child who is not the residential parent of the child is entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and

to which the residential parent of the child legally is provided access, unless the court determines that it would not be in the best interest of the child for the parent who is not the residential parent to have access to the records under those same terms and conditions. If the court determines that the parent of a child who is not the residential parent should not have access to records related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those records, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any keeper of a record who knowingly fails to comply with the order or division (H) of this section is in contempt of court.

(2) Subject to section 3125.16 and division (F) of section 3319.321 [3319.32.1] of the Revised Code, subsequent to the issuance of an order under division (H)(1) of this section, the keeper of any record that is related to a particular child and to which the residential parent legally is provided access shall permit the parent of the child who is not the residential parent to have access to the record under the same terms and conditions under which access is provided to the residential parent, unless the residential parent has presented the keeper of the record with a copy of an order issued under division (H)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to records pertaining to the child and the order pertains to the record in question. If the residential parent presents the keeper of the record with a copy of that type of order, the keeper of the record shall permit the parent who is not the residential parent to have access to the record only in accordance with the most recent order that has been issued pursuant to division (H)(1) of this section and presented to the keeper by the residential parent or the parent who is not the residential parent. Any keeper of any record who knowingly fails to comply with division (H) of this section or with any order issued pursuant to division (H)(1) of this section is in contempt of court.

(3) The prosecuting attorney of any county may file a complaint with the court of common pleas of that county requesting the court to issue a protective order preventing the disclosure pursuant to division (H)(1) or (2) of this section of any confidential law enforcement investigatory record. The court shall schedule a hearing on the motion and give notice of the date, time, and location of the hearing to all parties.

(I) A court that issues a parenting time order or decree pursuant to this section or section 3109.12 of the Revised Code shall determine whether the parent granted the right of parenting time is to be permitted access, in accordance with section 5104.011 [5104.01.1] of the Revised Code, to any child day-care center that is, or that in the future may be, attended by the children with whom the right of parenting time is granted. Unless the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted access to the center, the parent who is not the residential parent and who is granted parenting time rights is entitled to access to the center to the same extent that the residential

parent is granted access to the center. If the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted such access under division (C) of section 5104.011 [5104.01.1] of the Revised Code, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to the center, provided that the access shall not be greater than the access that is provided to the residential parent under division (C) of section 5104.011 [5104.01.1] of the Revised Code, the court shall enter its written findings of fact and opinions in the journal, and the court shall include the terms and conditions of access in the parenting time order or decree.

(J)(1) Subject to division (F) of section 3319.321 [3319.32.1] of the Revised Code, when a court issues an order or decree allocating parental rights and responsibilities for the care of a child, the parent of the child who is not the residential parent of the child is entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any student activity that is related to the child and to which the residential parent of the child legally is provided access, unless the court determines that it would not be in the best interest of the child to grant the parent who is not the residential parent access to the student activities under those same terms and conditions. If the court determines that the parent of the child who is not the residential parent should not have access to any student activity that is related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those student activities, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any school official or employee who knowingly fails to comply with the order or division (J) of this section is in contempt of court.

(2) Subject to division (F) of section 3319.321 [3319.32.1] of the Revised Code, subsequent to the issuance of an order under division (J)(1) of this section, all school officials and employees shall permit the parent of the child who is not the residential parent to have access to any student activity under the same terms and conditions under which access is provided to the residential parent of the child, unless the residential parent has presented the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school with a copy of an order issued under division (J)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to student activities related to the child and the order pertains to the student activity in question. If the residential parent presents the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school with a copy of that type of order, the school official or employee shall permit the parent who is not the residential parent to have access to the student activity only in accordance with the most recent order that has been issued pursuant to division (J)(1) of this section and presented to the school official or employee, the board of

education of the school, or the governing body of the chartered nonpublic school by the residential parent or the parent who is not the residential parent. Any school official or employee who knowingly fails to comply with division (J) of this section or with any order issued pursuant to division (J)(1) of this section is in contempt of court

(K) If any person is found in contempt of court for failing to comply with or interfering with any order or decree granting parenting time rights issued pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights issued pursuant to this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt, and may award reasonable compensatory parenting time or visitation to the person whose right of parenting time or visitation was affected by the failure or interference if such compensatory parenting time or visitation is in the best interest of the child. Any compensatory parenting time or visitation awarded under this division shall be included in an order issued by the court and, to the extent possible, shall be governed by the same terms and conditions as was the parenting time or visitation that was affected by the failure or interference.

(L) Any parent who requests reasonable parenting time rights with respect to a child under this section or section 3109.12 of the Revised Code or any person who requests reasonable companionship or visitation rights with respect to a child under this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code may file a motion with the court requesting that it waive all or any part of the costs that may accrue in the proceedings. If the court determines that the movant is indigent and that the waiver is in the best interest of the child, the court, in its discretion, may waive payment of all or any part of the costs of those proceedings.

(M) The juvenile court has exclusive jurisdiction to enter the orders in any case certified to it from another court.

(N) As used in this section:

(1) "Abused child" has the same meaning as in section 2151.031 [2151.03.1] of the Revised Code, and "neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(2) "Record" means any record, document, file, or other material that contains information directly related to a child, including, but not limited to, any of the following:

(a) Records maintained by public and nonpublic schools;

(b) Records maintained by facilities that provide child care, as defined in section 5104.01 of the Revised Code, publicly funded child care, as defined in section 5104.01 of the Revised Code, or pre-school services operated by or under the supervision of a school district board of education or a nonpublic school;

(c) Records maintained by hospitals, other facilities, or persons providing medical or surgical care or treatment for the child;

(d) Records maintained by agencies, departments, instrumentalities, or other entities of the state or any political subdivision of the state, other than a child support enforcement agency. Access to records maintained by a child support enforcement agency is governed by section 3125.16 of the Revised Code.

(3) "Confidential law enforcement investigatory record" has the same meaning as in section 149.43 of the Revised Code.

HISTORY: 143 v H 15 (Eff 5-31-90); 143 v S 3 (Eff 4-11-91); 144 v H 155 (Eff 7-22-91); 146 v H 274 (Eff 8-8-96); 147 v H 408 (Eff 10-1-97); 148 v S 180, Eff 3-22-2001; 150 v H 11, § 1, eff. 5-18-05.

[§ 3109.05.2] § 3109.052 Mediation of differences as to allocation of parental rights and responsibilities.

(A) If a proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child involves one or more children, if the parents of the children do not agree upon an appropriate allocation of parental rights and responsibilities for the care of their children or do not agree upon a specific schedule of parenting time for their children, the court may order the parents to mediate their differences on those matters in accordance with mediation procedures adopted by the court by local rule. When the court determines whether mediation is appropriate in any proceeding, it shall consider whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, whether either parent previously has been convicted of or pleaded guilty to an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, and whether either parent has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If either parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, the court may order mediation only if the court determines that it is in the best interests of the parties to order mediation and makes specific written findings of fact to support its determination.

If a court issues an order pursuant to this division requiring mediation, it also may order the parents to file a mediation report within a specified period of time and order the parents to pay the cost of mediation, unless either or both of the parents file a motion requesting that the court waive that requirement. Upon the filing of a motion requesting the waiver of that requirement, the court, for good cause shown, may waive the requirement that either or both parents pay the cost of mediation or

may require one of the parents to pay the entire cost of mediation. Any mediation procedures adopted by local court rule for use under this division shall include, but are not limited to, provisions establishing qualifications for mediators who may be employed or used and provisions establishing standards for the conduct of the mediation.

(B) If a mediation order is issued under division (A) of this section and the order requires the parents to file a mediation report, the mediator and each parent who takes part in mediation in accordance with the order jointly shall file a report of the results of the mediation process with the court that issued the order under that division. A mediation report shall indicate only whether agreement has been reached on any of the issues that were the subject of the mediation, and, if agreement has been reached, the content and details of the agreement. No mediation report shall contain any background information concerning the mediation process or any information discussed or presented in the process. The court shall consider the mediation report when it allocates parental rights and responsibilities for the care of children under section 3109.04 of the Revised Code and when it establishes a specific schedule of parenting time under section 3109.051 [3109.05.1] of the Revised Code. The court is not bound by the mediation report and shall consider the best interest of the children when making that allocation or establishing the parenting time schedule.

(C) If a mediation order is issued under division (A) of this section, the mediator shall not be made a party to, and shall not be called as a witness or testify in, any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children. The mediator shall not be made a party to, or be called as a witness or testify in, such an action or proceeding even if both parents give their prior consent to the mediator being made a party to or being called as a witness or to testify in the action or proceeding.

(D) Division (A) of this section does not apply to either of the following:

(1) Any proceeding, or the use of mediation in any proceeding that is not a proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child;

(2) The use of mediation in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child, in relation to issues other than the appropriate allocation of parental rights and responsibilities for the care of the parents' children and other than a specific parenting time schedule for the parents' children.

HISTORY: 143 v S 3 (Eff 4-11-91); 148 v S 180. Eff 3-22-2001.

§ 3109.06 Certification to juvenile court.

Any court, other than a juvenile court, that has jurisdiction in any case respecting the allocation of parental rights and responsibilities for the care of a child under eighteen years of age and the designation of the child's place of residence and legal custodian or in any case respecting the support of a child under eighteen years of

age, may, on its own motion or on motion of any interested party, with the consent of the juvenile court, certify the record in the case or so much of the record and such further information, in narrative form or otherwise, as the court deems necessary or the juvenile court requests, to the juvenile court for further proceedings; upon the certification, the juvenile court shall have exclusive jurisdiction.

In cases in which the court of common pleas finds the parents unsuitable to have the parental rights and responsibilities for the care of the child or children and unsuitable to provide the place of residence and to be the legal custodian of the child or children, consent of the juvenile court shall not be required to such certification. This section applies to actions pending on August 28, 1951.

In any case in which a court of common pleas, or other court having jurisdiction, has issued an order that allocates parental rights and responsibilities for the care of minor children and designates their place of residence and legal custodian of minor children, has made an order for support of minor children, or has done both, the jurisdiction of the court shall not abate upon the death of the person awarded custody but shall continue for all purposes during the minority of the children. The court, upon its own motion or the motion of either parent or of any interested person acting on behalf of the children, may proceed to make further disposition of the case in the best interests of the children and subject to sections 3109.42 to 3109.48 of the Revised Code. If the children are under eighteen years of age, it may certify them, pursuant to this section, to the juvenile court of any county for further proceedings. After certification to a juvenile court, the jurisdiction of the court of common pleas, or other court, shall cease, except as to any payments of spousal support due for the spouse and support payments due and unpaid for the children at the time of the certification.

Any disposition made pursuant to this section, whether by a juvenile court after a case is certified to it, or by any court upon the death of a person awarded custody of a child, shall be made in accordance with sections 3109.04 and 3109.42 to 3109.48 of the Revised Code. If an appeal is taken from a decision made pursuant to this section that allocates parental rights and responsibilities for the care of a minor child and designates the child's place of residence and legal custodian, the court of appeals shall give the case calendar priority and handle it expeditiously.

HISTORY: GC § 8005-6; 110 v 127; 117 v 808; 121 v 557; 124 v 178(195); Bureau of Code Revision, 10-1-53; 140 v H 93 (Eff 3-19-84); 143 v H 514 (Eff 1-1-91); 143 v S 3 (Eff 4-11-91); 148 v H 191. Eff 10-20-99.

§ 3109.11 Companionship or visitation rights where parent is deceased.

If either the father or mother of an unmarried minor child is deceased, the court of common pleas of the county in which the minor child resides may grant the parents and other relatives of the deceased father or mother reasonable companionship or visitation rights with respect to the minor child during the child's minority if the parent or other relative files a complaint requesting reasonable companionship or visitation rights and if the court determines that the granting of the companionship or visitation rights is in the best interest of the minor child. In determining whether to grant any person reasonable companionship or visitation rights with respect to

any child, the court shall consider all relevant factors, including, but not limited to, the factors set forth in division (D) of section 3109.051 [3109.05.1] of the Revised Code. Divisions (C), (K), and (L) of section 3109.051 [3109.05.1] of the Revised Code apply to the determination of reasonable companionship or visitation rights under this section and to any order granting any such rights that is issued under this section.

The remarriage of the surviving parent of the child or the adoption of the child by the spouse of the surviving parent of the child does not affect the authority of the court under this section to grant reasonable companionship or visitation rights with respect to the child to a parent or other relative of the child's deceased father or mother.

If the court denies a request for reasonable companionship or visitation rights made pursuant to this section and the complainant files a written request for findings of fact and conclusions of law, the court shall state in writing its findings of fact and conclusions of law in accordance with Civil Rule 52.

Except as provided in division (E)(6) of section 3113.31 of the Revised Code, if the court, pursuant to this section, grants any person companionship or visitation rights with respect to any child, it shall not require the public children services agency to provide supervision of or other services related to that person's exercise of companionship or visitation rights with respect to the child. This section does not limit the power of a juvenile court pursuant to Chapter 2151. of the Revised Code to issue orders with respect to children who are alleged to be abused, neglected, or dependent children or to make dispositions of children who are adjudicated abused, neglected, or dependent children or of a common pleas court to issue orders pursuant to section 3113.31 of the Revised Code.

HISTORY: 134 v H 163 (Eff 2-17-72); 143 v H 15 (Eff 5-31-90); 143 v S 3 (Eff 4-11-91); 146 v H 274 (Eff 8-8-96); 148 v S 180. Eff 3-22-2001.

§ 3109.12 Parenting time, companionship or visitation rights where mother is unmarried.

(A) If a child is born to an unmarried woman, the parents of the woman and any relative of the woman may file a complaint requesting the court of common pleas of the county in which the child resides to grant them reasonable companionship or visitation rights with the child. If a child is born to an unmarried woman and if the father of the child has acknowledged the child and that acknowledgment has become final pursuant to section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code or has been determined in an action under Chapter 3111. of the Revised Code to be the father of the child, the father may file a complaint requesting that the court of appropriate jurisdiction of the county in which the child resides grant him reasonable parenting time rights with the child and the parents of the father and any relative of the father may file a complaint requesting that the court grant them reasonable companionship or visitation rights with the child.

(B) The court may grant the parenting time rights or companionship or visitation rights requested under division (A) of this section, if it determines that the granting of the parenting time rights or companionship or visitation rights is in the best interest of the child. In determining whether to grant reasonable parenting time rights or reasonable companionship or visitation rights with

respect to any child, the court shall consider all relevant factors, including, but not limited to, the factors set forth in division (D) of section 3109.051 [3109.05.1] of the Revised Code. Divisions (C), (K), and (L) of section 3109.051 [3109.05.1] of the Revised Code apply to the determination of reasonable parenting time rights or reasonable companionship or visitation rights under this section and to any order granting any such rights that is issued under this section.

The marriage or remarriage of the mother or father of a child does not affect the authority of the court under this section to grant the natural father reasonable parenting time rights or the parents or relatives of the natural father or the parents or relatives of the mother of the child reasonable companionship or visitation rights with respect to the child.

If the court denies a request for reasonable parenting time rights or reasonable companionship or visitation rights made pursuant to division (A) of this section and the complainant files a written request for findings of fact and conclusions of law, the court shall state in writing its findings of fact and conclusions of law in accordance with Civil Rule 52.

Except as provided in division (E)(6) of section 3113.31 of the Revised Code, if the court, pursuant to this section, grants parenting time rights or companionship or visitation rights with respect to any child, it shall not require the public children services agency to provide supervision of or other services related to that parent's exercise of parenting time rights with the child or that person's exercise of companionship or visitation rights with the child. This section does not limit the power of a juvenile court pursuant to Chapter 2151. of the Revised Code to issue orders with respect to children who are alleged to be abused, neglected, or dependent children or to make dispositions of children who are adjudicated abused, neglected, or dependent children or of a common pleas court to issue orders pursuant to section 3113.31 of the Revised Code.

HISTORY: 143 v H 15 (Eff 5-31-90); 143 v S 3 (Eff 4-11-91); 146 v H 274 (Eff 8-8-96); 147 v H 352 (Eff 1-1-98); 148 v S 180. Eff 3-22-2001.

[PARENTING DETERMINATION JURISDICTION]

§ 3109.22 Repealed, 150 v S 185, § 2 [137 v S 135 (Eff 10-25-77); 143 v S 3. Eff 4-11-91]. Eff 4-11-05.

This section concerned jurisdiction to make parenting determination relative to child. See now RC § 3127.01 et seq.

§ 3109.27 Amended and renumbered RC § 3127.23 in 150 v S 185, eff. 4-11-05.

[§ 3109.40.1] § 3109.401 Legislative findings concerning parent-child relationship; purpose of chapter; task force on family law and children.

(A) The general assembly finds the following:

(1) That the parent and child relationship is of fundamental importance to the welfare of a child, and that the

relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;

(2) That parents have the responsibility to make decisions and perform other parenting functions necessary for the care and growth of their children;

(3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution of marriage, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities, must determine the child's best interests;

(4) That the courts and parents must take into consideration the following general principles when allocating parental rights and responsibilities and developing appropriate terms for parenting plans:

(a) Children are served by a parenting arrangement that best provides for a child's safety, emotional growth, health, stability, and physical care.

(b) Exposure of the child to harmful parental conflict should be minimized as much as possible.

(c) Whenever appropriate, parents should be encouraged to meet their responsibilities to their children through agreements rather than by relying on judicial intervention.

(d) When a parenting plan provides for mutual decision-making responsibility by the parents but they are unable to make decisions mutually, they should make a good faith effort to utilize the mediation process as required by the parenting plan.

(e) In apportioning between the parents the daily physical living arrangements of the child and the child's location during legal and school holidays, vacations, and days of special importance, a court should not impose any type of standard schedule unless a standard schedule meets the needs of the child better than any proposed alternative parenting plan.

(B) It is, therefore, the purpose of this chapter, when it is in the child's best interest, to foster the relationship between the child and each parent when a court allocates parental rights and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities.

(C) There is hereby created the task force on family law and children consisting of twenty-four members. The Ohio state bar association shall appoint three members who shall be attorneys with extensive experience in the practice of family law. The Ohio association of domestic relations judges shall appoint three members who shall be domestic relations judges. The Ohio association of juvenile and family court judges shall appoint three members who shall be juvenile or family court judges. The chief justice of the supreme court shall appoint eight members, three of whom shall be persons who practice in the field of family law mediation, two of whom shall be persons who practice in the field of child psychology, one of whom shall be a person who represents parent and child advocacy organizations, one of whom shall be a person who provides parenting education services, and one of whom shall be a magistrate employed by a domestic relations or juvenile court. The speaker of the house of representatives shall appoint two members who shall be members of the house of representatives and who shall be from different political parties. The president of the senate shall appoint two members who shall be members

of the senate and who shall be from different political parties. The governor shall appoint two members who shall represent child caring agencies. One member shall be the director of job and family services or the director's designee. The chief justice shall designate one member of the task force to chair the task force.

The appointing authorities and persons shall make appointments to the task force on family law and children within thirty days after September 1, 1998. Sections 101.82 to 101.87 of the Revised Code do not apply to the task force.

(D) The task force on family law and children shall do all of the following:

(1) Appoint and fix the compensation of any technical, professional, and clerical employees and perform any services that are necessary to carry out the powers and duties of the task force on family law and children. All employees of the task force shall serve at the pleasure of the task force.

(2) By July 1, 2001, submit to the speaker and minority leader of the house of representatives and to the president and the minority leader of the senate a report of its findings and recommendations on how to create a more civilized and constructive process for the parenting of children whose parents do not reside together. The recommendations shall propose a system to do all of the following:

(a) Put children first;

(b) Provide families with choices before they make a decision to obtain or finalize a divorce, dissolution, legal separation, or annulment;

(c) Redirect human services to intervention and prevention, rather than supporting the casualties of the current process;

(d) Avoid needless conflict between the participants;

(e) Encourage problem solving among the participants;

(f) Force the participants to act responsibly;

(g) Shield both the participants and their children from lasting emotional damage.

(3) Gather information on and study the current state of family law in this state;

(4) Collaborate and consult with entities engaged in family and children's issues including, but not limited to, the Ohio association of child caring agencies, the Ohio family court feasibility study, and the Ohio courts futures commission;

(5) Utilize findings and outcomes from pilot projects conducted by the Ohio family court feasibility study to explore alternatives in creating a more civilized and constructive process for the parenting of children whose parents do not reside together with an emphasis on the areas of mediation and obtaining visitation compliance.

(E) Courts of common pleas shall cooperate with the task force on family law and children in the performance of the task force's duties described in division (D) of this section.

HISTORY: 147 v S 112 (Eff 9-1-98); 147 v H 770 (Eff 9-1-98); 148 v S 245 (Eff 3-30-2000); 148 v H 471 (Eff 7-1-2000); 148 v H 548, Eff 3-22-2001†.

† The effective date of section 1 of HB 548 (148 v —) differs from the effective date set for the section by section 12 of the act. See the provisions of OConst Art II, §§ 1c and d.

The provisions of § 12 of HB 548 (148 v —) read as follows:

SECTION 12. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of this act shall take effect on January 1, 2001.

[PARENT KILLING OTHER PARENT]

§ 3109.46 Juvenile court to terminate custody order.

If the court to which notice is sent under section 3109.44 of the Revised Code is a juvenile court that issued a custody order described in that section, the court shall retain jurisdiction over the order. If the court to which notice is sent is not a juvenile court but the court issued a custody order described in that section, the court shall transfer jurisdiction over the custody order to the juvenile court of the county in which the child has a residence or legal settlement.

On receipt of the notice in cases in which the custody order was issued by a juvenile court or after jurisdiction is transferred, the juvenile court with jurisdiction shall terminate the custody order.

The termination order shall be treated as a complaint filed under section 2151.27 of the Revised Code alleging the child subject of the custody order to be a dependent child. If a juvenile court issued the terminated custody order under a prior juvenile proceeding under Chapter 2151. of the Revised Code in which the child was adjudicated an abused, neglected, dependent, unruly, or delinquent child or a juvenile traffic offender, the court shall treat the termination order as a new complaint.

HISTORY: 148 v H 191. EFF 10-20-99.

[DOCUMENTS PROVIDING GRANDPARENT WITH AUTHORITY OVER CARE, CUSTODY, AND CONTROL OF CHILD]

§ 3109.51 Definitions.

As used in sections 3109.52 to 3109.80 of the Revised Code:

(A) "Child" means a person under eighteen years of age.

(B) "Custodian" means an individual with legal custody of a child.

(C) "Guardian" means an individual granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights, privileges, and responsibilities of the child's parents.

(D) "Legal custody" and "residual parental rights, privileges, and responsibilities" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.52 Power of attorney granting grandparent with whom child resides authority over care, custody, and control of child.

The parent, guardian, or custodian of a child may create a power of attorney that grants to a grandparent of the child with whom the child is residing any of the

parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights of the parent, guardian, or custodian of the child in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the attorney in fact.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.53 Form of power of attorney.

To create a power of attorney under section 3109.52 of the Revised Code, a parent, guardian, or custodian shall use a form that is identical in form and content to the following:

POWER OF ATTORNEY

I, the undersigned, residing at, in the county of, state of, hereby appoint the child's grandparent,, residing at, in the county of, in the state of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of the child,, born, having social security number (optional), except my authority to consent to marriage or adoption of the child, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because one of the following circumstances exists:

(1) I am: (a) Seriously ill, incarcerated or about to be incarcerated, (b) Temporarily unable to provide financial support or parental guidance to the child, (c) Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition, (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable, or (e) In or about to enter a residential treatment program for substance abuse;

(2) I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; or

(3) I have a well-founded belief that the power of attorney is in the child's best interest.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of

by court order; (5) the death of the child who is the subject of the power of attorney; or (6) the death of the grandparent designated as the attorney in fact.

If this power of attorney terminates other than by the death of the attorney in fact, the grandparent who served as the attorney in fact shall notify, in writing, all of the following:

(a) Any schools, health care providers, or health insurance coverage provider with which the child has been involved through the grandparent;

(b) Any other person or entity that has an ongoing relationship with the child or grandparent such that the other person or entity would reasonably rely on the power of attorney unless notified of the termination;

(c) The court in which the power of attorney was filed after its creation; and

(d) The parent who is not the residential parent and legal custodian of the child who is required to be given notice of its creation. The grandparent shall make the notifications not later than one week after the date the power of attorney terminates.

9. If this power of attorney is terminated by written revocation of the person who created it, or the revocation is regarding a second or subsequent power of attorney, a copy of the revocation must be filed with the court with which that power of attorney was filed.

Additional information:

To the grandparent designated as attorney in fact:

1. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this power of attorney. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the power of attorney unless notified. The notification must be made not later than one week after the child stops living with you.
2. You must include with the power of attorney the following information:

(a) The child's present address, the addresses of the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period;

(b) Whether you have participated as a party, a witness, or in any other capacity in any other litigation, in this state or any other state, that concerned the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child;

(c) Whether you have information of any parenting proceeding concerning the child pending in a court of this or any other state;

(d) Whether you know of any person who has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child;

(e) Whether you previously have been convicted of or pleaded guilty to any criminal offense involving

any act that resulted in a child being an abused child or a neglected child or previously have been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication.

To school officials:

1. Except as provided in section 3313.649 [3313.64.9] of the Revised Code, this power of attorney, properly completed and notarized, authorizes the child in question to attend school in the district in which the grandparent designated as attorney in fact resides and that grandparent is authorized to provide consent in all school-related matters and to obtain from the school district educational and behavioral information about the child. This power of attorney does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.

2. The school district may require additional reasonable evidence that the grandparent lives in the school district.

3. A school district or school official that reasonably and in good faith relies on this power of attorney has no obligation to make any further inquiry or investigation.

To health care providers:

1. A person or entity that acts in good faith reliance on a power of attorney to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the power of attorney, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the power of attorney is completed and the signatures of the parent, guardian, or custodian of the child and the grandparent designated as attorney in fact are notarized.

2. The decision of a grandparent designated as attorney in fact, based on a power of attorney, shall be honored by a health care facility or practitioner, school district, or school official.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.55 Notice to be sent to other parent.

(A) A person who creates a power of attorney under section 3109.52 of the Revised Code shall send notice of the creation to the parent of the child who is not the residential parent and legal custodian of the child unless one of the following is the case:

(1) The parent is prohibited from receiving a notice of relocation in accordance with section 3109.051 [3109.05.1] of the Revised Code.

(2) The parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.

(3) The parent cannot be located with reasonable efforts.

(4) The power of attorney is being created by both parents.

(B) The notice shall be sent by certified mail not later than five days after the power of attorney is created. The notice shall state the name and address of the person designated as the attorney in fact.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.56 When power of attorney to be executed by both parents; execution by one person.

When a parent seeks to create a power of attorney pursuant to section 3109.52 of the Revised Code, all of the following apply:

(A) The power of attorney shall be executed by both parents if any of the following apply:

(1) The parents are married to each other and are living as husband and wife.

(2) The child is the subject of a shared parenting order issued pursuant to section 3109.04 of the Revised Code.

(3) The child is the subject of a custody order issued pursuant to section 3109.04 of the Revised Code unless one of the following is the case:

(a) The parent who is not the residential parent and legal custodian is prohibited from receiving a notice of relocation in accordance with section 3109.051 [3109.05.1] of the Revised Code.

(b) The parental rights of the parent who is not the residential parent and legal custodian have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.

(c) The parent who is not the residential parent and legal custodian cannot be located with reasonable efforts.

(B) In all other cases, the power of attorney may be executed only by one of the following persons:

(1) The parent who is the residential parent and legal custodian of the child, as determined by court order or as provided in section 3109.042 [3109.04.2] of the Revised Code;

(2) The parent with whom the child is residing the majority of the school year in cases in which no court has issued an order designating a parent as the residential parent and legal custodian of the child or section 3109.042 [3109.04.2] of the Revised Code is not applicable.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.57 Circumstances under which parent may execute power of attorney.

(A) Except as provided in division (B) of this section and subject to sections 3109.56 and 3109.58 of the Revised Code, a parent, guardian, or custodian may create a power of attorney under section 3109.52 of the Revised Code only under the following circumstances:

(1) The parent, guardian, or custodian of the child is any of the following:

(a) Seriously ill, incarcerated, or about to be incarcerated;

(b) Temporarily unable to provide financial support or parental guidance to the child;

(c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition;

(d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable;

(e) In or about to enter a residential treatment program for substance abuse.

(2) The parent, guardian, or custodian of the child has a well-founded belief that the power of attorney is in the child's best interest.

(B) In addition to the circumstances described in division (A) of this section and subject to sections 3109.56 and 3109.58 of the Revised Code, a parent may execute a

power of attorney if the other parent of the child is deceased.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.58 Pending proceedings that bar execution of power of attorney.

(A) As used in this section, "temporary custody," "permanent custody," and "planned permanent living arrangement" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

(B) A power of attorney created pursuant to section 3109.52 of the Revised Code may not be executed with respect to a child while any of the following proceedings are pending regarding the child:

(1) A proceeding for the appointment of a guardian for, or the adoption of, the child;

(2) A juvenile proceeding in which one of the following applies:

(a) The temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested.

(b) The child is the subject of an ex parte emergency custody order issued under division (D) of section 2151.31 of the Revised Code, and no hearing has yet been held regarding the child under division (A) of section 2151.314 [2151.31.4] of the Revised Code.

(c) The child is the subject of a temporary custody order issued under section 2151.33 of the Revised Code.

(3) A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.59 Termination of power of attorney.

(A) A power of attorney created under section 3109.52 of the Revised Code terminates on the occurrence of whichever of the following events occurs first:

(1) One year elapses following the date the power of attorney is notarized.

(2) The power of attorney is revoked in writing by the person who created it.

(3) The child ceases to reside with the grandparent designated the attorney in fact.

(4) The power of attorney is terminated by court order.

(5) The death of the child who is the subject of the power of attorney.

(6) The death of the grandparent designated as the attorney in fact.

(B) Not later than five days after a power of attorney is terminated pursuant to division (A)(2) of this section, a copy of the revocation of an initial power of attorney or a second or subsequent power of attorney must be filed with the court with which the power of attorney is filed pursuant to section 3109.76 of the Revised Code.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.60 Notifications by grandparent when power of attorney terminates.

When a power of attorney created pursuant to section 3109.52 of the Revised Code terminates pursuant to division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of section

3109.59 of the Revised Code, the grandparent designated as the attorney in fact shall notify, in writing, all of the following:

(A) The school district in which the child attends school;

(B) The child's health care providers;

(C) The child's health insurance coverage provider;

(D) The court in which the power of attorney was filed under section 3109.74 of the Revised Code;

(E) The parent who is not the residential parent and legal custodian and who is required to be given notice under section 3109.55 of the Revised Code;

(F) Any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the power of attorney unless notified of the termination.

The grandparent shall make the notifications not later than one week after the date the power of attorney terminates.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.61 Immunity of person relying on power of attorney.

A person who, in good faith, relies on or takes action in reliance on a power of attorney created under section 3109.52 of the Revised Code is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the person's reliance or action. The person is not subject to any disciplinary action from an entity that licenses or certifies the person.

Any medical, psychological, or dental treatment provided to a child in reliance on a power of attorney created under section 3109.52 of the Revised Code shall be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.

This section does not provide immunity from civil or criminal liability to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity as the person.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.62 Military power of attorney.

A military power of attorney executed pursuant to section 574(a) of the "National Defense Authorization Act for Fiscal Year 1994," 107 Stat. 1674 (1993), 10 U.S.C. 1044b, that grants a person's rights and responsibilities regarding the care, custody, and control of the person's child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child shall be considered a power of attorney created pursuant to sections 3109.51 to 3109.61 of the Revised Code, as long as the military power of attorney, according to its terms, remains in effect.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.65 Execution of caretaker authorization affidavit by grandparent.

(A) Except as provided in division (B) of this section, if a child is living with a grandparent who has made

reasonable attempts to locate and contact both of the child's parents, or the child's guardian or custodian, but has been unable to do so, the grandparent may obtain authority to exercise care, physical custody, and control of the child including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child by executing a caretaker authorization affidavit in accordance with section 3109.67 of the Revised Code.

(B) The grandparent may execute a caretaker authorization affidavit without attempting to locate the following parent:

(1) If paternity has not been established with regard to the child, the child's father.

(2) If the child is the subject of a custody order, the following parent:

(a) A parent who is prohibited from receiving a notice of relocation in accordance with section 3109.051 [3109.05.1] of the Revised Code;

(b) A parent whose parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.66 Form of affidavit.

The caretaker authorization affidavit that a grandparent described in section 3109.65 of the Revised Code may execute shall be identical in form and content to the following:

CARETAKER AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by sections 3109.65 to 3109.73 of the Ohio Revised Code.

Completion of items 1-7 and the signing and notarization of this affidavit is sufficient to authorize the grandparent signing to exercise care, physical custody, and control of the child who is its subject, including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child.

The child named below lives in my home, I am 18 years of age or older, and I am the child's grandparent.

1. Name of child:
2. Child's date and year of birth:
3. Child's social security number (optional):
4. My name:
5. My home address:
6. My date and year of birth:
7. My Ohio driver's license number or identification card number:
8. Despite having made reasonable attempts, I am either:

Unable to locate or contact the child's parents, or the child's guardian or custodian; or

I am unable to locate or contact one of the child's parents and I am not required to contact the other parent because paternity has not been established;

or

I am unable to locate or contact one of the child's parents and I am not required to contact the other parent because there is a custody order regarding the child and one of the following is the case:

(i) The parent has been prohibited from receiving notice of a relocation; or

(ii) The parental rights of the parent have been terminated.

9. I hereby certify that this affidavit is not being executed for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

WARNING: DO NOT SIGN THIS FORM IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT. FALSIFICATION IS A CRIME UNDER SECTION 2921.13 OF THE REVISED CODE, PUNISHABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

I declare that the foregoing is true and correct:

Signed: Date:

Grandparent

State of Ohio)

) ss:

County of)

Subscribed, sworn to, and acknowledged before me this day of

Notary public

Notices:

1. The grandparent's signature must be notarized by an Ohio notary public.
2. The grandparent who executed this affidavit must file it with the juvenile court of the county in which the grandparent resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding not later than five days after the date it is executed.
3. A grandparent who executes a second or subsequent caretaker authorization affidavit regarding a child who is the subject of a prior caretaker authorization affidavit must file the affidavit with the juvenile court of the county in which the grandparent resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. On filing, the court will schedule a hearing to determine whether the caretaker authorization affidavit is in the child's best interest.
4. This affidavit does not affect the rights of the child's parents, guardian, or custodian regarding the care, physical custody, and control of the child, and does not give the grandparent legal custody of the child.
5. A person or entity that relies on this affidavit, in good faith, has no obligation to make any further inquiry or investigation.
6. This affidavit terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the affidavit is notarized; (2) the child ceases to live with the grandparent who signs this form; (3) the parent, guardian, or custodian of the child acts to negate, reverse, or otherwise disapprove an action or decision of the grandparent

who signed this affidavit; or (4) the affidavit is terminated by court order; (5) the death of the child who is the subject of the affidavit; or (6) the death of the grandparent who executed the affidavit.

A parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit.

If this affidavit terminates other than by the death of the grandparent, the grandparent who signed this affidavit shall notify, in writing, all of the following:

(a) Any schools, health care providers, or health insurance coverage provider with which the child has been involved through the grandparent;

(b) Any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the affidavit unless notified of the termination;

(c) The court in which the affidavit was filed after its creation.

The grandparent shall make the notifications not later than one week after the date the affidavit terminates.

7. The decision of a grandparent to consent to or to refuse medical treatment or school enrollment for a child is superseded by a contrary decision of a parent, custodian, or guardian of the child, unless the decision of the parent, guardian, or custodian would jeopardize the life, health, or safety of the child.

Additional information:

To caretakers:

1. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this affidavit. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the affidavit unless notified. The notifications must be made not later than one week after the child stops living with you.
2. If you do not have the information requested in item 7 (Ohio driver's license or identification card), provide another form of identification such as your social security number or medicaid number.
3. You must include with the caretaker authorization affidavit the following information:
 - (a) The child's present address, the addresses of the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period;
 - (b) Whether you have participated as a party, a witness, or in any other capacity in any other litigation, in this state or any other state, that concerned the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child;
 - (c) Whether you have information of any parenting proceeding concerning the child pending in a court of this or any other state;

(d) Whether you know of any person who has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child;

(e) Whether you previously have been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously have been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication.

To school officials:

1. This affidavit, properly completed and notarized, authorizes the child in question to attend school in the district in which the grandparent who signed this affidavit resides and the grandparent is authorized to provide consent in all school-related matters and to discuss with the school district the child's educational progress. This affidavit does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.
2. The school district may require additional reasonable evidence that the grandparent lives at the address provided in item 5.
3. A school district or school official that reasonably and in good faith relies on this affidavit has no obligation to make any further inquiry or investigation.
4. The act of a parent, guardian, or custodian of the child to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit constitutes termination of this affidavit. A parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit.

To health care providers:

1. A person or entity that acts in good faith reliance on a CARETAKER AUTHORIZATION AFFIDAVIT to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the affidavit, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the applicable portions of the form are completed and the grandparent's signature is notarized.
2. The decision of a grandparent, based on a CARETAKER AUTHORIZATION AFFIDAVIT, shall be honored by a health care facility or practitioner, school district, or school official unless the health care facility or practitioner or educational facility or official has actual knowledge that a parent, guardian, or custodian of a child has made a contravening decision to consent to or to refuse medical treatment for the child.
3. The act of a parent, guardian, or custodian of the child to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit constitutes termination of this affidavit. A

parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.67 When affidavit is executed.

A caretaker authorization affidavit described in section 3109.66 of the Revised Code is executed when the affidavit is completed, signed by a grandparent described in section 3109.65 of the Revised Code, and notarized.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.68 Pending proceedings which bar execution of affidavit.

(A) As used in this section, "temporary custody," "permanent custody," and "planned permanent living arrangement" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

(B) A caretaker authorization affidavit may not be executed with respect to a child while any of the following proceedings are pending regarding the child:

- (1) A proceeding for the appointment of a guardian for, or the adoption of, the child;
- (2) A juvenile proceeding in which one of the following applies:
 - (a) The temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested.
 - (b) The child is the subject of an ex parte emergency custody order issued under division (D) of section 2151.31 of the Revised Code, and no hearing has yet been held regarding the child under division (A) of section 2151.314 [2151.31.4] of the Revised Code.
 - (c) The child is the subject of a temporary custody order issued under section 2151.33 of the Revised Code.
- (3) A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.69 Effects of execution of affidavit.

Once a caretaker authorization affidavit has been executed under section 3109.67 of the Revised Code, the grandparent may exercise care, physical custody, and control of the child, including enrolling the child in school, discussing with the school district the child's educational progress, consenting to all school-related matters regarding the child, and consenting to medical, psychological, or dental treatment for the child. The affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child, does not grant legal custody to the grandparent, and does not grant authority to the grandparent to consent to the marriage or adoption of the child.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.70 Termination of affidavit.

An executed caretaker authorization affidavit shall terminate on the occurrence of whichever of the following comes first:

(A) One year elapses following the date the affidavit is notarized.

(B) The child ceases to reside with the grandparent.

(C) The parent, guardian, or custodian of the child who is the subject of the affidavit acts, in accordance with section 3109.72 of the Revised Code, to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed the affidavit with respect to the child.

(D) The affidavit is terminated by court order.

(E) The death of the child who is the subject of the affidavit.

(F) The death of the grandparent who executed the affidavit.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.71 Notifications by grandparent when affidavit terminates.

When a caretaker authorization affidavit terminates pursuant to division (A), (B), (C), (D), or (E) of section 3109.70 of the Revised Code, the grandparent shall notify, in writing, the school district in which the child attends school, the child's health care providers, the child's health insurance coverage provider, the court in which the affidavit was filed under section 3109.74 of the Revised Code, and any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the affidavit unless notified of the termination. The grandparent shall make the notifications not later than one week after the date the affidavit terminates.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.72 Negation, reversal, or disapproval of action or decision by parent, guardian, or custodian.

The parent, guardian, or custodian of a child may negate, reverse, or otherwise disapprove any action taken or decision made pursuant to a caretaker authorization affidavit unless negation, reversal, or disapproval would jeopardize the life, health, or safety of the child. A parent, guardian, or custodian may negate, reverse, or disapprove a caretaker's action or decision only by delivering written notice of negation, reversal, or disapproval to the caretaker and the person responding to the caretaker's action or decision in reliance on the affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the affidavit.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.73 Immunity of person relying on affidavit.

A person who, in good faith, relies on or takes action in reliance on a caretaker authorization affidavit is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the reliance or action. The person is not subject to any disciplinary action from an entity that licenses or certifies the person. Any medical, psychological, or dental treatment provided to a child in reliance on an affidavit with respect to the child shall be considered to have been provided in good faith if the the

person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.

This section does not provide immunity from civil or criminal liability to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity as the person.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.74 Filing of power of attorney or affidavit; court may report information to public children services agency for investigation.

(A) A person who creates a power of attorney under section 3109.52 of the Revised Code or executes a caretaker authorization affidavit under section 3109.67 of the Revised Code shall file the power of attorney or affidavit with the juvenile court of the county in which the grandparent designated as attorney in fact or grandparent who executed the affidavit resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. The power of attorney or affidavit shall be filed not later than five days after the date it is created or executed and may be sent to the court by certified mail.

(B) A power of attorney filed under this section shall be accompanied by a receipt showing that the notice of creation of the power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail under section 3109.55 of the Revised Code.

(C)(1) The grandparent designated as attorney in fact or the grandparent who executed the affidavit shall include with the power of attorney or the caretaker authorization affidavit the information described in section 3109.27 of the Revised Code.

(2) If the grandparent provides information that the grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously has been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication, the court may report that information to the public children services agency pursuant to section 2151.421 [2151.42.1] of the Revised Code. Upon the receipt of that information, the public children services agency shall initiate an investigation pursuant to section 2151.421 [2151.42.1] of the Revised Code.

(3) If the court has reason to believe that a power of attorney or caretaker authorization affidavit is not in the best interest of the child, the court may report that information to the public children services agency pursuant to section 2151.421 [2151.42.1] of the Revised Code. Upon receipt of that information, the public children services agency shall initiate an investigation pursuant to section 2151.421 [2151.42.1] of the Revised Code. The public children services agency shall submit a report of its investigation to the court not later than thirty days after the court reports the information to the public children services agency or not later than forty-five days after the court reports the information to the public children services agency when information that is needed to determine the case disposition cannot be compiled within thirty days and the reasons are documented in the case record.

(D) The court shall waive any filing fee imposed for the filing of the power of attorney or caretaker authorization affidavit.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.77 Hearing to determine whether power of attorney or affidavit is in child's best interest.

(A) On the filing of a power of attorney or caretaker authorization affidavit under section 3109.76 of the Revised Code, the court in which the power of attorney or caretaker authorization affidavit was filed shall schedule a hearing to determine whether the power of attorney or affidavit is in the child's best interest. The court shall provide notice of the date, time, and location of the hearing to the parties and to the parent who is not the residential parent and legal custodian unless one of the following circumstances applies:

(1) In accordance with section 3109.051 [3109.05.1] of the Revised Code, that parent is not to be given a notice of relocation.

(2) The parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.

(3) The parent cannot be located with reasonable efforts.

(4) The power of attorney was created by both parents.

(B) The hearing shall be held not later than ten days after the date the power of attorney or affidavit was filed with the court. At the hearing, the parties and the parent who is not the residential parent and legal custodian may present evidence and be represented by counsel.

(C) At the conclusion of the hearing, the court may take any of the following actions that the court determines is in the child's best interest:

(1) Approve the power of attorney or affidavit. If approved, the power of attorney or affidavit shall remain in effect unless otherwise terminated under section 3109.59 of the Revised Code with respect to a power of attorney or section 3109.70 of the Revised Code with respect to an affidavit.

(2) Issue an order terminating the power of attorney or affidavit and ordering the child returned to the child's parent, guardian, or custodian. If the parent, guardian, or custodian of the child cannot be located, the court shall treat the filing of the power of attorney or affidavit with the court as a complaint under section 2151.27 of the Revised Code that the child is a dependent child.

(3) Treat the filing of the power of attorney or affidavit as a petition for legal custody and award legal custody of the child to the grandparent designated as the attorney in fact under the power of attorney or to the grandparent who executed the affidavit.

(D) The court shall conduct a de novo review of any order issued under division (C) of this section if all of the following apply regarding the parent who is not the residential parent and legal custodian:

(1) The parent did not appear at the hearing from which the order was issued.

(2) The parent was not represented by counsel at the hearing.

(3) The parent filed a motion with the court not later than fourteen days after receiving notice of the hearing pursuant to division (A) of this section.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.78 Actions taken for purpose of child's participation in academic or interscholastic athletic program prohibited.

(A) No person shall create a power of attorney under section 3109.52 of the Revised Code or execute a caretaker authorization affidavit under section 3109.67 of the Revised Code for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or school district.

(B) A person who violates division (A) of this section is in violation of section 2921.13 of the Revised Code and is guilty of falsification, a misdemeanor of the first degree.

(C) A power of attorney created, or an affidavit executed, in violation of this section is void as of the date of its creation or execution.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.79 Effect of power of attorney or affidavit on child support orders.

As used in this section, "administrative child support order" and "court child support order" have the same meanings as in section 3119.01 of the Revised Code.

A power of attorney created under section 3109.52 of the Revised Code or a caretaker authorization affidavit executed under section 3109.67 of the Revised Code shall not affect the enforcement of an administrative child support order or court child support order, unless a child support enforcement agency, with respect to an administrative child support order, or a court, with respect to either order, issues an order providing otherwise.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

§ 3109.80 Only one power of attorney or affidavit may be in effect at one time.

Only one power of attorney created under section 3109.52 of the Revised Code or one caretaker authorization executed under section 3109.67 of the Revised Code may be in effect for a child at one time.

HISTORY: 150 v H 130, § 1, eff. 7-20-04.

CHAPTER 3111: PARENTAGE

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§ 3111.01 Definition and extent of parent and child relationship.

(A) As used in sections 3111.01 to 3111.85 of the Revised Code, "parent and child relationship" means the legal relationship that exists between a child and the child's natural or adoptive parents and upon which those sections and any other provision of the Revised Code confer or impose rights, privileges, duties, and obligations. The "parent and child relationship" includes the mother and child relationship and the father and child relationship.

(B) The parent and child relationship extends equally to all children and all parents, regardless of the marital status of the parents.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 144 v S 10 (Eff 7-15-92); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.01 (RS § 5614; S&C 176; 70 v 111; GC § 8006-1; 110 v 296; 124 v 178(196); Bureau of Code Revision, 10-1-53; 127 v 1039(1103); 136 v S 145), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.02 Establishment of parent and child relationship.

(A) The parent and child relationship between a child and the child's natural mother may be established by proof of her having given birth to the child or pursuant to sections 3111.01 to 3111.18 or 3111.20 to 3111.85 of the Revised Code. The parent and child relationship between

a child and the natural father of the child may be established by an acknowledgment of paternity as provided in sections 3111.20 to 3111.35 of the Revised Code, and pursuant to sections 3111.01 to 3111.18 or 3111.38 to 3111.54 of the Revised Code. The parent and child relationship between a child and the adoptive parent of the child may be established by proof of adoption, or pursuant to Chapter 3107, of the Revised Code.

(B) A court that is determining a parent and child relationship pursuant to this chapter shall give full faith and credit to a parentage determination made under the laws of this state or another state, regardless of whether the parentage determination was made pursuant to a voluntary acknowledgement of paternity, an administrative procedure, or a court proceeding.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 144 v S 10 (Eff 7-15-92); 145 v S 355 (Eff 12-9-94); 147 v H 352 (Eff 1-1-98); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.02 (RS § 5628; 70 v 113, § 11; GC § 8006-2; 110 v 296; 124 v 178(196); Bureau of Code Revision, 10-1-53; 127 v 1039(1103)), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.03 Presumption of paternity.

(A) A man is presumed to be the natural father of a child under any of the following circumstances:

(1) The man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within three hundred days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and the child's mother separate pursuant to a separation agreement.

(2) The man and the child's mother attempted, before the child's birth, to marry each other by a marriage that was solemnized in apparent compliance with the law of the state in which the marriage took place, the marriage is or could be declared invalid, and either of the following applies:

(a) The marriage can only be declared invalid by a court and the child is born during the marriage or within three hundred days after the termination of the marriage by death, annulment, divorce, or dissolution;

(b) The attempted marriage is invalid without a court order and the child is born within three hundred days after the termination of cohabitation.

(3) An acknowledgment of paternity has been filed pursuant to section 3111.23 or former section 5101.314 [5101.31.4] of the Revised Code and has not become final under former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] or section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code.

(B) A presumption that arises under this section can only be rebutted by clear and convincing evidence that includes the results of genetic testing, except that a presumption that is conclusive as provided in division (A) of section 3111.95 or division (B) of section 3111.97 of the Revised Code cannot be rebutted. An acknowledgment of paternity that becomes final under section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code is not a presumption and shall be considered a final and enforceable determination of paternity unless the acknowledgment is rescinded under section 3111.28 or 3119.962 [3119.96.2] of the Revised Code. If two or more conflicting presumptions arise

under this section, the court shall determine, based upon logic and policy considerations, which presumption controls.

(C)(1) Except as provided in division (C)(2) of this section, a presumption of paternity that arose pursuant to this section prior to March 22, 2001, shall remain valid on and after that date unless rebutted pursuant to division (B) of this section. This division does not apply to a determination described in division (B)(3) of this section as division (B)(3) of this section existed prior to March 22, 2001.

(2) A presumption of paternity that arose prior to March 22, 2001, based on an acknowledgment of paternity that became final under former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] or section 2151.232 [2151.23.2] of the Revised Code is not a presumption and shall be considered a final and enforceable determination of paternity unless the acknowledgment is rescinded under section 3111.28 or 3119.962 [3119.96.2] of the Revised Code.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 142 v H 790 (Eff 3-16-89); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180, Eff 3-22-2001; 151 v H 102, § 1, eff. 6-15-06.

Not analogous to former RC § 3111.03 (RS § 5637; S&C 177; 70 v 112, § 3; GC § 8006-3; 110 v 296; 124 v 178(197); Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions, § 3 of HB 242 (148 v —) following RC § 3119.96.2.

§ 3111.04 Right to bring paternity action; stay pending birth; cooperation in administrative determination.

(A) An action to determine the existence or nonexistence of the father and child relationship may be brought by the child or the child's personal representative, the child's mother or her personal representative, a man alleged or alleging himself to be the child's father, the child support enforcement agency of the county in which the child resides if the child's mother, father, or alleged father is a recipient of public assistance or of services under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C.A. 651, as amended, or the alleged father's personal representative.

(B) An agreement does not bar an action under this section.

(C) If an action under this section is brought before the birth of the child and if the action is contested, all proceedings, except service of process and the taking of depositions to perpetuate testimony, may be stayed until after the birth.

(D) A recipient of public assistance or of services under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C.A. 651, as amended, shall cooperate with the child support enforcement agency of the county in which a child resides to obtain an administrative determination pursuant to sections 3111.38 to 3111.54 of the Revised Code, or, if necessary, a court determination pursuant to sections 3111.01 to 3111.18 of the Revised Code, of the existence or nonexistence of a parent and child relationship between the father and the child. If the recipient fails to cooperate, the agency may commence an action to determine the existence or nonexistence of a parent and child relationship between the father and the

child pursuant to sections 3111.01 to 3111.18 of the Revised Code.

(E) As used in this section, "public assistance" means medical assistance under Chapter 5111. of the Revised Code, assistance under Chapter 5107. of the Revised Code, disability financial assistance under Chapter 5115. of the Revised Code, or disability medical assistance under Chapter 5115. of the Revised Code.

HISTORY: 139 v H 245 (Eff 6-29-82); 144 v S 10 (Eff 7-15-92); 147 v H 352 (Eff 1-1-98); 148 v S 180. Eff 3-22-2001; 150 v H 95, § 1, eff. 6-26-03; 151 v H 136, § 1, eff. 5-17-06.

The effective date is set by section 182 of H.B. 95 (150 v —).

Not analogous to former RC § 3111.04 (RS § 5615; S&C 176; 74 v 11; GC § 8006-4; 110 v 296; 124 v 178(197); Bureau of Code Revision, 10-1-53; 125 v 184; 127 v 1039(1104)), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

Publisher's Note:

The amendment of RC § 3111.04 by 151 v H 66 was disapproved by the Governor.

§ 3111.05 Statutes of limitations.

An action to determine the existence or nonexistence of the father and child relationship may not be brought later than five years after the child reaches the age of eighteen. Neither section 3111.04 of the Revised Code nor this section extends the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by Chapter 2105., 2107., 2113., 2117., or 2123. of the Revised Code.

HISTORY: 139 v H 245. Eff 6-29-82.

Not analogous to former RC § 3111.05 (RS § 5615; S&C 176; 74 v 11; GC § 8006-5; 110 v 296; 124 v 178(197); Bureau of Code Revision, 10-1-53; 125 v 184; 127 v 1039(1104)), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.06 Jurisdiction of courts; personal jurisdiction.

(A) Except as otherwise provided in division (B) or (C) of section 3111.381 [3111.38.1] of the Revised Code, an action authorized under sections 3111.01 to 3111.18 of the Revised Code may be brought in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the child, the child's mother, or the alleged father resides or is found or, if the alleged father is deceased, of the county in which proceedings for the probate of the alleged father's estate have been or can be commenced, or of the county in which the child is being provided support by the county department of job and family services of that county. An action pursuant to sections 3111.01 to 3111.18 of the Revised Code to object to an administrative order issued pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code determining the existence or nonexistence of a parent and child relationship that has not become final and enforceable, may be brought only in the juvenile court or other court with jurisdiction of the county in which the child support enforcement agency that issued the order is located. If an action for divorce, dissolution, or legal separation has been filed in a court of common pleas, that court of common pleas has original

jurisdiction to determine if the parent and child relationship exists between one or both of the parties and any child alleged or presumed to be the child of one or both of the parties.

(B) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state as to an action brought under sections 3111.01 to 3111.18 of the Revised Code with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by the Rules of Civil Procedure, personal jurisdiction may be acquired by personal service of summons outside this state or by certified mail with proof of actual receipt.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 143 v H 514 (Eff 1-1-91); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180. Eff 3-22-2001; 151 v H 136, § 1, eff. 5-17-06.

Not analogous to former RC § 3111.06 (RS § 5616; 74 v 11; GC § 8006-6; 110 v 296; 124 v 178; Bureau of Code Revision, 10-1-53; 125 v 184; 127 v 1039), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.07 Proper parties to action; intervention by public agency.

(A) The natural mother, each man presumed to be the father under section 3111.03 of the Revised Code, and each man alleged to be the natural father shall be made parties to the action brought pursuant to sections 3111.01 to 3111.18 of the Revised Code or, if not subject to the jurisdiction of the court, shall be given notice of the action pursuant to the Rules of Civil Procedure and shall be given an opportunity to be heard. The child support enforcement agency of the county in which the action is brought also shall be given notice of the action pursuant to the Rules of Civil Procedure and shall be given an opportunity to be heard. The court may align the parties. The child shall be made a party to the action unless a party shows good cause for not doing so. Separate counsel shall be appointed for the child if the court finds that the child's interests conflict with those of the mother.

If the person bringing the action knows that a particular man is not or, based upon the facts and circumstances present, could not be the natural father of the child, the person bringing the action shall not allege in the action that the man is the natural father of the child and shall not make the man a party to the action.

(B) If an action is brought pursuant to sections 3111.01 to 3111.18 of the Revised Code and the child to whom the action pertains is or was being provided support by the department of job and family services, a county department of job and family services, or another public agency, the department, county department, or agency may intervene for purposes of collecting or recovering the support.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 143 v H 591 (Eff 4-12-90); 144 v S 10 (Eff 7-15-92); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180. Eff 3-22-2001; 151 v H 136, § 1, eff. 5-17-06.

Not analogous to former RC § 3111.07 (RS § 5617; S&C 177; 74 v 11; GC § 8006-7; 110 v 296; 124 v 178; Bureau of Code Revision, 10-1-53; 125 v 184; 127 v 1039), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.08 Actions governed by Civil Rules; admission of paternity or nonpaternity; default judgment.

(A) An action brought pursuant to sections 3111.01 to 3111.18 of the Revised Code to declare the existence or

nonexistence of the father and child relationship is a civil action and shall be governed by the Rules of Civil Procedure unless a different procedure is specifically provided by those sections.

(B) If an action is brought against a person to declare the existence or nonexistence of the father and child relationship between that person and a child and the person in his answer admits the existence or nonexistence of the father and child relationship as alleged in the action, the court shall enter judgment in accordance with section 3111.13 of the Revised Code. If the person against whom the action is brought fails to plead or otherwise defend against the action, the opposing party may make an oral or written motion for default judgment pursuant to the Rules of Civil Procedure. The court shall render a judgment by default against the person after hearing satisfactory evidence of the truth of the statements in the complaint.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 143 v H 591 (Eff 4-12-90); 144 v S 10 (Eff 7-15-92); 145 v S 353 (Eff 12-9-94); 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.08 (RS § 5618; S&C 177; 70 v 112; GC § 8006-8; 110 v 296; 123 v 368; 124 v 178; Bureau of Code Revision, 10-1-53; 127 v 1039; 136 v H 390), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.09 Genetic tests; DNA records; expert witnesses; judgment.

(A)(1) In any action instituted under sections 3111.01 to 3111.18 of the Revised Code, the court, upon its own motion, may order and, upon the motion of any party to the action, shall order the child's mother, the child, the alleged father, and any other person who is a defendant in the action to submit to genetic tests. Instead of or in addition to genetic testing ordered pursuant to this section, the court may use the following information to determine the existence of a parent and child relationship between the child and the child's mother, the alleged father, or another defendant:

(a) A DNA record of the child's mother, the child, the alleged father, or any other defendant that is stored in the DNA database pursuant to section 109.573 [109.57.3] of the Revised Code;

(b) Results of genetic tests conducted on the child, the child's mother, the alleged father, or any other defendant pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code.

If the court intends to use the information described in division (A)(1)(a) of this section, it shall order the superintendent of the bureau of criminal identification and investigation to disclose the information to the court. If the court intends to use the genetic test results described in division (A)(1)(b) of this section, it shall order the agency that ordered the tests to provide the report of the genetic test results to the court.

(2) If the child support enforcement agency is not made a party to the action, the clerk of the court shall schedule the genetic testing no later than thirty days after the court issues its order. If the agency is made a party to the action, the agency shall schedule the genetic testing in accordance with the rules adopted by the director of job and family services pursuant to section 3111.611 [3111.61.1] of the Revised Code. If the alleged father of

a child brings an action under sections 3111.01 to 3111.18 of the Revised Code and if the mother of the child willfully fails to submit to genetic testing or if the mother is the custodian of the child and willfully fails to submit the child to genetic testing, the court, on the motion of the alleged father, shall issue an order determining the existence of a parent and child relationship between the father and the child without genetic testing. If the mother or other guardian or custodian of the child brings an action under sections 3111.01 to 3111.18 of the Revised Code and if the alleged father of the child willfully fails to submit himself to genetic testing or, if the alleged father is the custodian of the child and willfully fails to submit the child to genetic testing, the court shall issue an order determining the existence of a parent and child relationship between the father and the child without genetic testing. If a party shows good cause for failing to submit to genetic testing or for failing to submit the child to genetic testing, the court shall not consider the failure to be willful.

(3) Except as provided in division (A)(4) of this section, any fees charged for the tests shall be paid by the party that requests them, unless the custodian of the child is represented by the child support enforcement agency in its role as the agency providing enforcement of child support orders under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, the custodian is a participant in Ohio works first under Chapter 5107. of the Revised Code for the benefit of the child, or the defendant in the action is found to be indigent, in which case the child support enforcement agency shall pay the costs of genetic testing. The child support enforcement agency, within guidelines contained in that federal law, shall use funds received pursuant to Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, to pay the fees charged for the tests.

Except as provided in division (A)(4) of this section, if there is a dispute as to who shall pay the fees charged for genetic testing, the child support enforcement agency shall pay the fees, but neither the court nor the agency shall delay genetic testing due to a dispute as to who shall pay the genetic testing fees. The child support enforcement agency or the person who paid the fees charged for the genetic testing may seek reimbursement for the genetic testing fees from the person against whom the court assesses the costs of the action. Any funds used in accordance with this division by the child support enforcement agency shall be in addition to any other funds that the agency is entitled to receive as a result of any contractual provision for specific funding allocations for the agency between the county, the state, and the federal government.

(4) If, pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code, the agency has previously conducted genetic tests on the child, child's mother, alleged father, or any other defendant and the current action pursuant to section 3111.01 to 3111.18 of the Revised Code has been brought to object to the result of those previous tests, the agency shall not be required to pay the fees for conducting genetic tests pursuant to this section on the same persons.

(B)(1) The genetic tests shall be made by qualified examiners who are authorized by the court or the department of job and family services. An examiner conducting a genetic test, upon the completion of the test, shall send a complete report of the test results to the clerk of the

court that ordered the test or, if the agency is a party to the action, to the child support enforcement agency of the county in which the court that ordered the test is located.

(2) If a court orders the superintendent of the bureau of criminal identification and investigation to disclose information regarding a DNA record stored in the DNA database pursuant to section 109.573 [109.57.3] of the Revised Code, the superintendent shall send the information to the clerk of the court that issued the order or, if the agency is a party to the action, to the child support enforcement agency of the county in which the court that issued the order is located.

(3) If a court orders the child support enforcement agency to provide the report of the genetic test results obtained pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code, the agency shall send the information to the person or government entity designated by the court that issued the order.

(4) The clerk, agency, or person or government entity under division (B)(3) of this section that receives a report or information pursuant to division (B)(1), (2), or (3) of this section shall mail a copy of the report or information to the attorney of record for each party or, if a party is not represented by an attorney, to the party. The clerk, agency, or person or government entity under division (B)(3) of this section that receives a copy of the report or information shall include with the report or information sent to an attorney of record of a party or a party a notice that the party may object to the admission into evidence of the report or information by filing a written objection as described in division (D) of section 3111.12 of the Revised Code with the court that ordered the tests or ordered the disclosure of the information no later than fourteen days after the report or information was mailed to the attorney of record or to the party. The examiners may be called as witnesses to testify as to their findings. Any party may demand that other qualified examiners perform independent genetic tests under order of the court. The number and qualifications of the independent examiners shall be determined by the court.

(C) Nothing in this section prevents any party to the action from producing other expert evidence on the issue covered by this section, but, if other expert witnesses are called by a party to the action, the fees of these expert witnesses shall be paid by the party calling the witnesses and only ordinary witness fees for these expert witnesses shall be taxed as costs in the action.

(D) If the court finds that the conclusions of all the examiners are that the alleged father is not the father of the child, the court shall enter judgment that the alleged father is not the father of the child. If the examiners disagree in their findings or conclusions, the court shall determine the father of the child based upon all the evidence.

(E) As used in sections 3111.01 to 3111.85 of the Revised Code:

(1) "Genetic tests" and "genetic testing" mean either of the following:

(a) Tissue or blood tests, including tests that identify the presence or absence of common blood group antigens, the red blood cell antigens, human lymphocyte antigens, serum enzymes, serum proteins, or genetic markers;

(b) Deoxyribonucleic acid typing of blood or buccal cell samples.

"Genetic test" and "genetic testing" may include the typing and comparison of deoxyribonucleic acid derived from the blood of one individual and buccal cells of another.

(2) "DNA record" and "DNA database" have the same meanings as in section 109.573 [109.57.3] of the Revised Code.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 142 v H 231 (Eff 10-5-87); 142 v H 708 (Eff 4-19-88); 143 v H 591 (Eff 4-12-90); 144 v S 10 (Eff 7-15-92); 145 v S 355 (Eff 12-9-94); 146 v H 5 (Eff 8-30-95); 146 v H 357 (Eff 9-19-96); 147 v H 408 (Eff 10-1-97); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.09 (RS § 5619; S&C 179; 70 v 112; GC § 8006-9; 110 v 296; 124 v 178; Bureau of Code Revision, 100-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions, § 3 of HB 242 (148 v —) following RC § 3119.96.2.

See provisions, § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.10 Evidence of paternity.

In an action brought under sections 3111.01 to 3111.18 of the Revised Code, evidence relating to paternity may include:

(A) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(B) An expert's opinion concerning the statistical probability of the alleged father's paternity, which opinion is based upon the duration of the mother's pregnancy;

(C) Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(D) Medical evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon the request of a party shall, require the child, the mother, and the man to submit to appropriate tests. Any fees charged for the tests shall be paid by the party that requests them unless the court orders the fees taxed as costs in the action.

(E) All other evidence relevant to the issue of paternity of the child.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.10 (RS § 5620; 70 v 112; GC § 8006-10; 124 v 178; 127 v 1039), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.11 Pretrial hearing; setting trial date.

If the person against whom an action is brought pursuant to sections 3111.01 to 3111.18 of the Revised Code does not admit in his answer the existence or nonexistence of the father and child relationship, the court shall hold a pretrial hearing, in accordance with the Civil Rules, at a time set by the court. At the pretrial hearing, the court shall notify each party to the action that the party may file a motion requesting the court to order the child's mother, the alleged father, and any other person who is a defendant in the action to submit to genetic tests and, if applicable, to the appropriate tests referred to in section 3111.10 of the Revised Code. When

the court determines that all pretrial matters have been completed, the action shall be set for trial.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.11 (RS § 5621; S&C 177; 70 v 112; GC § 8006-11; 110 v 296; 124 v 178; Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

[§ 3111.11.1] § 3111.111 Temporary support orders.

If an action is brought pursuant to sections 3111.01 to 3111.18 of the Revised Code to object to a determination made pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code that the alleged father is the natural father of a child, the court, on its own motion or on the motion of either party, shall issue a temporary order for the support of the child pursuant to Chapters 3119., 3121., 3123., and 3125. of the Revised Code requiring the alleged father to pay support to the natural mother or the guardian or legal custodian of the child. The order shall remain in effect until the court issues a judgment in the action pursuant to section 3111.13 of the Revised Code that determines the existence or nonexistence of a father and child relationship. If the court, in its judgment, determines that the alleged father is not the natural father of the child, the court shall order the person to whom the temporary support was paid under the order to repay the alleged father all amounts paid for support under the temporary order.

HISTORY: 147 v H 352 (Eff 1-1-98); 148 v S 180, Eff 3-22-2001.

§ 3111.12 Witnesses; objection to admission of certain evidence; verdict; priority of actions.

(A) In an action under sections 3111.01 to 3111.18 of the Revised Code, the mother of the child and the alleged father are competent to testify and may be compelled to testify by subpoena. If a witness refuses to testify upon the ground that the testimony or evidence of the witness might tend to incriminate the witness and the court compels the witness to testify, the court may grant the witness immunity from having the testimony of the witness used against the witness in subsequent criminal proceedings.

(B) Testimony of a physician concerning the medical circumstances of the mother's pregnancy and the condition and characteristics of the child upon birth is not privileged.

(C) Testimony relating to sexual access to the mother by a man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(D) If, pursuant to section 3111.09 of the Revised Code, a court orders genetic tests to be conducted, orders disclosure of information regarding a DNA record stored in the DNA database pursuant to section 109.573 [109.57.3] of the Revised Code, or intends to use a report of genetic test results obtained from tests conducted pursuant to former section 3111.21 or 3111.22 or sections 3111.38 to 3111.54 of the Revised Code, a party may object to the admission into evidence of any of the genetic test results or of the DNA record information by filing a written objection with the court that ordered the tests or disclosure or intends to use a report of genetic test results. The party shall file the written objection with the

court no later than fourteen days after the report of the test results or the DNA record information is mailed to the attorney of record of a party or to a party. The party making the objection shall send a copy of the objection to all parties.

If a party files a written objection, the report of the test results or the DNA record information shall be admissible into evidence as provided by the Rules of Evidence. If a written objection is not filed, the report of the test results or the DNA record information shall be admissible into evidence without the need for foundation testimony or other proof of authenticity or accuracy.

(E) If a party intends to introduce into evidence invoices or other documents showing amounts expended to cover pregnancy and confinement and genetic testing, the party shall notify all other parties in writing of that intent and include copies of the invoices and documents. A party may object to the admission into evidence of the invoices or documents by filing a written objection with the court that is hearing the action no later than fourteen days after the notice and the copies of the invoices and documents are mailed to the attorney of record of each party or to each party.

If a party files a written objection, the invoices and other documents shall be admissible into evidence as provided by the Rules of Evidence. If a written objection is not filed, the invoices or other documents are admissible into evidence without the need for foundation testimony or other evidence of authenticity or accuracy.

(F) A juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code shall give priority to actions under sections 3111.01 to 3111.18 of the Revised Code and shall issue an order determining the existence or nonexistence of a parent and child relationship no later than one hundred twenty days after the date on which the action was brought in the juvenile court or other court with jurisdiction.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 144 v S 10 (Eff 7-15-92); 145 v S 355 (Eff 12-9-94); 146 v H 5 (Eff 8-30-95); 147 v H 352 (Eff 1-1-98); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.12 (RS § 5622; 70 v 112; GC § 8006-12; 110 v 296; 124 v 178; Bureau of Code Revision, 10-1-53), repealed, 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.13 Judgment or order.

(A) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(B) If the judgment or order of the court is at variance with the child's birth record, the court may order that a new birth record be issued under section 3111.18 of the Revised Code.

(C) Except as otherwise provided in this section, the judgment or order may contain, at the request of a party and if not prohibited under federal law, any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the payment of all or any part of the reasonable expenses of the mother's pregnancy and confinement, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. After entry of the judgment or order, the father may petition

that he be designated the residential parent and legal custodian of the child or for parenting time rights in a proceeding separate from any action to establish paternity. Additionally, if the mother is unmarried, the father may file a complaint requesting the granting of reasonable parenting time rights, and the parents of the father, any relative of the father, the parents of the mother, and any relative of the mother may file a complaint requesting the granting of reasonable companionship or visitation rights, with the child pursuant to section 3109.12 of the Revised Code.

The judgment or order shall contain any provision required by section 3111.14 of the Revised Code.

(D) Support judgments or orders ordinarily shall be for periodic payments that may vary in amount. In the best interest of the child, the purchase of an annuity may be ordered in lieu of periodic payments of support if the purchase agreement provides that any remaining principal will be transferred to the ownership and control of the child on the child's attainment of the age of majority.

(E) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

(F)(1) Any court that makes or modifies an order for child support under this section shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(2) When a court determines whether to require a parent to pay an amount for that parent's failure to support a child prior to the date the court issues an order requiring that parent to pay an amount for the current support of that child, it shall consider all relevant factors, including, but not limited to, any monetary contribution either parent of the child made to the support of the child prior to the court issuing the order requiring the parent to pay an amount for the current support of the child.

(3)(a) A court shall not require a parent to pay an amount for that parent's failure to support a child prior to the date the court issues an order requiring that parent to pay an amount for the current support of that child or to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement, if both of the following apply:

(i) At the time of the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the child was over three years of age.

(ii) Prior to the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the alleged father had no knowledge and had no reason to have knowledge of his alleged paternity of the child.

(b) For purposes of division (F)(4)(a)(ii) of this section, the mother of the child may establish that the alleged father had or should have had knowledge of the

paternity of the child by showing, by a preponderance of the evidence, that she performed a reasonable and documented effort to contact and notify the alleged father of his paternity of the child.

(c) A party is entitled to obtain modification of an existing order for arrearages under this division regardless of whether the judgment, court order, or administrative support order from which relief is sought was issued prior to, on, or after October 27, 2000.

(G) As used in this section, "birth record" has the same meaning as in section 3705.01 of the Revised Code.

(H) Unless the court has reason to believe that a person named in the order is a potential victim of domestic violence, any order issued pursuant to this section finding the existence of a parent and child relationship shall contain the full names, addresses, and social security numbers of the mother and father of the child and the full name and address of the child.

HISTORY: 139 v H 245 (Eff 6-29-82); 140 v H 614 (Eff 4-10-85); 141 v H 509 (Eff 12-1-86); 142 v H 231 (Eff 10-5-87); 142 v H 708 (Eff 4-19-88); 142 v H 790 (Eff 3-16-89); 143 v H 15 (Eff 5-31-90); 143 v H 591 (Eff 4-12-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 145 v S 115 (Eff 10-12-93); 145 v H 173 (Eff 12-31-93); 147 v H 352 (Eff 1-1-98); 148 v H 242 (Eff 10-27-2000); 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.13 (RS § 5623; 70 v 112; GC § 8006-13; 110 v 296; 124 v 178; Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions, § 3 of HB 242 (148 v —) following RC § 3119.96.2.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.14 Expert witness fees; costs.

The court may order reasonable fees for experts and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any party to be paid by the court, and, before or after payment by any party or the county, may order all or part of the fees and costs to be taxed as costs in the action.

HISTORY: 139 v H 245 (Eff 6-29-82); 143 v H 591 (Eff 4-12-90); 144 v S 10. Eff 7-15-92.

Not analogous to former RC § 3111.14 (RS § 5624; 70 v 115; GC § 8006-14; 124 v 178; Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

See provisions § 5 of SB 10 (144 v —) following RC § 3103.03.1.

§ 3111.15 Enforcement of father's obligation.

(A) If the existence of the father and child relationship is declared or if paternity or a duty of support has been adjudicated under sections 3111.01 to 3111.18 of the Revised Code or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent that any of them may furnish, has furnished, or is furnishing these expenses.

(B) The court may order support payments to be made to the mother, the clerk of the court, or a person or

agency designated to administer them for the benefit of the child under the supervision of the court.

(C) Willful failure to obey the judgment or order of the court is a civil contempt of the court.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.15 (RS § 5625; S&C 178; 70 v 113; GC § 8006-15; 124 v 178; Bureau of Code Revision, 10-1-53, 125 v 184), repealed 139 v H 245, eff 6-29-82.

§ 3111.16 Continuing jurisdiction of court.

The court has continuing jurisdiction to modify or revoke a judgment or order issued under sections 3111.01 to 3111.18 of the Revised Code to provide for future education and support and a judgment or order issued with respect to matters listed in divisions (C) and (D) of section 3111.13 and division (B) of section 3111.15 of the Revised Code, except that a court entering a judgment or order for the purchase of an annuity under division (D) of section 3111.13 of the Revised Code may specify that the judgment or order may not be modified or revoked.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.16 (GC § 8006-16; 118 v 570; 124 v 178; Bureau of Code Revision, 10-1-53; 136 v S 145), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.17 Determination of mother and child relationship.

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of sections 3111.01 to 3111.18 of the Revised Code that are applicable to the father and child relationship shall apply to an action brought under this section.

HISTORY: 139 v H 245 (Eff 6-29-82); 141 v H 476 (Eff 9-24-86); 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.17 (RS § 5626; S&C 178; 70 v 115; 72 v 49; 75 v 742; GC § 8006-17; 110 v 296; 119 v 731; 124 v 178; Bureau of Code Revision, 10-1-53; 125 v 184; 133 v S 460; 136 v S 145), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.18 New birth record.

As used in this section, "birth record" has the meaning given in section 3705.01 of the Revised Code.

Upon the order of a court of this state or upon the request of a court of another state, the department of health shall prepare a new birth record consistent with the findings of the court and shall substitute the new record for the original birth record.

HISTORY: 139 v H 245 (Eff 6-29-82); 142 v H 790, Eff 3-16-89.

Not analogous to former RC § 3111.18 (RS § 5627; 72 v 49; GC § 8006-18; 124 v 178; Bureau of Code Revision, 10-1-53), repealed 139 v H 245, eff 6-29-82.

The effective date is set by section 4 of HB 790.

§ 3111.19 Interference with establishment of paternity.

No person, by using physical harassment or threats of violence against another person, shall interfere with the other person's initiation or continuance of, or attempt to

prevent the other person from initiating or continuing, an action under sections 3111.01 to 3111.18 of the Revised Code.

HISTORY: RC § 3111.29, 144 v S 10 (Eff 7-15-92); RC § 3111.19, 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.19 (139 v H 245; 145 v S 115), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.19 (RS § 5631; S&S 38; 70 v 113; GC § 8006-19; 124 v 178; Bureau of Code Revision, 10-1-53; 127 v 1039), repealed 139 v H 245, § 2, eff 6-29-82.

[ACKNOWLEDGEMENT OF PATERNITY]

§ 3111.20 Birth record defined.

As used in sections 3111.21 to 3111.85 of the Revised Code, "birth record" has the same meaning as in section 3705.01 of the Revised Code.

HISTORY: 148 v S 180, Eff 3-22-2001.

Not analogous to former RC § 3111.20 (144 v S 10; 146 v H 167; 147 v H 408; 147 v H 352; 148 v H 222; 148 v H 471; 148 v H 509; 148 v H 535), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.20 (RS § 5632; S & S 38; 70 v 113, § 15; GC § 8006-20; 124 v 178(200); Bureau of Code Revision, 10-1-53; 127 v 1039(1105); 136 v S 145), repealed 139 v H 245, § 2, eff 6-29-82.

Publisher's Note:

The effective date of HB 535 (148 v —), amending RC § 3111.20, is 4-1-2001. The act added to division (A)(8) the following: "... A PROVIDER, AS DEFINED IN SECTION 3305.01 OF THE REVISED CODE...."

§ 3111.21 Notary public to notarize acknowledgment.

If the natural mother and alleged father of a child sign an acknowledgment of paternity affidavit prepared pursuant to section 3111.31 of the Revised Code with respect to that child at a child support enforcement agency, the agency shall provide a notary public to notarize the acknowledgment.

HISTORY: 147 v H 352 (Eff 1-1-98); 148 v H 471, Eff 7-1-2000.

Not analogous to former RC § 3111.21 (147 v H 352; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.21 (144 v S 10; 146 v H 167), repealed 147 v H 352, § 2, eff 1-1-98.

Not analogous to former RC § 3111.21 (RS § 5633; S & S 38, 39; 70 v 114, §§ 16-18; GC § 8006-21; 124 v 178(201); Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.22 Signed and notarized acknowledgment to be sent to job and family services department.

A child support enforcement agency shall send a signed and notarized acknowledgment of paternity to the office of child support in the department of job and family services pursuant to section 3111.23 of the Revised Code. The agency shall send the acknowledgment no later than ten days after it has been signed and notarized. If the agency knows a man is presumed under section 3111.03

of the Revised Code to be the father of the child and the presumed father is not the man who signed an acknowledgment with respect to the child, the agency shall not notarize or send the acknowledgment with respect to the child pursuant to this section.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.22 (144 v S 10; 146 v H 167; 147 v H 352; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.22 (RS § 5634; S & S 39; 70 v 114, § 19; GC § 8006-22; 124 v 178(201); Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.23 Filing of acknowledgment with office of child support; procedure for acknowledgment.

The natural mother, the man acknowledging he is the natural father, or the other custodian or guardian of a child, a child support enforcement agency pursuant to section 3111.22 of the Revised Code, a local registrar of vital statistics pursuant to section 3705.091 [3705.09.1] of the Revised Code, or a hospital staff person pursuant to section 3727.17 of the Revised Code, in person or by mail, may file an acknowledgment of paternity with the office of child support in the department of job and family services, acknowledging that the child is the child of the man who signed the acknowledgment. The acknowledgment of paternity shall be made on the affidavit prepared pursuant to section 3111.31 of the Revised Code, shall be signed by the natural mother and the man acknowledging that he is the natural father, and each signature shall be notarized. The mother and man may sign and have the signature notarized outside of each other's presence. An acknowledgment shall be sent to the office no later than ten days after it has been signed and notarized. If a person knows a man is presumed under section 3111.03 of the Revised Code to be the father of the child described in this section and that the presumed father is not the man who signed an acknowledgment with respect to the child, the person shall not notarize or file the acknowledgment pursuant to this section.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.23 (144 v S 10; 145 v H 173; 146 v H 167; 146 v S 292; 147 v H 408; 147 v H 352; 147 v S 170; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.23 (RS § 5635; S & S 39; 70 v 115, § 19; GC § 8006-23; 124 v 178(201); Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.24 Examination to determine whether acknowledgment is completed correctly; return for correction.

(A) On the filing of an acknowledgment, the office of child support shall examine the acknowledgment to determine whether it is completed correctly. The office shall make the examination no later than five days after the acknowledgment is filed. If the acknowledgment is completed correctly, the office shall comply with division (B) of this section. If the acknowledgment is not completed correctly, the office shall return it to the person or entity that filed it. The person or entity shall have ten days from the date the office sends the acknowledgment back

to correct it and return it to the office. The office shall send, along with the acknowledgment, a notice stating what needs to be corrected and the amount of time the person or entity has to make the corrections and return the acknowledgment to the office.

If the person or entity returns the acknowledgment in a timely manner; the office shall examine the acknowledgment again to determine whether it has been correctly completed. If the acknowledgment has been correctly completed, the office shall comply with division (B) of this section. If the acknowledgment has not been correctly completed the second time or if the acknowledgment is not returned to the office in a timely manner, the acknowledgment is invalid and the office shall return it to the person or entity and shall not enter it into the birth registry. If the office returns an acknowledgment the second time, it shall send a notice to the person or entity stating the errors in the acknowledgment and that the acknowledgment is invalid.

(B) If the office determines an acknowledgment is correctly completed, the office shall enter the information on the acknowledgment into the birth registry pursuant to sections 3111.64 and 3111.65 of the Revised Code. After entering the information in the registry, the office shall send the acknowledgment to the department of health for storage pursuant to section 3705.091 [3705.09.1] of the Revised Code. The office may request that the department of health send back to the office any acknowledgment that is being stored by the department of health pursuant to that section.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.24 (144 v S 10; 145 v H 173; 147 v H 352; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

Not analogous to former RC § 3111.24 (RS § 5636; S & S 39; 70 v 115, § 22; GC § 8006-24; 124 v 178(201); Bureau of Code Revision, 10-1-53), repealed 139 v H 245, § 2, eff 6-29-82.

§ 3111.25 Finality of acknowledgment.

An acknowledgment of paternity is final and enforceable without ratification by a court when the acknowledgment has been filed with the office of child support, the information on the acknowledgment has been entered in the birth registry, and the acknowledgment has not been rescinded and is not subject to possible rescission pursuant to section 3111.27 of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.25 (144 v S 10; 145 v H 173; 147 v H 352; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

§ 3111.26 Effects of final and enforceable acknowledgment.

After an acknowledgment of paternity becomes final and enforceable, the child is the child of the man who signed the acknowledgment of paternity, as though born to him in lawful wedlock. If the mother is unmarried, the man who signed the acknowledgment of paternity may file a complaint requesting the granting of reasonable parenting time with the child under section 3109.12 of the Revised Code and the parents of the man who signed the acknowledgment of paternity, any relative of the man who signed the acknowledgment of paternity, the parents of the mother, and any relative of the mother may file a

complaint pursuant to that section requesting the granting of reasonable companionship or visitation rights with the child. Once the acknowledgment becomes final the man who signed the acknowledgment of paternity assumes the parental duty of support.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.26 (144 v S 10; 147 v H 352), repealed 148 v S 180, § 2, eff 3-22-2001.

§ 3111.27 Rescission of acknowledgment.

(A) Except as provided in section 2151.232 [2151.23.2] or 3111.821 [3111.82.1] of the Revised Code, for an acknowledgment of paternity filed with the office of child support to be rescinded both of the following must occur:

(1) Not later than sixty days after the date of the child's signature on the acknowledgment, one of the persons who signed it must do both of the following:

(a) Request a determination under section 3111.38 of the Revised Code of whether there is a parent and child relationship between the man who signed the acknowledgment and the child who is the subject of it;

(b) Give the office written notice of having complied with division (A)(1)(a) of this section and include in the notice the name of the child support enforcement agency conducting genetic tests to determine whether there is a parent and child relationship;

(2) An order must be issued under section 3111.46 of the Revised Code determining whether there is a parent and child relationship between the man and the child.

(B) Not later than the end of the business day following the business day on which the office receives a notice under division (A)(1)(b) of this section, it shall contact the agency indicated in the notice to verify that the person sending it has complied with division (A)(1) of this section. If the office verifies compliance, and the notice was sent within the time limit required by this section, the office shall note in its records the date the notice was received and that the acknowledgment to which the notice pertains is subject to rescission. The office shall direct the agency to notify the office of the agency's issuance of an order described in division (A)(2) of this section. On receipt from an agency of notice that an order described in division (A)(2) of this section has been issued, the acknowledgment to which the order pertains shall be rescinded as of the date.

If the office is unable to verify compliance with division (A)(1) of this section, it shall note in its records the date the notice under division (A)(1)(b) of this section was received and that compliance with division (A)(1) of this section was not verified.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.27 (144 v S 10; 146 v H 167; 147 v H 352; 148 v H 471), repealed 148 v S 180, § 2, eff 3-22-2001.

§ 3111.28 Action to rescind acknowledgment based on fraud, duress or material mistake of fact.

After an acknowledgment becomes final pursuant to section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code, a man presumed to be the father of the child pursuant to section 3111.03 of the Revised Code who did not sign the acknowledgment, either person who signed the acknowledgment, or a

guardian or legal custodian of the child may bring an action to rescind the acknowledgment on the basis of fraud, duress, or material mistake of fact. The court shall treat the action as an action to determine the existence or nonexistence of a parent and child relationship pursuant to sections 3111.01 to 3111.18 of the Revised Code. An action pursuant to this section shall be brought no later than one year after the acknowledgment becomes final. The action may be brought in one of the following courts in the county in which the child, the guardian or custodian of the child, or either person who signed the acknowledgment resides: the juvenile court or the domestic relations division of the court of common pleas that has jurisdiction pursuant to section 2101.022 [2101.02.2] or 2301.03 of the Revised Code to hear and determine cases arising under Chapter 3111. of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.28 (144 v S 10; 145 v H 173; 146 v H 167; 147 v H 352), repealed 148 v S 180, § 2, eff 3-22-2001.

§ 3111.29 Proceedings to enforce support obligation.

Once an acknowledgment of paternity becomes final under section 3111.25 of the Revised Code, the mother or other custodian or guardian of the child may file a complaint pursuant to section 2151.231 [2151.23.1] of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the child or the guardian or legal custodian of the child resides requesting that the court order the father to pay an amount for the support of the child, may contact the child support enforcement agency for assistance in obtaining the order, or may request that an administrative officer of a child support enforcement agency issue an administrative order for the payment of child support pursuant to section 3111.81 of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.29, amended and renumbered RC § 3111.19 in 148 v S 180, eff 3-22-2001.

§ 3111.30 Preparation of new birth record.

Once an acknowledgment of paternity becomes final, the office of child support shall notify the department of health of the acknowledgment. If the original birth record is inconsistent with the acknowledgment, on receipt of the notice, the department of health shall, in accordance with section 3705.09 of the Revised Code, prepare a new birth record consistent with the acknowledgment and substitute the new record for the original birth record.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.30, amended and renumbered RC § 3111.88 in 148 v S 180, eff 3-22-2001.

§ 3111.31 Form for acknowledgment of paternity affidavit.

The department of job and family services shall prepare an acknowledgment of paternity affidavit that includes in boldface type at the top of the affidavit the rights and responsibilities of and the due process safe-

guards afforded to a person who acknowledges that he is the natural father of a child, including that if an alleged father acknowledges a parent and child relationship he assumes the parental duty of support, that both signators waive any right to bring an action pursuant to sections 3111.01 to 3111.18 of the Revised Code or make a request pursuant to section 3111.38 of the Revised Code, other than for purposes of rescinding the acknowledgment pursuant to section 3111.27 of the Revised Code in order to ensure expediency in resolving the question of the existence of a parent and child relationship, that either parent may rescind the acknowledgment pursuant to section 3111.27 of the Revised Code, that an action may be brought pursuant to section 3111.28 of the Revised Code, or a motion may be filed pursuant to section 3119.961 [3119.96.1] of the Revised Code, to rescind the acknowledgment, and that the natural father has the right to petition a court pursuant to section 3109.12 of the Revised Code for an order granting him reasonable parenting time with respect to the child and to petition the court for custody of the child pursuant to section 2151.23 of the Revised Code. The affidavit shall include all of the following:

(A) Basic instructions for completing the form, including instructions that both the natural father and the mother of the child are required to sign the statement, that they may sign the statement without being in each other's presence, and that the signatures must be notarized;

(B) Blank spaces to enter the full name, social security number, date of birth and address of each parent;

(C) Blank spaces to enter the full name, date of birth, and the residence of the child;

(D) A blank space to enter the name of the hospital or department of health code number assigned to the hospital, for use in situations in which the hospital fills out the form pursuant to section 3727.17 of the Revised Code;

(E) An affirmation by the mother that the information she supplied is true to the best of her knowledge and belief and that she is the natural mother of the child named on the form and assumes the parental duty of support of the child;

(F) An affirmation by the father that the information he supplied is true to the best of his knowledge and belief, that he has received information regarding his legal rights and responsibilities, that he consents to the jurisdiction of the courts of this state, and that he is the natural father of the child named on the form and assumes the parental duty of support of the child;

(G) Signature lines for the mother of the child and the natural father;

(H) Signature lines for the notary public;

(I) An instruction to include or attach any other evidence necessary to complete the new birth record that is required by the department by rule.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.31, amended and renumbered RC § 3111.89 in 148 v S 180, eff 3-22-2001.

§ 3111.32 Informational pamphlets; toll-free telephone number.

The department of job and family services shall prepare pamphlets that discuss the benefit of establishing a parent and child relationship, the proper procedure for

establishing a parent and child relationship between a father and his child, and a toll-free telephone number that interested persons may call for more information regarding the procedures for establishing a parent and child relationship.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.32, amended and renumbered RC § 3111.90 in 148 v S 180, eff 3-22-2001.

§ 3111.33 Distribution of pamphlets and forms.

The department of job and family services shall make available the pamphlets and the acknowledgment of paternity affidavits and statements to the department of health, to each hospital it has a contract with pursuant to section 3727.17 of the Revised Code, and to any individual who requests a pamphlet. The department of job and family services shall make available the affidavit acknowledging paternity to each county child support enforcement agency, the department of health, and any other person or agency that requests copies.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.33, renumbered RC § 3111.91 in 148 v S 180, eff 3-22-2001.

§ 3111.34 Rules concerning new birth record.

The director of job and family services, in consultation with the department of health, shall adopt rules specifying additional evidence necessary to complete a new birth record that is required to be included with an acknowledgment of paternity affidavit.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.34, amended and renumbered RC § 3111.92 in 148 v S 180, eff 3-22-2001.

§ 3111.35 Rules to implement provisions.

The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement sections 3111.20 to 3111.34 of the Revised Code that are consistent with Title IV-D of the "Social Security Act," 88 Stat. 2351, 42 U.S.C. 651 et seq., as amended.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.35, amended and renumbered RC § 3111.93 in 148 v S 180, eff 3-22-2001.

[ADMINISTRATIVE DETERMINATION OF PATERNITY, SUPPORT]

§ 3111.38 Request for administrative determination of paternity.

At the request of a person described in division (A) of section 3111.04 of the Revised Code the child support enforcement agency of the county in which a child resides or in which the guardian or legal custodian of the child resides shall determine the existence or nonexistence of a parent and child relationship between an alleged father and the child.

HISTORY: 148 v S 180. Eff 3-22-2001.

Not analogous to former RC § 3111.38, amended and renumbered RC § 3111.96 in 148 v S 180, eff 3-22-2001.

[§ 3111.38.1] § 3111.381 Request to precede court action; jurisdiction of courts.

(A) Except as provided in divisions (B), (C), (D), and (E) of this section, no person may bring an action under sections 3111.01 to 3111.18 of the Revised Code unless the person has requested an administrative determination under section 3111.38 of the Revised Code of the existence or nonexistence of a parent and child relationship.

(B) An action to determine the existence or nonexistence of a parent and child relationship may be brought by the child's mother in the appropriate division of the court of common pleas in the county in which the child resides, without requesting an administrative determination, if the child's mother brings the action in order to request an order to determine the allocation of parental rights and responsibilities, the payment of all or any part of the reasonable expenses of the mother's pregnancy and confinement, or support of the child. The clerk of the court shall forward a copy of the complaint to the child support enforcement agency of the county in which the complaint is filed.

(C) An action to determine the existence or nonexistence of a parent and child relationship may be brought by the putative father of the child in the appropriate division of the court of common pleas in the county in which the child resides, without requesting an administrative determination, if the putative father brings the action in order to request an order to determine the allocation of parental rights and responsibilities. The clerk of the court shall forward a copy of the complaint to the child support enforcement agency of the county in which the complaint is filed.

(D) If services are requested by the court, under divisions (B) and (C) of this section, of the child support enforcement agency to determine the existence or nonexistence of a parent and child relationship, a Title IV-D application must be completed and delivered to the child support enforcement agency.

(E) If the alleged father of a child is deceased and proceedings for the probate of the estate of the alleged father have been or can be commenced, the court with jurisdiction over the probate proceedings shall retain jurisdiction to determine the existence or nonexistence of a parent and child relationship between the alleged father and any child without an administrative determination being requested from a child support enforcement agency.

If an action for divorce, dissolution of marriage, or legal separation, or an action under section 2151.231 [2151.23.1] or 2151.232 [2151.23.2] of the Revised Code requesting an order requiring the payment of child support and provision for the health care of a child, has been filed in a court of common pleas and a question as to the existence or nonexistence of a parent and child relationship arises, the court in which the original action was filed shall retain jurisdiction to determine the existence or nonexistence of the parent and child relationship without an administrative determination being requested from a child support enforcement agency.

If a juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the

Revised Code issues a support order under section 2151.231 [2151.23.1] or 2151.232 [2151.23.2] of the Revised Code relying on a presumption under section 3111.03 of the Revised Code, the juvenile court or other court with jurisdiction that issued the support order shall retain jurisdiction if a question as to the existence of a parent and child relationship arises.

HISTORY: 148 v S 180. Eff 3-22-2001; 151 v H 136, § 1, eff. 5-17-06.

§ 3111.39 Proceedings where requests filed with multiple agencies.

If more than one child support enforcement agency receives a request to determine the existence or nonexistence of a parent and child relationship concerning the same child and each agency is an appropriate agency for the filing of the request as provided in section 3111.38 of the Revised Code, the agency that receives the request first shall act on the request. If an agency that receives a request is not the appropriate agency for the filing of the request, the agency shall forward the request to the agency of the county in which the child or the guardian or legal custodian of the child resides, and the latter agency shall proceed with the request.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.40 Contents of request.

A request for an administrative determination of the existence or nonexistence of a parent and child relationship shall contain all of the following:

(A) The name, birthdate, and current address of the alleged father of the child;

(B) The name, social security number, and current address of the mother of the child;

(C) The name and last known address of the alleged father of the child;

(D) The name and birthdate of the child.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.41 Assignment to administrative officer; order for genetic testing.

On receiving a request for a determination of the existence or nonexistence of a parent and child relationship, a child support enforcement agency shall assign an administrative officer to consider the request. The officer shall issue an order requiring the child, mother, and alleged father to submit to genetic testing. The order shall specify the date of the genetic tests for the mother, alleged father, and child, which shall be no later than forty-five days after the date of assignment of the administrative officer. The tests shall be conducted in accordance with the rules adopted by the director of job and family services under section 3111.611 [3111.61.1] of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.42 Notice attached to genetic testing order.

A child support enforcement agency shall attach a notice to each order for genetic testing and send both to the mother and the alleged father. The notice shall state all of the following:

(A) That the agency has been asked to determine the existence of a parent and child relationship between a child and the alleged named father;

(B) The name and birthdate of the child of which the man is alleged to be the natural father;

(C) The name of the mother and the alleged natural father;

(D) The rights and responsibilities of a parent;

(E) That the child, the mother, and the alleged father must submit to genetic testing at the date, time, and place determined by the agency in the order issued pursuant to section 3111.41 of the Revised Code;

(F) The administrative procedure for determining the existence of a parent and child relationship;

(G) That if the alleged father or natural mother willfully fails to submit to genetic testing, or the alleged father, natural mother, or the custodian of the child willfully fails to submit the child to genetic testing, the agency will issue an order that it is inconclusive whether the alleged father is the child's natural father;

(H) That if the alleged father or natural mother willfully fails to submit to genetic testing, or the alleged father, natural mother, or custodian of the child willfully fails to submit the child to genetic testing, they may be found in contempt of court.

HISTORY: 148 v S 180. Eff 3-22-2001.

[§ 3111.42.1] § 3111.421 Service of notice and order.

The notice and order described in section 3111.42 of the Revised Code shall be sent in accordance with the provisions of the Rules of Civil Procedure that govern service of process, except to the extent that the provisions of the Civil Rules by their nature are clearly inapplicable and except that references in the provisions of the Civil Rules to the court or to the clerk of the court shall be construed as being references to the child support enforcement agency or the administrative officer.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.43 Persons to be notified; genetic testing of persons present.

If a child support enforcement agency is asked to determine the existence or nonexistence of a parent and child relationship, the administrative officer shall provide notice of the request pursuant to the Rules of Civil Procedure to the natural mother of the child who is the subject of the request, each man presumed under section 3111.03 of the Revised Code to be the father of the child, and each man alleged to be the natural father. If the agency is unable to obtain service of process on the presumed father, alleged father, or natural mother within the time prescribed by section 3111.41 of the Revised Code, the agency shall proceed with genetic testing of all of those persons who are present on the date scheduled for the testing.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.44 Informational conference prior to testing; cancellation where acknowledgment signed.

After issuing a genetic testing order, the administrative officer may schedule a conference with the mother and the alleged father to provide information. If a conference

is scheduled and no other man is presumed to be the father of the child under section 3111.03 of the Revised Code, the administrative officer shall provide the mother and alleged father the opportunity to sign an acknowledgment of paternity affidavit prepared pursuant to section 3111.31 of the Revised Code. If they sign an acknowledgment of paternity, the administrative officer shall cancel the genetic testing order the officer had issued. Regardless of whether a conference is held, if the mother and alleged father do not sign an acknowledgment of paternity affidavit or if an affidavit cannot be notarized or filed because another man is presumed under section 3111.03 of the Revised Code to be the father of the child, the child, the mother, and the alleged father shall submit to genetic testing in accordance with the order issued by the administrative officer.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.45 Qualified examiner to conduct tests; report.

The genetic testing required under an administrative genetic testing order shall be conducted by a qualified examiner authorized by the department of job and family services. On completion of the genetic tests, the examiner shall send a complete report of the test results to the agency.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.46 Order finding paternity or non-paternity.

On receipt of the genetic test results, the administrative officer shall do one of the following:

(A) If the results of the genetic testing show a ninety-nine per cent or greater probability that the alleged father is the natural father of the child, the administrative officer of the agency shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding.

(B) If the results of genetic testing show less than a ninety-nine per cent probability that the alleged father is the natural father of the child, the administrative officer shall issue an administrative order that the alleged father is not the father of the child who is the subject of the proceeding.

An order issued pursuant to this section shall be sent to parties in accordance with the Civil Rule governing service and filing of pleadings and other papers subsequent to the original complaint.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.47 Willful failure to submit to test results in inconclusive finding.

If the alleged natural father or the natural mother willfully fails to submit to genetic testing or if either parent or any other person who is the custodian of the child willfully fails to submit the child to genetic testing, the agency shall enter an administrative order stating that it is inconclusive as to whether the alleged natural father is the natural father of the child.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.48 Order to include information concerning judicial paternity proceedings.

An administrative officer shall include in an order issued under section 3111.46 of the Revised Code a notice that contains the information described in section 3111.49 of the Revised Code informing the mother, father, and the guardian or legal custodian of the child of the right to bring an action under sections 3111.01 to 3111.18 of the Revised Code and of the effect of failure to timely bring the action.

An agency shall include in an administrative order issued under section 3111.47 of the Revised Code a notice that contains the information described in section 3111.50 of the Revised Code informing the parties of their right to bring an action under sections 3111.01 to 3111.18 of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.49 Order is conclusive unless judicially challenged within thirty days.

The mother, alleged father, and guardian or legal custodian of a child may object to an administrative order determining the existence or nonexistence of a parent and child relationship by bringing, within thirty days after the date the administrative officer issues the order, an action under sections 3111.01 to 3111.18 of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code in the county in which the child support enforcement agency that employs the administrative officer who issued the order is located. If the action is not brought within the thirty-day period, the administrative order is final and enforceable by a court and may not be challenged in an action or proceeding under Chapter 3111. of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.50 Right to bring action where order is inconclusive.

If a child support enforcement agency issues an administrative order stating that it is inconclusive as to whether the alleged natural father is the natural father of the child, any of the parties may bring an action under sections 3111.01 to 3111.18 of the Revised Code to establish a parent and child relationship.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.51 Names, addresses and social security numbers of parents and child to be included.

Unless the child support enforcement agency has reason to believe that a person named in the order is a potential victim of domestic violence, any administrative order finding the existence of a parent and child relationship shall contain the full names, addresses, and social security numbers of the mother and father of the child who is the subject of the order and the full name and address of the child.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.52 Order changing surname of child.

The child support enforcement agency, as part of an administrative order determining the existence of a parent and child relationship, may order the surname of the child subject to the determination to be changed and order the change to be made on the child's birth record consistent with the order if both the parties agree to the change.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.53 Employment of administrative officers.

(A) A child support enforcement agency, in accordance with the rules adopted by the director of job and family services pursuant to division (B) of this section, shall employ an administrative officer, contract with another entity to provide an administrative officer, or contract with an individual to serve as an administrative officer to issue administrative orders determining the existence or nonexistence of a parent and child relationship, requiring the payment of child support, or both.

(B) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code regulating administrative officers who issue administrative orders described in division (A) of this section, including the following:

- (1) The qualifications of the administrative officer;
- (2) Any other procedures, requirements, or standards necessary for the employment of the administrative officer.

HISTORY: RC § 2301.35.8, 144 v S 10 (Eff 7-15-92); 146 v H 167 (Eff 6-11-96)†; 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); RC § 3111.53, 148 v S 180. Eff 3-22-2001.

† The effective date of HB 167 (146 v —) is changed from 11-15-96 to 6-11-96 by section 7 of HB 710 (146 v —).

§ 3111.54 Finding of contempt for willful failure to submit to testing.

If an alleged father or natural mother willfully fails to submit to genetic testing, or if the alleged father, natural mother, or any other person who is the custodian of the child willfully fails to submit the child to genetic testing, as required by an order for genetic testing issued under section 3111.41 of the Revised Code, the child support enforcement agency that issued the order may request that the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the agency is located find the alleged father, natural mother, or other person in contempt pursuant to section 2705.02 of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.58 New birth record consistent with agency's determination.

If an administrative order determining the existence or nonexistence of a parent and child relationship includes a finding that the child's father is a man other than the man named in the child's birth record as the father or is otherwise at variance with the child's birth record, the

agency that made the determination shall notify the department of health of the determination as soon as any period for objection to the determination provided for in former section 3111.21 or 3111.22 or section 3111.49 of the Revised Code has elapsed.

On receipt of notice under this section or notice from an agency of another state with authority to make paternity determinations that has made a determination of the existence or nonexistence of a parent and child relationship, the department of health shall prepare a new birth record consistent with the agency's determination and substitute the new record for the original birth record.

HISTORY: RC § 3111.22.1, 147 v H 352 (Eff 1-1-98); RC § 3111.58, 148 v S 180. Eff 3-22-2001.

§ 3111.61 Collection of samples and performance of testing.

If a child support enforcement agency is made a party to an action brought to establish a parent and child relationship under sections 3111.01 to 3111.18 of the Revised Code and the court orders the parties to the action to submit to genetic testing or the agency orders the parties to submit to genetic testing under section 3111.41 of the Revised Code, the agency shall provide for collection of samples and performance of genetic testing in accordance with generally accepted medical techniques. If a court ordered the genetic testing, the agency shall inform the court of the procedures for collecting the samples and performing the genetic tests, in accordance with the rules governing on-site genetic testing adopted by the director of job and family services pursuant to section 3111.611 [3111.61.1] of the Revised Code.

HISTORY: RC § 2301.35.6, 144 v S 10 (Eff 7-15-92); 146 v H 357 (Eff 9-19-96); 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); RC § 3111.61, 148 v S 180. Eff 3-22-2001.

[§ 3111.61.1] § 3111.611 Rules for on-site genetic testing.

The director of job and family services shall adopt in accordance with Chapter 119. of the Revised Code rules governing the establishment by child support enforcement agencies of on-site genetic testing programs to be used in actions under sections 3111.01 to 3111.18 of the Revised Code and in administrative procedures under sections 3111.38 to 3111.54 of the Revised Code. The rules shall include provisions relating to the environment in which a blood or buccal cell sample may be drawn, the medical personnel who may draw a sample, the trained personnel who may perform the genetic comparison, the types of genetic testing that may be performed on a sample, and the procedure for notifying the court of the location at which the sample will be drawn, who will draw the sample, and who will perform the genetic testing on the sample, and any other procedures or standards the director determines are necessary for the implementation of on-site genetic testing.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.64 Birth registry maintained by office of child support.

The office of child support in the department of job and family services shall establish and maintain a birth registry that shall contain all of the following information

contained in orders determining the existence of a parent and child relationship and acknowledgments of paternity required to be filed with the office:

- (A) The names of the parents of the child subject to the order or acknowledgment;
- (B) The name of the child;
- (C) The resident address of each parent and each parent's social security number.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.65 Access to registry; comparison of information.

The birth registry shall be maintained as part of and be accessible through the automated system created pursuant to section 3125.07 of the Revised Code. The office of child support shall make comparisons of the information in the registry with the information maintained by the department of job and family services pursuant to sections 3107.062 [3107.06.2] and 3121.894 [3121.89.4] of the Revised Code. The office shall make the comparisons in the manner and in the time intervals required by the rules adopted pursuant to section 3111.67 of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.66 Filing of judicial or administrative order; entry on registry.

A court or child support enforcement agency, whichever is applicable, shall file the following with the office of child support:

(A) An order issued pursuant to section 3111.13 of the Revised Code on or after January 1, 1998;

(B) An order issued pursuant to section 3111.22 of the Revised Code on or after January 1, 1998, that has become final and enforceable;

(C) An order issued pursuant to section 3111.46 of the Revised Code on or after the effective date of this section.

On the filing of an order pursuant to this section, the office shall enter the information on the order in the birth registry.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.67 Rules concerning birth registry.

The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement the requirements of sections 3111.64 to 3111.66 of the Revised Code that are consistent with Title IV-D of the "Social Security Act," 88 Stat. 2351, 42 U.S.C. 651 et seq., as amended.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.69 Location of absent parent via putative father registry.

The office of child support in the department of job and family services and a child support enforcement agency may examine the putative father registry established under section 3107.062 [3107.06.2] of the Revised Code to locate an absent parent for the purpose of the office or agency carrying out its duties under the child and spousal support enforcement programs established

under Chapter 3125. of the Revised Code. Neither the office nor an agency shall use the information it receives from the registry for any purpose other than child and spousal support enforcement.

HISTORY: RC § 5101.31.3, 146 v H 419 (Eff 9-18-96); 148 v H 471 (Eff 7-1-2000); RC § 3111.69, 148 v S 180. Eff 3-22-2001.

§ 3111.71 Contracts with hospitals concerning unmarried women giving birth.

The department of job and family services shall enter into a contract with local hospitals for the provision of staff by the hospitals to meet with unmarried women who give birth in or en route to the particular hospital. On or before April 1, 1998, each hospital shall enter into a contract with the department of job and family services pursuant to this section regarding the duties imposed by this section and section 3727.17 of the Revised Code concerning paternity establishment. A hospital that fails to enter into a contract shall not receive the fee from the department for correctly signed and notarized affidavits submitted by the hospital.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.72 Contract requirements concerning hospital staff; fee for correctly executed acknowledgment of paternity affidavits.

The contract between the department of job and family services and a local hospital shall require all of the following:

(A) That the hospital provide a staff person to meet with each unmarried mother who gave birth in or en route to the hospital within twenty-four hours of the birth or before the mother is released from the hospital;

(B) That the staff person attempt to meet with the father of the unmarried mother's child if possible;

(C) That the staff person explain to the unmarried mother and the father, if he is present, the benefit to the child of establishing a parent and child relationship between the father and the child and the various proper procedures for establishing a parent and child relationship;

(D) That the staff person present to the unmarried mother and, if possible, the father, the pamphlet or statement regarding the rights and responsibilities of a natural parent that is prepared and provided by the department of job and family services pursuant to section 3111.32 of the Revised Code;

(E) That the staff person provide the mother and, if possible, the father, all forms and statements necessary to voluntarily establish a parent and child relationship, including, but not limited to, the acknowledgment of paternity affidavit prepared by the department of job and family services pursuant to section 3111.31 of the Revised Code;

(F) That the staff person, at the request of both the mother and father, help the mother and father complete any form or statement necessary to establish a parent and child relationship;

(G) That the hospital provide a notary public to notarize an acknowledgment of paternity affidavit signed by the mother and father;

(H) That the staff person present to an unmarried mother who is not participating in the Ohio works first program established under Chapter 5107. or receiving

medical assistance under Chapter 5111. of the Revised Code an application for Title IV-D services;

(I) That the staff person forward any completed acknowledgment of paternity, no later than ten days after it is completed, to the office of child support in the department of job and family services;

(J) That the department of job and family services pay the hospital twenty dollars for every correctly signed and notarized acknowledgment of paternity affidavit from the hospital.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.73 Annual report on nonparticipating hospitals.

Not later than July 1, 1998, and the first day of each July thereafter, the department of job and family services shall complete a report on the hospitals that have not entered into contracts described in this section. The department shall submit the report to the chairperson and ranking minority member of the committees of the house of representatives and senate with primary responsibility for issues concerning paternity establishment.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.74 Procedure where acknowledgment conflicts with presumption of paternity.

If the hospital knows or determines that a man is presumed under section 3111.03 of the Revised Code to be the father of a child and that the presumed father is not the man who signed or is attempting to sign an acknowledgment with respect to the child, the hospital shall take no further action with regard to the acknowledgment and shall not send the acknowledgment to the office of child support.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.77 Presumed father assumes duty of support.

A man who is presumed to be the natural father of a child pursuant to section 3111.03 of the Revised Code assumes the parental duty of support with respect to the child as provided in section 3103.031 [3103.03.1] of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.78 Methods of enforcing obligations of presumed father.

A parent, guardian, or legal custodian of a child, the person with whom the child resides, or the child support enforcement agency of the county in which the child, parent, guardian, or legal custodian of the child resides may do the following to require a man to pay support and provide for the health care needs of the child if the man is presumed to be the natural father of the child under section 3111.03 of the Revised Code:

(A) If the presumption is not based on an acknowledgment of paternity, file a complaint pursuant to section 2151.231 [2151.23.1] of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of

the county in which the child, parent, guardian, or legal custodian resides;

(B) Ask an administrative officer of a child support enforcement agency to issue an administrative order pursuant to section 3111.81 of the Revised Code;

(C) Contact a child support enforcement agency for assistance in obtaining an order for support and the provision of health care for the child.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.80 Administrative hearing to determine child support and provision for health care.

If a request for issuance of an administrative support order is made under section 3111.29 or 3111.78 of the Revised Code or an administrative officer issues an administrative order determining the existence of a parent and child relationship under section 3111.46 of the Revised Code, the administrative officer shall schedule an administrative hearing to determine, in accordance with Chapters 3119. and 3121. of the Revised Code, the amount of child support any parent is required to pay, the method of payment of child support, and the method of providing for the child's health care.

The administrative officer shall send the mother and the father of the child notice of the date, time, place, and purpose of the administrative hearing. With respect to an administrative hearing scheduled pursuant to an administrative order determining, pursuant to section 3111.46 of the Revised Code, the existence of a parent and child relationship, the officer shall attach the notice of the administrative hearing to the order and send it in accordance with that section. The Rules of Civil Procedure shall apply regarding the sending of the notice, except to the extent the civil rules, by their nature, are clearly inapplicable and except that references in the civil rules to the court or the clerk of the court shall be construed as being references to the child support enforcement agency or the administrative officer.

The hearing shall be held no later than sixty days after the request is made under section 3111.29 or 3111.78 of the Revised Code or an administrative officer issues an administrative order determining the existence of a parent and child relationship under section 3111.46 of the Revised Code. The hearing shall not be held earlier than thirty days after the officer gives the mother and father notice of the hearing.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.81 Administrative order concerning support and health care.

After the hearing under section 3111.80 of the Revised Code is completed, the administrative officer may issue an administrative order for the payment of support and provision for the child's health care. The order shall do all of the following:

(A) Require periodic payments of support that may vary in amount, except that, if it is in the best interest of the child, the administrative officer may order the purchase of an annuity in lieu of periodic payments of support if the purchase agreement provides that any remaining principal will be transferred to the ownership and control of the child on the child's attainment of the age of majority;

(B) Require the parents to provide for the health care needs of the child in accordance with sections 3119.29 to 3119.56 of the Revised Code;

(C) Include a notice that contains the information described in section 3111.84 of the Revised Code informing the mother and the father of the right to object to the order by bringing an action for the payment of support and provision of the child's health care under section 2151.231 [2151.23.1] of the Revised Code and the effect of a failure to timely bring the action.

HISTORY: 148 v S 180 (Eff 3-22-2001); 149 v H 657. Eff 12-13-2002.

§ 3111.82 Raising issue of paternity.

A party to a request made under section 3111.78 of the Revised Code for an administrative support order may raise the issue of the existence or nonexistence of a parent and child relationship.

HISTORY: 148 v S 180. Eff 3-22-2001.

[§ 3111.82.1] § 3111.821 Proceedings where issue of paternity is raised; finality of acknowledgment.

If a request is made pursuant to section 3111.78 of the Revised Code for an administrative support order and the issue of the existence or nonexistence of a parent and child relationship is raised, the administrative officer shall treat the request as a request made pursuant to section 3111.38 of the Revised Code and determine the issue in accordance with that section. If the request made under section 3111.78 of the Revised Code is made based on an acknowledgment of paternity that has not become final, the administrative officer shall promptly notify the office of child support in the department of job and family services when the officer issues an order determining the existence or nonexistence of a parent and child relationship with respect to the child who is the subject of the acknowledgment of paternity. On receipt of the notice by the office, the acknowledgment of paternity shall be considered rescinded.

If the parties do not raise the issue of the existence or nonexistence of a parent and child relationship pursuant to the request made under section 3111.78 of the Revised Code and an administrative order is issued pursuant to section 3111.81 of the Revised Code prior to the date the acknowledgment of paternity becomes final, the acknowledgment shall be considered final as of the date of the issuance of the order. An administrative order issued pursuant to section 3111.81 of the Revised Code shall not affect an acknowledgment that becomes final prior to the issuance of the order.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.83 Registration of order concerning support and health care.

An administrative officer who issues an administrative support order for the payment of support and provision for a child's health care shall register the order or cause the order to be registered in the system established under section 3111.831 [3111.83.1] of the Revised Code or with the clerk of the court of appropriate jurisdiction of the

county served by the administrative officer's child support enforcement agency.

HISTORY: 148 v S 180. Eff 3-22-2001.

[§ 3111.83.1] § 3111.831 Safekeeping and retrieval of administrative support orders.

Each child support enforcement agency may develop a system and procedure for the organized safekeeping and retrieval of administrative support orders for the payment of support and provision for the child's health care.

HISTORY: 148 v S 180. Eff 3-22-2001.

[§ 3111.83.2] § 3111.832 Registration of order with court.

If an administrative support order is registered with the clerk of a court of appropriate jurisdiction, the clerk shall not charge a fee for the registration and shall assign the order a case number.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.84 Action objecting to order; finality of unchallenged order.

The mother or father of a child who is the subject of an administrative support order may object to the order by bringing an action for the payment of support and provision for the child's health care under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the child support enforcement agency that employs the administrative officer is located. The action shall be brought not later than thirty days after the date of the issuance of the administrative support order. If neither the mother nor the father brings an action for the payment of support and provision for the child's health care within that thirty-day period, the administrative support order is final and enforceable by a court and may be modified only as provided in Chapters 3119., 3121., and 3123. of the Revised Code.

HISTORY: 148 v S 180. Eff 3-22-2001.

§ 3111.85 Prior administrative support orders.

An administrative support order issued pursuant to former section 3111.21 of the Revised Code prior to January 1, 1998, that is in effect on the effective date of this section shall remain in effect on and after the effective date of this section and shall be considered an administrative support order issued pursuant to section 3111.81 of the Revised Code for all purposes.

HISTORY: 148 v S 180. Eff 3-22-2001.

[NON-SPOUSAL ARTIFICIAL INSEMINATION]

§ 3111.88 Definitions.

As used in sections 3111.88 to 3111.96 of the Revised Code:

(A) "Artificial insemination" means the introduction of semen into the vagina, cervical canal, or uterus through instruments or other artificial means.

(B) "Donor" means a man who supplies semen for a non-spousal artificial insemination.

(C) "Non-spousal artificial insemination" means an artificial insemination of a woman with the semen of a man who is not her husband.

(D) "Physician" means a person who is licensed pursuant to Chapter 4731. of the Revised Code to practice medicine or surgery or osteopathic medicine or surgery in this state.

(E) "Recipient" means a woman who has been artificially inseminated with the semen of a donor.

HISTORY: RC § 3111.30, 141 v H 476 (Eff 9-24-86); RC § 3111.88, 148 v S 180. Eff 3-22-2001.

§ 3111.89 Scope of artificial insemination provisions.

Sections 3111.88 to 3111.96 of the Revised Code deal with non-spousal artificial insemination for the purpose of impregnating a woman so that she can bear a child that she intends to raise as her child. These sections do not deal with the artificial insemination of a wife with the semen of her husband or with surrogate motherhood.

HISTORY: RC § 3111.31, 141 v H 476 (Eff 9-24-86); RC § 3111.89, 148 v S 180. Eff 3-22-2001.

§ 3111.90 Supervision by physician.

A non-spousal artificial insemination shall be performed by a physician or a person who is under the supervision and control of a physician. Supervision requires the availability of a physician for consultation and direction, but does not necessarily require the personal presence of the physician who is providing the supervision.

HISTORY: RC § 3111.32, 141 v H 476 (Eff 9-24-86); RC § 3111.90, 148 v S 180. Eff 3-22-2001.

§ 3111.91 Medical history and examination of donor.

(A) In a non-spousal artificial insemination, fresh or frozen semen may be used, provided that the requirements of division (B) of this section are satisfied.

(B)(1) A physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or person under the supervision and control of a physician may use fresh semen for purposes of a non-spousal artificial insemination, only if within one year prior to the supplying of the semen, all of the following occurred:

(a) A complete medical history of the donor, including, but not limited to, any available genetic history of the donor, was obtained by a physician, a physician assistant, a clinical nurse specialist, or a certified nurse practitioner.

(b) The donor had a physical examination by a physician, a physician assistant, a clinical nurse specialist, or a certified nurse practitioner.

(c) The donor was tested for blood type and RH factor.

(2) A physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or person under the supervision and control of a

physician may use frozen semen for purposes of a non-spousal artificial insemination only if all the following apply:

(a) The requirements set forth in division (B)(1) of this section are satisfied;

(b) In conjunction with the supplying of the semen, the semen or blood of the donor was the subject of laboratory studies that the physician involved in the non-spousal artificial insemination considers appropriate. The laboratory studies may include, but are not limited to, venereal disease research laboratories, karyotyping, GC culture, cytomegalo, hepatitis, kem-zyme, Tay-Sachs, sickle-cell, ureaplasma, HLTV-III, and chlamydia.

(c) The physician involved in the non-spousal artificial insemination determines that the results of the laboratory studies are acceptable results.

(3) Any written documentation of a physical examination conducted pursuant to division (B)(1)(b) of this section shall be completed by the individual who conducted the examination.

HISTORY: RC § 3111.33, 141 v H 476 (Eff 9-24-86); RC § 3111.91, 148 v S 180 (Eff 3-22-2001); 149 v S 245, Eff 3-31-2003.

§ 3111.92 Both spouses must consent.

The non-spousal artificial insemination of a married woman may occur only if both she and her husband sign a written consent to the artificial insemination as described in section 3111.93 of the Revised Code.

HISTORY: RC § 3111.34, 141 v H 476 (Eff 9-24-86); RC § 3111.92, 148 v S 180, Eff 3-22-2001.

§ 3111.93 Contents of consent form; providing information about donor; noting of date.

(A) Prior to a non-spousal artificial insemination, the physician associated with it shall do the following:

(1) Obtain the written consent of the recipient on a form that the physician shall provide. The written consent shall contain all of the following:

(a) The name and address of the recipient and, if married, her husband;

(b) The name of the physician;

(c) The proposed location of the performance of the artificial insemination;

(d) A statement that the recipient and, if married, her husband consent to the artificial insemination;

(e) If desired, a statement that the recipient and, if married, her husband consent to more than one artificial insemination if necessary;

(f) A statement that the donor shall not be advised by the physician or another person performing the artificial insemination as to the identity of the recipient or, if married, her husband and that the recipient and, if married, her husband shall not be advised by the physician or another person performing the artificial insemination as to the identity of the donor;

(g) A statement that the physician is to obtain necessary semen from a donor and, subject to any agreed upon provision as described in division (A)(1)(n) of this section, that the recipient and, if married, her husband shall rely upon the judgment and discretion of the physician in this regard;

(h) A statement that the recipient and, if married, her husband understand that the physician cannot be respon-

sible for the physical or mental characteristics of any child resulting from the artificial insemination;

(i) A statement that there is no guarantee that the recipient will become pregnant as a result of the artificial insemination;

(j) A statement that the artificial insemination shall occur in compliance with sections 3111.88 to 3111.96 of the Revised Code;

(k) A brief summary of the paternity consequences of the artificial insemination as set forth in section 3111.95 of the Revised Code;

(l) The signature of the recipient and, if married, her husband;

(m) If agreed to, a statement that the artificial insemination will be performed by a person who is under the supervision and control of the physician;

(n) Any other provision that the physician, the recipient, and, if married, her husband agree to include.

(2) Upon request, provide the recipient and, if married, her husband with the following information to the extent the physician has knowledge of it:

(a) The medical history of the donor, including, but not limited to, any available genetic history of the donor and persons related to him by consanguinity, the blood type of the donor, and whether he has an RH factor;

(b) The race, eye and hair color, age, height, and weight of the donor;

(c) The educational attainment and talents of the donor;

(d) The religious background of the donor;

(e) Any other information that the donor has indicated may be disclosed.

(B) After each non-spousal artificial insemination of a woman, the physician associated with it shall note the date of the artificial insemination in the physician's records pertaining to the woman and the artificial insemination, and retain this information as provided in section 3111.94 of the Revised Code.

HISTORY: RC § 3111.35, 141 v H 476 (Eff 9-24-86); RC § 3111.93, 148 v S 180, Eff 3-22-2001.

§ 3111.94 Confidentiality and retention of information.

(A) The physician who is associated with a non-spousal artificial insemination shall place the written consent obtained pursuant to division (A)(1) of section 3111.93 of the Revised Code, information provided to the recipient and, if married, her husband pursuant to division (A)(2) of that section, other information concerning the donor that the physician possesses, and other matters concerning the artificial insemination in a file that shall bear the name of the recipient. This file shall be retained by the physician in the physician's office separate from any regular medical chart of the recipient, and shall be confidential, except as provided in divisions (B) and (C) of this section. This file is not a public record under section 149.43 of the Revised Code.

(B) The written consent form and information provided to the recipient and, if married, her husband pursuant to division (A)(2) of section 3111.93 of the Revised Code shall be open to inspection only until the child born as the result of the non-spousal artificial insemination is twenty-one years of age, and only to the recipient or, if married, her husband upon request to the physician.

(C) Information pertaining to the donor that was not provided to the recipient and, if married, her husband pursuant to division (A)(2) of section 3111.93 of the Revised Code and that the physician possesses shall be kept in the file pertaining to the non-spousal artificial insemination for at least five years from the date of the artificial insemination. At the expiration of this period, the physician may destroy such information or retain it in the file.

The physician shall not make this information available for inspection by any person during the five-year period or, if the physician retains the information after the expiration of that period, at any other time, unless the following apply:

(1) A child is born as a result of the artificial insemination, an action is filed by the recipient, her husband if she is married, or a guardian of the child in the domestic relations division or, if there is no domestic relations division, the general division of the court of common pleas of the county in which the office of the physician is located, the child is not twenty-one years of age or older, and the court pursuant to division (C)(2) of this section issues an order authorizing the inspection of specified types of information by the recipient, husband, or guardian;

(2) Prior to issuing an order authorizing an inspection of information, the court shall determine, by clear and convincing evidence, that the information that the recipient, husband, or guardian wishes to inspect is necessary for or helpful in the medical treatment of the child born as a result of the artificial insemination, and shall determine which types of information in the file are germane to the medical treatment and are to be made available for inspection by the recipient, husband, or guardian in that regard. An order only shall authorize the inspection of information germane to the medical treatment of the child.

HISTORY: RC § 3111.36, 141 v H 476 (Eff 9-24-86); RC § 3111.94, 148 v S 180. Eff 3-22-2001.

§ 3111.95 Recipient's husband considered natural father; status of donor.

(A) If a married woman is the subject of a non-spousal artificial insemination and if her husband consented to the artificial insemination, the husband shall be treated in law and regarded as the natural father of a child conceived as a result of the artificial insemination, and a child so conceived shall be treated in law and regarded as the natural child of the husband. A presumption that arises under division (A)(1) or (2) of section 3111.03 of the Revised Code is conclusive with respect to this father and child relationship, and no action or proceeding under sections 3111.01 to 3111.18 or sections 3111.38 to 3111.54 of the Revised Code shall affect the relationship.

(B) If a woman is the subject of a non-spousal artificial insemination, the donor shall not be treated in law or regarded as the natural father of a child conceived as a result of the artificial insemination, and a child so conceived shall not be treated in law or regarded as the natural child of the donor. No action or proceeding under sections 3111.01 to 3111.18 or sections 3111.38 to 3111.54 of the Revised Code shall affect these consequences.

HISTORY: RC § 3111.37, 141 v H 476 (Eff 9-24-86); 147 v H 352 (Eff 1-1-98); 148 v H 242 (Eff 10-27-2000); RC § 3111.95, 148 v S 180. Eff 3-22-2001.

§ 3111.96 Effect of noncompliance.

The failure of a physician or person under the supervision and control of a physician to comply with the applicable requirements of sections 3111.88 to 3111.95 of the Revised Code shall not affect the legal status, rights, or obligations of a child conceived as a result of a non-spousal artificial insemination, a recipient, a husband who consented to the non-spousal artificial insemination of his wife, or the donor. If a recipient who is married and her husband make a good faith effort to execute a written consent that is in compliance with section 3111.93 of the Revised Code relative to a non-spousal artificial insemination, the failure of the written consent to so comply shall not affect the paternity consequences set forth in division (A) of section 3111.95 of the Revised Code.

HISTORY: RC § 3111.38, 141 v H 476 (Eff 9-24-86); RC § 3111.96, 148 v S 180. Eff 3-22-2001.

§ 3111.97 Parentage of child born as result of embryo donation.

(A) A woman who gives birth to a child born as a result of embryo donation shall be treated in law and regarded as the natural mother of the child, and the child shall be treated in law and regarded as the natural child of the woman. No action or proceeding under this chapter shall affect the relationship.

(B) If a married woman gives birth to a child born as a result of embryo donation to which her husband consented, the husband shall be treated in law and regarded as the natural father of the child, and the child shall be treated in law and regarded as the natural child of the husband. A presumption that arises under division (A)(1) or (2) of section 3111.03 of the Revised Code is conclusive with respect to this father and child relationship, and no action or proceeding under this chapter shall affect the relationship.

(C) If a married woman gives birth to a child born as a result of embryo donation to which her husband has not consented, a presumption that arises under division (A)(1) or (2) of section 3111.03 of the Revised Code that the husband is the father of the child may be rebutted by clear and convincing evidence that includes the lack of consent to the embryo donation.

(D) As used in this division, "donor" means an individual who produced genetic material used to create an embryo, consents to the implantation of the embryo in a woman who is not the individual or the individual's wife, and at the time of the embryo donation does not intend to raise the resulting child as the individual's own.

If an individual who produced genetic material used to create an embryo dies, the other person who produced genetic material used to create the embryo may consent to donate the embryo. In such a case, the deceased person shall be deemed a donor for the purposes of this section.

A donor shall not be treated in law or regarded as a parent of a child born as a result of embryo donation. A donor shall have no parental responsibilities and shall have no right, obligation, or interest with respect to a child resulting from the donation.

(E) This section deals with embryo donation for the purpose of impregnating a woman so that she can bear a child that she intends to raise as her child.

HISTORY: 151 v H 102, § 1, eff. 6-15-06.

§ 3111.99 Penalty.

Whoever violates section 3111.19 of the Revised Code is guilty of interfering with the establishment of paternity, a misdemeanor of the first degree.

HISTORY: 144 v S 10 (Eff 7-15-92); 146 v S 2 (Eff 7-1-96); 146 v H 167 (Eff 6-11-96)†; 147 v H 352 (Eff 1-1-98); 148 v H 471 (Eff 7-1-2000); 148 v S 180. Eff 3-22-2001.

† The effective date of HB 167 (146 v —) was changed from 11-15-96 to 6-11-96 by § 7 of HB 710 (146 v —).

CHAPTER 3113: NEGLECT, ABANDONMENT, OR DOMESTIC VIOLENCE

§ 3113.31 Definitions; jurisdiction; petition; hearing; protection orders; consent agreements.

(A) As used in this section:

(1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member:

(a) Attempting to cause or recklessly causing bodily injury;

(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 [2903.21.1] or 2911.211 [2911.21.1] of the Revised Code;

(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 [2151.03.1] of the Revised Code;

(d) Committing a sexually oriented offense.

(2) "Court" means the domestic relations division of the court of common pleas in counties that have a domestic relations division, and the court of common pleas in counties that do not have a domestic relations division.

(3) "Family or household member" means any of the following:

(a) Any of the following who is residing with or has resided with the respondent:

(i) A spouse, a person living as a spouse, or a former spouse of the respondent;

(ii) A parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(b) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

(4) "Person living as a spouse" means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited with the respondent within five years prior to the date of the alleged occurrence of the act in question.

(5) "Victim advocate" means a person who provides support and assistance for a person who files a petition under this section.

(6) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(B) The court has jurisdiction over all proceedings under this section. The petitioner's right to relief under this section is not affected by the petitioner's leaving the residence or household to avoid further domestic violence.

(C) A person may seek relief under this section on the person's own behalf, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state:

(1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence;

(2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner;

(3) A request for relief under this section.

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing on the same day that the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, including, but not limited to, an order described in division (E)(1)(a), (b), or (c) of this section, that the court finds necessary to protect the family or household member from domestic violence. Immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm, in which the respondent has threatened the family or household member with a sexually oriented offense, or in which the respondent previously has been convicted of or pleaded guilty to an offense that constitutes domestic violence against the family or household member.

(2)(a) If the court, after an ex parte hearing, issues an order described in division (E)(1)(b) or (c) of this section, the court shall schedule a full hearing for a date that is within seven court days after the ex parte hearing. If any other type of protection order that is authorized under division (E) of this section is issued by the court after an ex parte hearing, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court may grant a continuance of the full hearing to a reasonable time determined by the court:

(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

(ii) The parties consent to the continuance.

(iii) The continuance is needed to allow a party to obtain counsel.

(iv) The continuance is needed for other good cause.

(b) An ex parte order issued under this section does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under division (D)(2)(a) of this section or

because the court grants a continuance under that division.

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1) After an ex parte or full hearing, the court⁴ may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members. The order or agreement may:

(a) Direct the respondent to refrain from abusing or from committing sexually oriented offenses against the family or household members;

(b) Grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or by ordering the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent, and the petitioner or other family or household member;

(c) When the respondent has a duty to support the petitioner or other family or household member living in the residence or household and the respondent is the sole owner or lessee of the residence or household, grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing;

(d) Temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights;

(e) Require the respondent to maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member;

(f) Require the respondent, petitioner, victim of domestic violence, or any combination of those persons, to seek counseling;

(g) Require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(h) Grant other relief that the court considers equitable and fair, including, but not limited to, ordering the respondent to permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

(2) If a protection order has been issued pursuant to this section in a prior action involving the respondent and the petitioner or one or more of the family or household members or victims, the court may include in a protection order that it issues a prohibition against the respondent returning to the residence or household. If it includes a prohibition against the respondent returning to the residence or household in the order, it also shall include in the order provisions of the type described in division (E)(7) of this section. This division does not preclude the

court from including in a protection order or consent agreement, in circumstances other than those described in this division, a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, and, if the court includes any requirement of that type in an order or agreement, the court also shall include in the order provisions of the type described in division (E)(7) of this section.

(3)(a) Any protection order issued or consent agreement approved under this section shall be valid until a date certain, but not later than five years from the date of its issuance or approval unless modified or terminated as provided in division (E)(8) of this section.

(b) Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(d) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues an order allocating parental rights and responsibilities for the care of children or on the date that a juvenile court in an action brought by the petitioner or respondent issues an order awarding legal custody of minor children. Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(e) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues a support order or on the date that a juvenile court in an action brought by the petitioner or respondent issues a support order.

(c) Any protection order issued or consent agreement approved pursuant to this section may be renewed in the same manner as the original order or agreement was issued or approved.

(4) A court may not issue a protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do or to refrain from doing under division (E)(1)(a), (b), (c), (d), (e), (g), or (h) of this section unless all of the following apply:

(a) The respondent files a separate petition for a protection order in accordance with this section.

(b) The petitioner is served notice of the respondent's petition at least forty-eight hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.

(c) If the petitioner has requested an ex parte order pursuant to division (D) of this section, the court does not delay any hearing required by that division beyond the time specified in that division in order to consolidate the hearing with a hearing on the petition filed by the respondent.

(d) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed an act of domestic violence or has violated a temporary protection order issued pursuant to section 2919.26 of the Revised Code, that both the petitioner and the respondent acted primarily as aggressors, and that neither the petitioner nor the respondent acted primarily in self-defense.

(5) No protection order issued or consent agreement approved under this section shall in any manner affect title to any real property.

(6)(a) If a petitioner, or the child of a petitioner, who obtains a protection order or consent agreement pursuant to division (E)(1) of this section or a temporary protection order pursuant to section 2919.26 of the Revised Code and is the subject of a parenting time order issued pursuant to section 3109.051 [3109.05.1] or 3109.12 of the Revised Code or a visitation or companionship order issued pursuant to section 3109.051 [3109.05.1], 3109.11, or 3109.12 of the Revised Code or division (E)(1)(d) of this section granting parenting time rights to the respondent, the court may require the public children services agency of the county in which the court is located to provide supervision of the respondent's exercise of parenting time or visitation or companionship rights with respect to the child for a period not to exceed nine months, if the court makes the following findings of fact:

- (i) The child is in danger from the respondent;
- (ii) No other person or agency is available to provide the supervision.

(b) A court that requires an agency to provide supervision pursuant to division (E)(6)(a) of this section shall order the respondent to reimburse the agency for the cost of providing the supervision, if it determines that the respondent has sufficient income or resources to pay that cost.

(7)(a) If a protection order issued or consent agreement approved under this section includes a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, the order or agreement shall state clearly that the order or agreement cannot be waived or nullified by an invitation to the respondent from the petitioner or other family or household member to enter the residence, school, business, or place of employment or by the respondent's entry into one of those places otherwise upon the consent of the petitioner or other family or household member.

(b) Division (E)(7)(a) of this section does not limit any discretion of a court to determine that a respondent charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a protection order issued or consent agreement approved under this section, did not commit the violation or was not in contempt of court.

(8)(a) The court may modify or terminate as provided in division (E)(8) of this section a protection order or consent agreement that was issued after a full hearing under this section. The court that issued the protection order or approved the consent agreement shall hear a motion for modification or termination of the protection order or consent agreement pursuant to division (E)(8) of this section.

(b) Either the petitioner or the respondent of the original protection order or consent agreement may bring a motion for modification or termination of a protection order or consent agreement that was issued or approved after a full hearing. The court shall require notice of the motion to be made as provided by the Rules of Civil Procedure. If the petitioner for the original protection order or consent agreement has requested that the petitioner's address be kept confidential, the court shall not disclose the address to the respondent of the original protection order or consent agreement or any other person, except as otherwise required by law. The moving

party has the burden of proof to show, by a preponderance of the evidence, that modification or termination of the protection order or consent agreement is appropriate because either the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate.

(c) In considering whether to modify or terminate a protection order or consent agreement issued or approved under this section, the court shall consider all relevant factors, including, but not limited to, the following:

- (i) Whether the petitioner consents to modification or termination of the protection order or consent agreement;

- (ii) Whether the petitioner fears the respondent;

- (iii) The current nature of the relationship between the petitioner and the respondent;

- (iv) The circumstances of the petitioner and respondent, including the relative proximity of the petitioner's and respondent's workplaces and residences and whether the petitioner and respondent have minor children together;

- (v) Whether the respondent has complied with the terms and conditions of the original protection order or consent agreement;

- (vi) Whether the respondent has a continuing involvement with illegal drugs or alcohol;

- (vii) Whether the respondent has been convicted of or pleaded guilty to an offense of violence since the issuance of the protection order or approval of the consent agreement;

- (viii) Whether any other protection orders, consent agreements, restraining orders, or no contact orders have been issued against the respondent pursuant to this section, section 2919.26 of the Revised Code, any other provision of state law, or the law of any other state;

- (ix) Whether the respondent has participated in any domestic violence treatment, intervention program, or other counseling addressing domestic violence and whether the respondent has completed the treatment, program, or counseling;

- (x) The time that has elapsed since the protection order was issued or since the consent agreement was approved;

- (xi) The age and health of the respondent;

- (xii) When the last incident of abuse, threat of harm, or commission of a sexually oriented offense occurred or other relevant information concerning the safety and protection of the petitioner or other protected parties.

(d) If a protection order or consent agreement is modified or terminated as provided in division (E)(8) of this section, the court shall issue copies of the modified or terminated order or agreement as provided in division (F) of this section. A petitioner may also provide notice of the modification or termination to the judicial and law enforcement officials in any county other than the county in which the order or agreement is modified or terminated as provided in division (N) of this section.

(e) If the respondent moves for modification or termination of a protection order or consent agreement pursuant to this section, the court may assess costs against the respondent for the filing of the motion.

(F)(1) A copy of any protection order, or consent agreement, that is issued, approved, modified, or terminated under this section shall be issued by the court to the petitioner, to the respondent, and to all law enforce-

ment agencies that have jurisdiction to enforce the order or agreement. The court shall direct that a copy of an order be delivered to the respondent on the same day that the order is entered.

(2) All law enforcement agencies shall establish and maintain an index for the protection orders and the approved consent agreements delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order and consent agreement delivered, each agency shall note on the index the date and time that it received the order or consent agreement.

(3) Regardless of whether the petitioner has registered the order or agreement in the county in which the officer's agency has jurisdiction pursuant to division (N) of this section, any officer of a law enforcement agency shall enforce a protection order issued or consent agreement approved by any court in this state in accordance with the provisions of the order or agreement, including removing the respondent from the premises, if appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that an order under this section may be obtained with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order or approves a consent agreement that modifies or terminates a protection order or consent agreement, or that refuses to modify or terminate a protection order or consent agreement, that refuses to grant a protection order or approve a consent agreement, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.

(H) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 [2151.42.1] of the Revised Code or by any other law. When a petition under this section alleges domestic violence against minor children, the court shall report the fact, or cause reports to be made, to a county, township, or municipal peace officer under section 2151.421 [2151.42.1] of the Revised Code.

(I) Any law enforcement agency that investigates a domestic dispute shall provide information to the family or household members involved regarding the relief available under this section and section 2919.26 of the Revised Code.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition pursuant to this section or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K)(1) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

(2) If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified under this section on or after December 31, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require

the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(L)(1) A person who violates a protection order issued or a consent agreement approved under this section is subject to the following sanctions:

(a) Criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order or consent agreement constitutes a violation of that section;

(b) Punishment for contempt of court.

(2) The punishment of a person for contempt of court for violation of a protection order issued or a consent agreement approved under this section does not bar criminal prosecution of the person for a violation of section 2919.27 of the Revised Code. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section shall not subsequently be punished for contempt of court arising out of the same activity.

(M) In all stages of a proceeding under this section, a petitioner may be accompanied by a victim advocate.

(N)(1) A petitioner who obtains a protection order or consent agreement under this section or a temporary protection order under section 2919.26 of the Revised Code may provide notice of the issuance or approval of the order or agreement to the judicial and law enforcement officials in any county other than the county in which the order is issued or the agreement is approved by registering that order or agreement in the other county pursuant to division (N)(2) of this section and filing a copy of the registered order or registered agreement with a law enforcement agency in the other county in accordance with that division. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to section 2919.272 [2919.27.2] of the Revised Code and filing a copy of the registered order with a law enforcement agency in that county.

(2) A petitioner may register a temporary protection order, protection order, or consent agreement in a county other than the county in which the court that issued the order or approved the agreement is located in the following manner:

(a) The petitioner shall obtain a certified copy of the order or agreement from the clerk of the court that issued the order or approved the agreement and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order or agreement is to be registered.

(b) Upon accepting the certified copy of the order or agreement for registration, the clerk of the court of common pleas, municipal court, or county court shall place an endorsement of registration on the order or agreement and give the petitioner a copy of the order or agreement that bears that proof of registration.

(3) The clerk of each court of common pleas, the clerk of each municipal court, and the clerk of each county court shall maintain a registry of certified copies of temporary protection orders, protection orders, or consent agreements that have been issued or approved by courts in other counties and that have been registered with the clerk.

HISTORY: 137 v H 835 (Eff 3-27-79); 138 v H 920 (Eff 4-9-81); 140 v H 587 (Eff 9-25-84); 140 v H 614 (Eff 4-10-85); 140 v H 113 (Eff 1-8-85); 141 v H 509 (Eff 12-1-86); 141 v H 428 (Eff 12-23-86); 142 v H 231 (Eff 10-5-87); 142 v H 708 (Eff 4-19-88); 142 v H 172 (Eff 3-17-89); 143 v H 591 (Eff 4-12-90); 143 v S 3 (Eff 4-11-91); 144 v S 10 (Eff 7-15-92); 144 v H 536 (Eff 11-5-92); 145 v H 173 (Eff 12-31-93); 145 v H 335 (Eff 12-9-94); 146 v H 274 (Eff 8-8-96); 146 v H 438 (Eff 7-1-97); 147 v S 1 (Eff 10-21-97); 147 v H 352 (Eff 1-1-98); 148 v S 180 (Eff 3-22-2001); 149 v H 548, Eff 3-31-2003; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07.

Comment, Legislative Service Commission

Section 3113.31 of the Revised Code is amended by Am. Sub. S.B. 17 and Am. Sub. H.B. 95 of the 126th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are identical, and that S.B. 17 is the later amendment concurred by the General Assembly.

§ 3113.32 Records of domestic dispute and violence problems; annual statistical report.

(A) The sheriff of a county, constable or chief of police of a township, and chief of police of a city or village shall keep a separate record of domestic dispute and domestic violence problems on a form prepared and distributed by the superintendent of the bureau of criminal identification and investigation. The forms shall contain spaces for the reporting of all information that the superintendent determines to be relevant to domestic dispute and domestic violence problems, including, but not limited to, the number of domestic dispute and domestic violence problems reported to the law enforcement agency for which the record is kept, the relationship of the complainant and the person allegedly the victim of the domestic violence, if different, to the alleged offender, and the relationship of all other persons involved in the domestic dispute or domestic violence problem, and the action taken by the law enforcement officers who handled the domestic dispute or domestic violence problem. A copy of the record shall be submitted to the bureau each month.

(B) The superintendent of the bureau of criminal identification and investigation shall receive copies of monthly records of domestic dispute and domestic violence problems kept by local law enforcement agencies and submitted to him under division (A) of this section. The superintendent shall compile the data and annually produce a statistical public report on the incidence of domestic disputes and violence in this state and its political subdivisions. The report shall be prepared in such a manner that there is no identifying data, including the names and addresses of the persons involved in the domestic dispute and domestic violence problems, that would enable any person to determine the identity of any of the persons involved.

(C) The attorney general shall oversee the statistical reporting required pursuant to this section to ensure that it is complete and accurate.

HISTORY: 140 v H 587, Eff 9-25-84.

Analogous to former RC § 3113.32 (137 v H 835), repealed 137 v H 835, § 3, eff 3-27-83.

CHAPTER 3115: UNIFORM INTERSTATE FAMILY SUPPORT ACT

§ 3115.37 Obligor's remedy for contesting withholding order.

(A) If a person designated as an obligor under an income withholding order issued in another state and

received directly by a payor in this state believes that the person is not subject to a support order or does not have a duty of support under any order issued by any tribunal pursuant to which the income withholding order was issued, the person may contact the office of child support in the department of job and family services and request that the office investigate whether the person is subject to such a support order or has such a duty of support. Not later than fifteen days after the date the request is made, the office shall conduct the investigation and notify the person of its determination. If the office determines that the person is subject to a support order or does have a duty of support under any order issued by any tribunal pursuant to which the income withholding order was issued, the person may contest the validity or enforcement of the income withholding order by filing an action for declaratory judgment pursuant to Chapter 2721. of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code in the county in which is located the payor's principal place of business requesting that the court determine whether the person is the obligor subject to a support order or has a duty of support under a support order pursuant to which the income withholding order was issued.

(B) The obligor shall give notice of the action initiated pursuant to Chapter 2721. of the Revised Code to all of the following:

- (1) A support enforcement agency providing services to the obligee;
- (2) Each payor that has directly received an income withholding order;
- (3) The person or agency designated to receive payments in the income withholding order or, if no person or agency is designated, the obligee.

(C) Notwithstanding sections 3115.32 to 3115.36 of the Revised Code, if the office determines, or the court issues an order determining, that the person is not an obligor subject to a support order or does not have a duty of support under a support order pursuant to which the income withholding order was issued, the payor shall not enforce the income withholding order against the person.

HISTORY: 147 v H 352 (Eff 1-1-98); 148 v S 180, Eff 3-22-2001.

CHAPTER 3119: CALCULATION OF CHILD SUPPORT OBLIGATION — HEALTH INSURANCE COVERAGE

§ 3119.61 Commencement of review of administrative order; modification.

The child support enforcement agency shall review an administrative child support order on the date established pursuant to section 3119.60 of the Revised Code for formally beginning the review of the order. If the agency determines that a modification is necessary and in the best interest of the child subject to the order, the agency shall calculate the amount the obligor shall pay in accordance with section 3119.021 [3119.02.1] of the Revised Code. The agency may not grant a deviation pursuant to section 3119.23 of the Revised Code from the guidelines set forth in section 3119.021 [3119.02.1] of the Revised Code. If the agency can set the child support the obligor is to pay without granting such a deviation from the guidelines, the agency shall do the following:

(A) Give the obligor and obligee notice of the revised amount of child support to be paid under the administrative child support order, of their right to request an administrative hearing on the revised child support amount, of the procedures and time deadlines for requesting the hearing, and that the agency will modify the administrative child support order to include the revised child support amount unless the obligor or obligee requests an administrative hearing on the revised amount no later than thirty days after receipt of the notice under this division;

(B) If neither the obligor nor obligee timely requests an administrative hearing on the revised amount of child support, modify the administrative child support order to include the revised child support amount;

(C) If the obligor or obligee timely requests an administrative hearing on the revised amount of child support, do all of the following:

- (1) Schedule a hearing on the issue;
- (2) Give the obligor and obligee notice of the date, time, and location of the hearing;
- (3) Conduct the hearing in accordance with the rules adopted under section 3119.76 of the Revised Code;
- (4) Redetermine at the hearing a revised amount of child support to be paid under the administrative child support order;
- (5) Modify the order to include the revised amount of child support;
- (6) Give notice to the obligor and obligee of the amount of child support to be paid under the order and that the obligor and obligee may object to the modified order by initiating an action under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the mother, the father, the child, or the guardian or custodian of the child reside.

Except as otherwise provided in section 3119.772 [3119.77.2] of the Revised Code, if the agency modifies an existing administrative child support order, the modification shall relate back to the first day of the month following the date certain on which the review began under section 3119.60 of the Revised Code.

If the agency cannot set the amount of child support the obligor will pay under the administrative child support order without granting a deviation pursuant to section 3119.23 of the Revised Code, the agency shall bring an action under section 2151.231 [2151.23.1] of the Revised Code on behalf of the person who requested that the agency review the existing administrative order or, if no one requested the review, on behalf of the obligee, in the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the agency is located requesting that the court issue a child support order.

HISTORY: 148 v S 180. Eff 3-22-2001; 150 v H 149, § 1, eff. 6-2-04.

§ 3119.91 Request for administrative hearing on investigation conclusions; objection to decision.

If an obligor or obligee under a child support order timely requests an administrative hearing pursuant to section 3119.90 of the Revised Code, the child support enforcement agency shall schedule a hearing on the issue, give the parties notice of the date, time, and location of

the hearing, and conduct the hearing. On completion of the hearing, the child support enforcement agency shall issue a decision. The decision shall include a notice stating that the obligor or obligee may object to the decision by filing a motion within thirty days after the issuance of the decision in one of the following courts requesting a determination as to whether the order should be terminated or whether any other appropriate determination regarding the order should be made:

(A) With respect to a court child support order, in the court that issued the order or that otherwise has jurisdiction over the order;

(B) With respect to an administrative child support order, the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the agency that issued the order is located.

The notice shall also state that if neither the obligor nor the obligee files the motion within the thirty-day period, the administrative hearing decision is final and will be filed with the court or in the administrative case file.

HISTORY: 148 v S 180. Eff 3-22-2001.

[§ 3119.96.1] § 3119.961 Filing of motion for relief from paternity determination or support order; transfer of action.

(A) Notwithstanding the provisions to the contrary in Civil Rule 60(B) and in accordance with this section, a person may file a motion for relief from a final judgment, court order, or administrative determination or order that determines that the person or a male minor referred to in division (B) of section 3109.19 of the Revised Code is the father of a child or from a child support order under which the person or male minor is the obligor. Except as otherwise provided in this section, the person shall file the motion in the division of the court of common pleas of the county in which the original judgment, court order, or child support order was made or issued or in the division of the court of common pleas of the county that has jurisdiction involving the administrative determination or order. If the determination of paternity is an acknowledgment of paternity that has become final under section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code or former section 3111.211 [3111.21.1] or 5101.314 [5101.31.4] of the Revised Code, the person shall file the motion in the juvenile court or other court with jurisdiction of the county in which the person or the child who is the subject of the acknowledgment resides.

(B) On the motion of any adverse party or on its own motion, the court in which an action is brought under this section may transfer the action to the county in which an adverse party resides when it appears to the court that the location of the original venue presents a hardship for that adverse party.

HISTORY: 148 v S 180 (Eff 3-22-2001); 149 v S 208. Eff 1-25-2002.

CHAPTER 3121: COLLECTION AND DISBURSEMENT OF CHILD SUPPORT

§ 3121.37 Noncompliance with administrative order as contempt.

If an obligor or any other person fails to comply with an administrative child support order, the agency that issued

the order may request that the juvenile court or other court with jurisdiction under section 2101.022 [2101.02.2] or 2301.03 of the Revised Code of the county in which the agency is located find the obligor or other person in contempt pursuant to section 2705.02 of the Revised Code.

HISTORY: 148 v S 180, Eff 3-22-2001.

CHAPTER 3127: UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

§ 3127.01 Definitions.

(A) As used in the Revised Code, "uniform child custody jurisdiction and enforcement act" means the act addressing interstate recognition and enforcement of child custody orders adopted in 1997 by the national conference of commissioners on uniform state laws or any law substantially similar to the act adopted by another state.

(B) As used in sections 3127.01 to 3127.53 of the Revised Code:

(1) "Abandoned" means the parents of a child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that ninety-day period.

(2) "Child" means an individual who has not attained eighteen years of age.

(3) "Child custody determination" means a judgment, decree, or other order of a court that provides for legal custody, physical custody, parenting time, or visitation with respect to a child. "Child custody determination" includes an order that allocates parental rights and responsibilities. "Child custody determination" includes permanent, temporary, initial, and modification orders. "Child custody determination" does not include an order or the portion of an order relating to child support or other monetary obligations of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, parenting time, or visitation with respect to a child is an issue. "Child custody proceeding" may include a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights, or protection from domestic violence. "Child custody proceeding" does not include a proceeding regarding juvenile delinquency, contractual emancipation, or enforcement pursuant to sections 3127.31 to 3127.47 of the Revised Code.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under sections 3127.01 to 3127.53 of the Revised Code.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than the child's parent, who meets both of the following criteria:

(a) The person has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence from the child, within one year immediately before the commencement of a child custody proceeding; and

(b) The person has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or Alaskan Native village that is recognized by federal or state law.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

HISTORY: 150 v S 185, § 1, eff. 4-11-05.

§ 3127.23 Duty of parties to provide information; sealing of information.

(A) Each party in a child custody proceeding, in the party's first pleading or in an affidavit attached to that pleading, shall give information if reasonably ascertainable under oath as to the child's present address or whereabouts, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period. In this pleading or affidavit, each party also shall include all of the following information:

(1) Whether the party has participated as a party, a witness, or in any other capacity in any other proceeding concerning the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child including any designation of parenting time rights and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of or visitation with the same child and, if so, the court, case number and the date of the child custody determination, if any;

(2) Whether the party knows of any proceedings that could affect the current proceeding, including proceedings for enforcement of child custody determinations, proceedings relating to domestic violence or protection orders, proceedings to adjudicate the child as an abused,

neglected, or dependent child, proceedings seeking termination of parental rights, and adoptions, and, if so, the court, the case number, and the nature of the proceeding;

(3) Whether the party knows of any person who is not a party to the proceeding and has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child and, if so, the names and addresses of those persons.

(B) If the declaration under division (A)(1), (2), or (3) of this section is in the affirmative, the declarant shall give additional information as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(C) Each party has a continuing duty to inform the court of any child custody proceeding concerning the child in this or any other state that could affect the current proceeding.

(D) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child

would be jeopardized by the disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, and liberty of the party or child and determines that the disclosure is in the interests of justice.

(E) A public children services agency, acting pursuant to a complaint or an action on a complaint filed under section 2151.27 of the Revised Code, is not subject to the requirements of this section.

(F) As used in this section, "abused child" has the same meaning as in section 2151.031 [2151.03.1] of the Revised Code, "neglected child" has the same meaning as in section 2151.03 of the Revised Code, and "dependent child" has the same meaning as in section 2151.04 of the Revised Code.

HISTORY: 137 v S 135 (Eff 10-25-77); 143 v S 3 (Eff 4-11-91); 146 v H 274 (Eff 8-8-96); 148 v S 180, Eff 3-22-2001; 150 v S 185, § 1, eff. 4-11-05.

Publisher's Note:

This section was amended and renumbered from RC § 3109.27 by 150 v S 185, effective April 11, 2005.

TITLE 33: EDUCATION — LIBRARIES

CHAPTER 3313: BOARDS OF EDUCATION

§ 3313.65 Admission and tuition for children of institutionalized or incarcerated parents.

(A) As used in this section and section 3313.64 of the Revised Code:

(1) A person is "in a residential facility" if the person is a resident or a resident patient of an institution, home, or other residential facility that is:

(a) Licensed as a nursing home, residential care facility, or home for the aging by the director of health under section 3721.02 of the Revised Code or licensed as a community alternative home by the director of health under section 3724.03 of the Revised Code;

(b) Licensed as an adult care facility by the director of health under Chapter 3722. of the Revised Code;

(c) Maintained as a county home or district home by the board of county commissioners or a joint board of county commissioners under Chapter 5155. of the Revised Code;

(d) Operated or administered by a board of alcohol, drug addiction, and mental health services under section 340.03 or 340.06 of the Revised Code, or provides residential care pursuant to contracts made under section 340.03 or 340.033 [340.03.3] of the Revised Code;

(e) Maintained as a state institution for the mentally ill under Chapter 5119. of the Revised Code;

(f) Licensed by the department of mental health under section 5119.20 or 5119.22 of the Revised Code;

(g) Licensed as a residential facility by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code;

(h) Operated by the veteran's administration or another agency of the United States government;

(i) The Ohio soldiers' and sailors' home.

(2) A person is "in a correctional facility" if any of the following apply:

(a) The person is an Ohio resident and is:

(i) Imprisoned, as defined in section 1.05 of the Revised Code;

(ii) Serving a term in a community-based correctional facility or a district community-based correctional facility;

(iii) Required, as a condition of parole, a post-release control sanction, a community control sanction, transitional control, or early release from imprisonment, as a condition of shock parole or shock probation granted under the law in effect prior to July 1, 1996, or as a condition of a furlough granted under the version of section 2967.26 of the Revised Code in effect prior to March 17, 1998, to reside in a halfway house or other community residential center licensed under section 2967.14 of the Revised Code or a similar facility designated by the court of common pleas that established the condition or by the adult parole authority.

(b) The person is imprisoned in a state correctional institution of another state or a federal correctional institution but was an Ohio resident at the time the sentence was imposed for the crime for which the person is imprisoned.

(3) A person is "in a juvenile residential placement" if the person is an Ohio resident who is under twenty-one years of age and has been removed, by the order of a juvenile court, from the place the person resided at the time the person became subject to the court's jurisdiction in the matter that resulted in the person's removal.

(4) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(5) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(B) If the circumstances described in division (C) of this section apply, the determination of what school district must admit a child to its schools and what district, if any, is liable for tuition shall be made in accordance

with this section, rather than section 3313.64 of the Revised Code.

(C) A child who does not reside in the school district in which the child's parent resides and for whom a tuition obligation previously has not been established under division (C) (2) of section 3313.64 of the Revised Code shall be admitted to the schools of the district in which the child resides if at least one of the child's parents is in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, is not known to reside in this state.

(D) Regardless of who has custody or care of the child, whether the child resides in a home, or whether the child receives special education, if a district admits a child under division (C) of this section, tuition shall be paid to that district as follows:

(1) If the child's parent is in a juvenile residential placement, by the district in which the child's parent resided at the time the parent became subject to the jurisdiction of the juvenile court;

(2) If the child's parent is in a correctional facility, by the district in which the child's parent resided at the time the sentence was imposed;

(3) If the child's parent is in a residential facility, by the district in which the parent resided at the time the parent was admitted to the residential facility, except that if the parent was transferred from another residential facility, tuition shall be paid by the district in which the parent resided at the time the parent was admitted to the facility from which the parent first was transferred;

(4) In the event of a disagreement as to which school district is liable for tuition under division (C)(1), (2), or (3) of this section, the superintendent of public instruction shall determine which district shall pay tuition.

(E) If a child covered by division (D) of this section receives special education in accordance with Chapter 3323. of the Revised Code, the tuition shall be paid in accordance with section 3323.13 or 3323.14 of the Revised Code. Tuition for children who do not receive special education shall be paid in accordance with division (J) of section 3313.64 of the Revised Code.

HISTORY: 140 v H 210 (Eff 12-12-83); 141 v H 428 (Eff 12-23-86); 143 v S 2 (Eff 11-1-89); 143 v H 253 (Eff 11-15-90); 143 v H 317 (Eff 10-10-89); 145 v H 571 (Eff 10-6-94); 146 v H 117 (Eff 9-29-95); 146 v S 2 (Eff 7-1-96); 147 v S 111 (Eff 3-17-98); 150 v H 3, § 1, eff. 8-15-03; 149 v H 490, § 1, eff. 1-1-04; 150 v H 3, § 6, eff. 1-1-04.

The effective date is set by section 8 of H.B. 3 (150 v —).

Not analogous to former RC § 3313.65 (GC § 4838-3; 120 v 475(530); Bureau of Code Revision, 10-1-53), repealed 139 v S 140, § 2, eff 7-1-81.

§ 3313.66 Suspension, expulsion or permanent exclusion; removal from curricular or extracurricular activities.

(A) Except as provided under division (B)(2) of this section, the superintendent of schools of a city, exempted village, or local school district, or the principal of a public school may suspend a pupil from school for not more than ten school days. The board of education of a city, exempted village, or local school district may adopt a policy granting assistant principals and other administrators the authority to suspend a pupil from school for a period of time as specified in the policy of the board of education, not to exceed ten school days. If at the time a suspension is imposed there are fewer than ten school

days remaining in the school year in which the incident that gives rise to the suspension takes place, the superintendent may apply any remaining part or all of the period of the suspension to the following school year. Except in the case of a pupil given an in-school suspension, no pupil shall be suspended unless prior to the suspension such superintendent or principal does both of the following:

(1) Gives the pupil written notice of the intention to suspend the pupil and the reasons for the intended suspension and, if the proposed suspension is based on a violation listed in division (A) of section 3313.662 [3313.66.2] of the Revised Code and if the pupil is sixteen years of age or older, includes in the notice a statement that the superintendent may seek to permanently exclude the pupil if the pupil is convicted of or adjudicated a delinquent child for that violation;

(2) Provides the pupil an opportunity to appear at an informal hearing before the principal, assistant principal, superintendent, or superintendent's designee and challenge the reason for the intended suspension or otherwise to explain the pupil's actions.

(B)(1) Except as provided under division (B)(2), (3), or (4) of this section, the superintendent of schools of a city, exempted village, or local school district may expel a pupil from school for a period not to exceed the greater of eighty school days or the number of school days remaining in the semester or term in which the incident that gives rise to the expulsion takes place, unless the expulsion is extended pursuant to division (F) of this section. If at the time an expulsion is imposed there are fewer than eighty school days remaining in the school year in which the incident that gives rise to the expulsion takes place, the superintendent may apply any remaining part or all of the period of the expulsion to the following school year.

(2)(a) Unless a pupil is permanently excluded pursuant to section 3313.662 [3313.66.2] of the Revised Code, the superintendent of schools of a city, exempted village, or local school district shall expel a pupil from school for a period of one year for bringing a firearm to a school operated by the board of education of the district or onto any other property owned or controlled by the board, except that the superintendent may reduce this requirement on a case-by-case basis in accordance with the policy adopted by the board under section 3313.661 [3313.66.1] of the Revised Code.

(b) The superintendent of schools of a city, exempted village, or local school district may expel a pupil from school for a period of one year for bringing a firearm to an interscholastic competition, an extracurricular event, or any other school program or activity that is not located in a school or on property that is owned or controlled by the district. The superintendent may reduce this disciplinary action on a case-by-case basis in accordance with the policy adopted by the board under section 3313.661 [3313.66.1] of the Revised Code.

(c) Any expulsion pursuant to division (B)(2) of this section shall extend, as necessary, into the school year following the school year in which the incident that gives rise to the expulsion takes place. As used in this division, "firearm" has the same meaning as provided pursuant to the "Gun-Free Schools Act of 1994," 108 Stat. 270, 20 U.S.C. 8001(a)(2).

(3) The board of education of a city, exempted village, or local school district may adopt a resolution authorizing the superintendent of schools to expel a pupil from school for a period not to exceed one year for bringing a knife to a school operated by the board, onto any other property

owned or controlled by the board, or to an interscholastic competition, an extracurricular event, or any other program or activity sponsored by the school district or in which the district is a participant, or for possessing a firearm or knife at a school, on any other property owned or controlled by the board, or at an interscholastic competition, an extracurricular event, or any other school program or activity, which firearm or knife was initially brought onto school board property by another person. The resolution may authorize the superintendent to extend such an expulsion, as necessary, into the school year following the school year in which the incident that gives rise to the expulsion takes place.

(4) The board of education of a city, exempted village, or local school district may adopt a resolution establishing a policy under section 3313.661 [3313.66.1] of the Revised Code that authorizes the superintendent of schools to expel a pupil from school for a period not to exceed one year for committing an act that is a criminal offense when committed by an adult and that results in serious physical harm to persons as defined in division (A)(5) of section 2901.01 of the Revised Code or serious physical harm to property as defined in division (A)(6) of section 2901.01 of the Revised Code while the pupil is at school, on any other property owned or controlled by the board, or at an interscholastic competition, an extracurricular event, or any other school program or activity. Any expulsion under this division shall extend, as necessary, into the school year following the school year in which the incident that gives rise to the expulsion takes place.

(5) The board of education of any city, exempted village, or local school district may adopt a resolution establishing a policy under section 3313.661 [3313.66.1] of the Revised Code that authorizes the superintendent of schools to expel a pupil from school for a period not to exceed one year for making a bomb threat to a school building or to any premises at which a school activity is occurring at the time of the threat. Any expulsion under this division shall extend, as necessary, into the school year following the school year in which the incident that gives rise to the expulsion takes place.

(6) No pupil shall be expelled under division (B)(1), (2), (3), (4) or (5) of this section unless, prior to the pupil's expulsion, the superintendent does both of the following:

(a) Gives the pupil and the pupil's parent, guardian, or custodian written notice of the intention to expel the pupil;

(b) Provides the pupil and the pupil's parent, guardian, custodian, or representative an opportunity to appear in person before the superintendent or the superintendent's designee to challenge the reasons for the intended expulsion or otherwise to explain the pupil's actions.

The notice required in this division shall include the reasons for the intended expulsion, notification of the opportunity of the pupil and the pupil's parent, guardian, custodian, or representative to appear before the superintendent or the superintendent's designee to challenge the reasons for the intended expulsion or otherwise to explain the pupil's action, and notification of the time and place to appear. The time to appear shall not be earlier than three nor later than five school days after the notice is given, unless the superintendent grants an extension of time at the request of the pupil or the pupil's parent, guardian, custodian, or representative. If an extension is granted after giving the original notice, the superintendent shall notify the pupil and the pupil's parent, guardian, custodian, or representative of the new time and

place to appear. If the proposed expulsion is based on a violation listed in division (A) of section 3313.662 [3313.66.2] of the Revised Code and if the pupil is sixteen years of age or older, the notice shall include a statement that the superintendent may seek to permanently exclude the pupil if the pupil is convicted of or adjudicated a delinquent child for that violation.

(7) A superintendent of schools of a city, exempted village, or local school district shall initiate expulsion proceedings pursuant to this section with respect to any pupil who has committed an act warranting expulsion under the district's policy regarding expulsion even if the pupil has withdrawn from school for any reason after the incident that gives rise to the hearing but prior to the hearing or decision to impose the expulsion. If, following the hearing, the pupil would have been expelled for a period of time had the pupil still been enrolled in the school, the expulsion shall be imposed for the same length of time as on a pupil who has not withdrawn from the school.

(C) If a pupil's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on the school premises, the superintendent or a principal or assistant principal may remove a pupil from curricular activities or from the school premises, and a teacher may remove a pupil from curricular activities under the teacher's supervision, without the notice and hearing requirements of division (A) or (B) of this section. As soon as practicable after making such a removal, the teacher shall submit in writing to the principal the reasons for such removal.

If a pupil is removed under this division from a curricular activity or from the school premises, written notice of the hearing and of the reason for the removal shall be given to the pupil as soon as practicable prior to the hearing, which shall be held within three school days from the time the initial removal is ordered. The hearing shall be held in accordance with division (A) of this section unless it is probable that the pupil may be subject to expulsion, in which case a hearing in accordance with division (B) of this section shall be held, except that the hearing shall be held within three school days of the initial removal. The individual who ordered, caused, or requested the removal to be made shall be present at the hearing.

If the superintendent or the principal reinstates a pupil in a curricular activity under the teacher's supervision prior to the hearing following a removal under this division, the teacher, upon request, shall be given in writing the reasons for such reinstatement.

(D) The superintendent or principal, within one school day after the time of a pupil's expulsion or suspension, shall notify in writing the parent, guardian, or custodian of the pupil and the treasurer of the board of education of the expulsion or suspension. The notice shall include the reasons for the expulsion or suspension, notification of the right of the pupil or the pupil's parent, guardian, or custodian to appeal the expulsion or suspension to the board of education or to its designee, to be represented in all appeal proceedings, to be granted a hearing before the board or its designee in order to be heard against the suspension or expulsion, and to request that the hearing be held in executive session, notification that the expulsion may be subject to extension pursuant to division (F) of this section if the pupil is sixteen years of age or older, and notification that the superintendent

may seek the pupil's permanent exclusion if the suspension or expulsion was based on a violation listed in division (A) of section 3313.662 [3313.66.2] of the Revised Code that was committed when the child was sixteen years of age or older and if the pupil is convicted of or adjudicated a delinquent child for that violation.

Any superintendent expelling a pupil under this section for more than twenty school days or for any period of time if the expulsion will extend into the following semester or school year shall, in the notice required under this division, provide the pupil and the pupil's parent, guardian, or custodian with information about services or programs offered by public and private agencies that work toward improving those aspects of the pupil's attitudes and behavior that contributed to the incident that gave rise to the pupil's expulsion. The information shall include the names, addresses, and phone numbers of the appropriate public and private agencies.

(E) A pupil or the pupil's parent, guardian, or custodian may appeal the pupil's expulsion by a superintendent or suspension by a superintendent, principal, assistant principal, or other administrator to the board of education or to its designee. The pupil or the pupil's parent, guardian, or custodian may be represented in all appeal proceedings and shall be granted a hearing before the board or its designee in order to be heard against the suspension or expulsion. At the request of the pupil or of the pupil's parent, guardian, custodian, or attorney, the board or its designee may hold the hearing in executive session but shall act upon the suspension or expulsion only at a public meeting. The board, by a majority vote of its full membership or by the action of its designee, may affirm the order of suspension or expulsion, reinstate the pupil, or otherwise reverse, vacate, or modify the order of suspension or expulsion.

The board or its designee shall make a verbatim record of hearings held under this division. The decisions of the board or its designee may be appealed under Chapter 2506. of the Revised Code.

This section shall not be construed to require notice and hearing in accordance with division (A), (B), or (C) of this section in the case of normal disciplinary procedures in which a pupil is removed from a curricular activity for a period of less than one school day and is not subject to suspension or expulsion.

(F)(1) If a pupil is expelled pursuant to division (B) of this section for committing any violation listed in division (A) of section 3313.662 [3313.66.2] of the Revised Code and the pupil was sixteen years of age or older at the time of committing the violation, if a complaint, indictment, or information is filed alleging that the pupil is a delinquent child based upon the commission of the violation or the pupil is prosecuted as an adult for the commission of the violation, and if the resultant juvenile court or criminal proceeding is pending at the time that the expulsion terminates, the superintendent of schools that expelled the pupil may file a motion with the court in which the proceeding is pending requesting an order extending the expulsion for the lesser of an additional eighty days or the number of school days remaining in the school year. Upon the filing of the motion, the court immediately shall schedule a hearing and give written notice of the time, date, and location of the hearing to the superintendent and to the pupil and the pupil's parent, guardian, or custodian. At the hearing, the court shall determine whether there is reasonable cause to believe that the pupil committed the alleged violation that is the basis of

the expulsion and, upon determining that reasonable cause to believe the pupil committed the violation does exist, shall grant the requested extension.

(2) If a pupil has been convicted of or adjudicated a delinquent child for a violation listed in division (A) of section 3313.662 [3313.66.2] of the Revised Code for an act that was committed when the child was sixteen years of age or older, if the pupil has been expelled pursuant to division (B) of this section for that violation, and if the board of education of the school district of the school from which the pupil was expelled has adopted a resolution seeking the pupil's permanent exclusion, the superintendent may file a motion with the court that convicted the pupil or adjudicated the pupil a delinquent child requesting an order to extend the expulsion until an adjudication order or other determination regarding permanent exclusion is issued by the superintendent of public instruction pursuant to section 3301.121 [3301.12.1] and division (D) of section 3313.662 [3313.66.2] of the Revised Code. Upon the filing of the motion, the court immediately shall schedule a hearing and give written notice of the time, date, and location of the hearing to the superintendent of the school district, the pupil, and the pupil's parent, guardian, or custodian. At the hearing, the court shall determine whether there is reasonable cause to believe the pupil's continued attendance in the public school system may endanger the health and safety of other pupils or school employees and, upon making that determination, shall grant the requested extension.

(G) The failure of the superintendent or the board of education to provide the information regarding the possibility of permanent exclusion in the notice required by divisions (A), (B), and (D) of this section is not jurisdictional, and the failure shall not affect the validity of any suspension or expulsion procedure that is conducted in accordance with this section or the validity of a permanent exclusion procedure that is conducted in accordance with sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code.

(H) With regard to suspensions and expulsions pursuant to divisions (A) and (B) of this section by the board of education of any city, exempted village, or local school district, this section shall apply to any student, whether or not the student is enrolled in the district, attending or otherwise participating in any curricular program provided in a school operated by the board or provided on any other property owned or controlled by the board.

(I) Whenever a student is expelled under this section, the expulsion shall result in removal of the student from the student's regular school setting. However, during the period of the expulsion, the board of education of the school district that expelled the student or any board of education admitting the student during that expulsion period may provide educational services to the student in an alternative setting.

(J)(1) Notwithstanding sections 3109.51 to 3109.80, 3313.64, and 3313.65 of the Revised Code, any school district, after offering an opportunity for a hearing, may temporarily deny admittance to any pupil if one of the following applies:

(a) The pupil has been suspended from the schools of another district under division (A) of this section and the period of suspension, as established under that division, has not expired;

(b) The pupil has been expelled from the schools of another district under division (B) of this section and the

period of the expulsion, as established under that division or as extended under division (F) of this section, has not expired.

If a pupil is temporarily denied admission under this division, the pupil shall be admitted to school in accordance with sections 3109.51 to 3109.80, 3313.64, or 3313.65 of the Revised Code no later than upon expiration of the suspension or expulsion period, as applicable.

(2) Notwithstanding sections 3109.51 to 3109.80, 3313.64, and 3313.65 of the Revised Code, any school district, after offering an opportunity for a hearing, may temporarily deny admittance to any pupil if the pupil has been expelled or otherwise removed for disciplinary purposes from a public school in another state and the period of expulsion or removal has not expired. If a pupil is temporarily denied admission under this division, the pupil shall be admitted to school in accordance with sections 3109.51 to 3109.80, 3313.64, or 3313.65 of the Revised Code no later than the earlier of the following:

(a) Upon expiration of the expulsion or removal period imposed by the out-of-state school;

(b) Upon expiration of a period established by the district, beginning with the date of expulsion or removal from the out-of-state school, that is no greater than the period of expulsion that the pupil would have received under the policy adopted by the district under section 3313.661 [3313.66.1] of the Revised Code had the offense that gave rise to the expulsion or removal by the out-of-state school been committed while the pupil was enrolled in the district.

(K) As used in this section:

(1) "Permanently exclude" and "permanent exclusion" have the same meanings as in section 3313.662 [3313.66.2] of the Revised Code.

(2) "In-school suspension" means the pupil will serve all of the suspension in a school setting.

HISTORY: GC § 4838-4; 120 v 475 (530); Bureau of Code Revision, 10-1-53; 127 v 104 (Eff 9-9-57); 129 v 239 (Eff 7-28-61); 136 v H 421 (Eff 6-4-76); 138 v H 1 (Eff 5-16-79); 141 v H 666 (Eff 3-25-87); 144 v S 51 (Eff 10-29-91); 144 v H 154 (Eff 7-31-92); 145 v H 152 (Eff 7-1-93); 146 v H 64 (Eff 9-14-95); 146 v H 81 (Eff 6-5-96); 148 v S 1 (Eff 8-6-99); 148 v H 620 (Eff 3-12-2001); 148 v S 179, § 3. Eff 1-1-2002; 150 v H 130, § 1, eff. 7-20-04.

The provisions of § 3 of H.B. 130 (150 v —) read as follows:

SECTION 3. Section 3313.66 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 620 and Am. Sub. S.B. 179 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 5 of SB 179.

CHAPTER 3321: SCHOOL ATTENDANCE

Section

- 3321.01 Compulsory school age; admission to kindergarten or first grade; pupil personnel services committee.
- 3321.02 Children amenable to compulsory education laws.
- 3321.03 Parent's duty to see that child receives instruction; exceptions.
- 3321.04 Scope of parent's duty; excuses from attendance.
- 3321.05 All-day or extended kindergarten.
- 3321.07 Requirements for child not attending public schools.
- 3321.08 Part-time school; definition.

Section

- 3321.09 Part-time schooling not provided by board of education.
- 3321.10 Supervision of children employed on age and schooling certificates.
- 3321.11 Availability or accessibility of part-time schools.
- 3321.12 Report to treasurer of board.
- 3321.13 Duties of teacher and superintendent upon child's withdrawal from school or habitual absence; forms.

[ATTENDANCE OFFICERS]

- 3321.14 Attendance officer; pupil-personnel workers.
- 3321.15 Service center attendance officer and assistants.
- 3321.16 Investigation of nonattendance.
- 3321.17 Powers of officer and assistants.
- 3321.18 Enforcement proceedings.
- 3321.19 Truancy; actions directed at parent, guardian or responsible person.
- [3321.19.1] 3321.191 Board to adopt policy concerning habitual truancy; intervention strategies.
- 3321.20 Warnings concerning failure to attend part-time school or class; complaint.
- 3321.21 Notice.
- 3321.22 Juvenile court proceedings.

[FAILURE TO SEND CHILD TO SCHOOL]

- 3321.38 Violation of compulsory attendance laws; bond.
- 3321.99 Penalty.

§ 3321.01 Compulsory school age; admission to kindergarten or first grade; pupil personnel services committee.

(A)(1) As used in this chapter, "parent," "guardian," or "other person having charge or care of a child" means either parent unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case "parent" means the parent who is the residential parent and legal custodian of the child. If the child is in the legal or permanent custody of a person or government agency, "parent" means that person or government agency. When a child is a resident of a home, as defined in section 3313.64 of the Revised Code, and the child's parent is not a resident of this state, "parent," "guardian," or "other person having charge or care of a child" means the head of the home.

A child between six and eighteen years of age is "of compulsory school age" for the purpose of sections 3321.01 to 3321.13 of the Revised Code. A child under six years of age who has been enrolled in kindergarten also shall be considered "of compulsory school age" for the purpose of sections 3321.01 to 3321.13 of the Revised Code unless at any time the child's parent or guardian, at the parent's or guardian's discretion and in consultation with the child's teacher and principal, formally withdraws the child from kindergarten. The compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which the child resides.

(2) No child shall be admitted to a kindergarten or a first grade of a public school in a district in which all children are admitted to kindergarten and the first grade in August or September unless the child is five or six years of age, respectively, by the thirtieth day of September of the year of admittance, or by the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the begin-

ning of such term or semester, except that in those school districts using or obtaining educationally accepted standardized testing programs for determining entrance, as approved by the board of education of such districts, the board shall admit a child to kindergarten or the first grade who fails to meet the age requirement, provided the child meets necessary standards as determined by such standardized testing programs. If the board of education has not established a standardized testing program, the board shall designate the necessary standards and a testing program it will accept for the purpose of admitting a child to kindergarten or first grade who fails to meet the age requirement. Each child who will be the proper age for entrance to kindergarten or first grade by the first day of January of the school year for which admission is requested shall be so tested upon the request of the child's parent.

(3) Notwithstanding divisions (A)(2) and (D) of this section, beginning with the school year that starts in 2001 and continuing thereafter the board of education of any district may adopt a resolution establishing the first day of August in lieu of the thirtieth day of September as the required date by which students must have attained the age specified in those divisions.

(B) As used in divisions (C) and (D) of this section, "successfully completed kindergarten" and "successful completion of kindergarten" mean that the child has completed the kindergarten requirements at one of the following:

- (1) A public or chartered nonpublic school;
- (2) A kindergarten class that is both of the following:
 - (a) Offered by a day-care provider licensed under Chapter 5104. of the Revised Code;
 - (b) If offered after July 1, 1991, is directly taught by a teacher who holds one of the following:
 - (i) A valid educator license issued under section 3319.22 of the Revised Code;
 - (ii) A Montessori preprimary credential or age-appropriate diploma granted by the American Montessori society or the association Montessori internationale;
 - (iii) Certification determined under division (G) of this section to be equivalent to that described in division (B)(2)(b)(ii) of this section;
 - (iv) Certification for teachers in nontax-supported schools pursuant to section 3301.071 [3301.07.1] of the Revised Code.

(C) Except as provided in division (D) of this section, no school district shall admit to the first grade any child who has not successfully completed kindergarten.

(D) Upon request of a parent, the requirement of division (C) of this section may be waived by the district's pupil personnel services committee in the case of a child who is at least six years of age by the thirtieth day of September of the year of admittance and who demonstrates to the satisfaction of the committee the possession of the social, emotional, and cognitive skills necessary for first grade.

The board of education of each city, local, and exempted village school district shall establish a pupil personnel services committee. The committee shall be composed of all of the following to the extent such personnel are either employed by the district or employed by the governing board of the educational service center within whose territory the district is located and the educational service center generally furnishes the services of such personnel to the district:

- (2) An elementary school counselor;
- (3) An elementary school principal;
- (4) A school psychologist;
- (5) A teacher assigned to teach first grade;
- (6) A gifted coordinator.

The responsibilities of the pupil personnel services committee shall be limited to the issuing of waivers allowing admittance to the first grade without the successful completion of kindergarten. The committee shall have no other authority except as specified in this section.

(E) The scheduling of times for kindergarten classes and length of the school day for kindergarten shall be determined by the board of education of a city, exempted village, or local school district.

(F) Any kindergarten class offered by a day-care provider or school described by division (B)(1) or (B)(2)(a) of this section shall be developmentally appropriate.

(G) Upon written request of a day-care provider described by division (B)(2)(a) of this section, the department of education shall determine whether certification held by a teacher employed by the provider meets the requirement of division (B)(2)(b)(iii) of this section and, if so, shall furnish the provider a statement to that effect.

HISTORY: GC § 4849; 120 v 475(560); Bureau of Code Revision, 10-1-53; 131 v 805 (Eff 8-1-67); 131 v 806 (Eff 8-1-67); 132 v S 190 (Eff 8-25-67); 135 v H 159 (Eff 9-30-75); 137 v H 811 (Eff 8-21-78); 138 v H 550 (Eff 7-18-80); 139 v S 140 (Eff 7-1-81); 143 v S 140 (Eff 7-1-90); 143 v H 738 (Eff 7-13-90); 143 v S 3 (Eff 4-11-91); 144 v H 250 (Eff 3-23-93); 146 v H 117 (Eff 9-29-95); 146 v S 230 (Eff 10-29-96) 148 v H 281 (Eff 10-29-99); 148 v H 383 (Eff 2-13-2001); 149 v H 94. Eff 9-5-2001.

The effective date is set by section 204 of HB 94.

§ 3321.02 Children amenable to compulsory education laws.

Every child actually resident in the state shall be amenable to the laws relating to compulsory education, and neither he nor the person in charge of him shall be excused from the operation of said sections or the penalties under them on the ground that the child's residence is seasonal, that the parent of the child is a resident of another state, or that the child has attended school for the legal period in another state.

HISTORY: GC § 4849-1; 120 v 475(560); Bureau of Code Revision. Eff 10-1-53.

§ 3321.03 Parent's duty to see that child receives instruction; exceptions.

Except as provided in this section, the parent of a child of compulsory school age shall cause such child to attend a school in the school district in which the child is entitled to attend school under division (B) or (F) of section 3313.64 or section 3313.65 of the Revised Code, to participate in a special education program under Chapter 3323. of the Revised Code, or to otherwise cause him to be instructed in accordance with law. Every child of compulsory school age shall attend a school or participate in a special education program that conforms to the minimum standards prescribed by the state board of education until the child:

(A) Receives a diploma granted by the board of education or other governing authority, successfully completes the curriculum of any high school, or successfully completes the individualized education program devel-

oped for the student by any high school pursuant to section 3323.08 of the Revised Code;

(B) Receives an age and schooling certificate as provided in section 3331.01 of the Revised Code; or

(C) Is excused from school under standards adopted by the state board of education pursuant to section 3321.04 of the Revised Code, or if in need of special education, he is excused from such programs pursuant to section 3321.04 of the Revised Code.

HISTORY: GC § 4849-2; 120 v 475(560); Bureau of Code Revision, 10-1-53; 126 v 655(679) (Eff 1-3-56); 131 v H 950 (Eff 8-16-65); 136 v H 455 (Eff 8-27-76); 137 v H 811 (Eff 8-21-78); 139 v S 140 (Eff 7-1-81); 140 v H 210 (Eff 12-12-83); 142 v H 231 (Eff 10-5-87); 142 v H 146 (Eff 6-9-88); 142 v H 743 (Eff 9-9-88); 143 v S 51 (Eff 10-26-89); 143 v H 341 (Eff 4-25-90); 144 v H 55, Eff 6-30-92.

§ 3321.04 Scope of parent's duty; excuses from attendance.

Notwithstanding division (D) of section 3311.19 and division (D) of section 3311.52 of the Revised Code, this section does not apply to any joint vocational or cooperative education school district or its superintendent.

Every parent of any child of compulsory school age who is not employed under an age and schooling certificate must send such child to a school or a special education program that conforms to the minimum standards prescribed by the state board of education, for the full time the school or program attended is in session, which shall not be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or program or within one week of the date on which the child begins to reside in the district or within one week after his withdrawal from employment.

For the purpose of operating a school or program on a trimester plan, "full time the school attended is in session," as used in this section means the two trimesters to which the child is assigned by the board of education. For the purpose of operating a school or program on a quarterly plan, "full time the school attended is in session," as used in this section, means the three quarters to which the child is assigned by the board of education. For the purpose of operating a school or program on a pentameter plan, "full time the school is in session," as used in this section, means the four pentameters to which the child is assigned by the board of education.

Excuses from future attendance at or past absence from school or a special education program may be granted for the causes, by the authorities, and under the following conditions:

(A) The superintendent of the city or exempted village school district or the educational service center in which the child resides may excuse the child from attendance for any part of the remainder of the current school year upon satisfactory showing of either of the following facts:

(1) That the child's bodily or mental condition does not permit attendance at school or a special education program during such period; this fact is certified in writing by a licensed physician or, in the case of a mental condition, by a licensed physician, a licensed psychologist, licensed school psychologist or a certificated school psychologist; and provision is made for appropriate instruction of the child, in accordance with Chapter 3323. of the Revised Code;

(2) That the child is being instructed at home by a person qualified to teach the branches in which instruc-

tion is required, and such additional branches, as the advancement and needs of the child may, in the opinion of such superintendent, require. In each such case the issuing superintendent shall file in his office, with a copy of the excuse, papers showing how the inability of the child to attend school or a special education program or the qualifications of the person instructing the child at home were determined. All such excuses shall become void and subject to recall upon the removal of the disability of the child or the cessation of proper home instruction; and thereupon the child or the child's parents may be proceeded against after due notice whether such excuse be recalled or not.

(B) The state board of education may adopt rules authorizing the superintendent of schools of the district in which the child resides to excuse a child over fourteen years of age from attendance for a future limited period for the purpose of performing necessary work directly and exclusively for the child's parents or legal guardians.

All excuses provided for in divisions (A) and (B) of this section shall be in writing and shall show the reason for excusing the child. A copy thereof shall be sent to the person in charge of the child.

(C) The board of education of the city or exempted village school district or the governing board of the educational service center in which a public school is located or the governing authorities of a private or parochial school may in the rules governing the discipline in such schools, prescribe the authority by which and the manner in which any child may be excused for absence from such school for good and sufficient reasons.

The state board of education may by rule prescribe conditions governing the issuance of excuses, which shall be binding upon the authorities empowered to issue them.

HISTORY: GC § 4849-3; 120 v 475(561); Bureau of Code Revision, 10-1-53; 126 v 655(679) (Eff 1-1-56); 132 v S 356 (Eff 5-31-68); 134 v H 475 (Eff 12-20-71); 136 v H 455 (Eff 8-27-76); 144 v S 195 (Eff 4-16-93); 146 v H 117, Eff 9-29-95.

The effective date is set by section 197 of HB 117.

§ 3321.05 All-day or extended kindergarten.

Any school district may operate all-day kindergarten or extended kindergarten, but no district shall require any student to attend kindergarten for more than the number of clock hours required each day for traditional kindergarten by the minimum standards adopted under section 3301.07 of the Revised Code. Each school district that operates all-day or extended kindergarten shall accommodate students whose parents or guardians elect to enroll them for the minimum number of hours.

HISTORY: 147 v S 55 (Eff 7-1-98); 147 v H 650, Eff 7-1-98.

Not analogous to former RC § 3321.05 (GC § 4849-4; 120 v 475(562); Bureau of Code Revision, 10-1-53; 126 v 655), repealed 136 v H 455, § 2, eff 8-27-76.

The effective date is set by section 28 of HB 650.

§ 3321.07 Requirements for child not attending public schools.

If any child attends upon instruction elsewhere than in a public school such instruction shall be in a school which conforms to the minimum standards prescribed by the

state board of education. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district. This section does not require a child to attend a high school instead of a vocational, commercial, or other special type of school, provided the instruction therein is for a term and for hours equivalent to those of the high school, and provided his attendance at such school will not interfere with a continuous program of education for the child to the age of sixteen.

HISTORY: GC § 4849-6; 120 v 475(563); Bureau of Code Revision, 10-1-53; 126 v 655(681). Eff 1-3-56.

§ 3321.08 Part-time school; definition.

Every child who has been granted an age and schooling certificate shall, until the age at which such certificate is no longer required, attend a part-time school or class for the number of hours not over eight per week that such school or class is in session, provided the board of education of the school district in which the child resides or is employed has made such school or class available. Such attendance shall be for the full term such school or class is in session, and shall begin with the first week of the school term or within one week after issuance of the age and schooling certificate. This section does not apply to children who are employed under vacation and part-time certificates only. The superintendent of schools may excuse a child from such attendance for one of the reasons provided in section 3321.10 of the Revised Code. A part-time school or class is one which shall offer to those minors who have entered industry, instruction supplemental to their daily occupations or which will increase their civic and vocational competence or both and which are taught between the hours of seven in the morning and six in the afternoon of any day except a legal holiday, Saturday, or Sunday, or between the hours of seven in the morning and twelve noon of Saturday.

HISTORY: GC § 4849-7; 120 v 475(563); Bureau of Code Revision, 10-1-53; 136 v H 455. Eff 8-27-76.

§ 3321.09 Part-time schooling not provided by board of education.

Attendance at a part-time school or class provided by an employer, by a partnership, corporation, or individual, by a private or parochial school, by a college, or by a philanthropic or similar agency shall serve in lieu of attendance at a part-time school or class provided by a board of education in case the given school or class is conducted for substantially a term and hours equivalent to those of the part-time schools or classes provided by the local board, and in case the school or class is approved by the state board of education. When such school or class is conducted within or in connection with the establishment in which the child is working the obligation of attendance at part-time school or class indicated in section 3321.08 of the Revised Code, shall apply to the children holding age and schooling certificates who are employed in the given establishment regardless of the accessibility of public part-time schools or classes.

HISTORY: GC § 4849-8; 120 v 475(563); Bureau of Code Revision, 10-1-53; 126 v 655 (681). Eff 1-3-56.

§ 3321.10 Supervision of children employed on age and schooling certificates.

All parents, guardians, and other persons who have the care of children who are employed under age and

schooling certificates shall cause them to attend a part-time day school or class for the full time that the school or class is in session whenever such part-time school or class has been established and is accessible to the child in the district where the child resides or is employed, unless the superintendent of schools determines that the child has already completed the same work as or work equivalent to that taken up in such part-time schools or classes as are available for the child to attend or that the bodily or mental condition of the child does not permit his attendance at such school or class.

Such attendance shall begin within the first week of the school term or within one week after an age and schooling certificate is issued to a child.

If a child resides in one school district and is employed in another he shall be under the jurisdiction of the district in which he is employed for the purpose of this section and the section 3321.08 of the Revised Code, unless by written excuse the superintendent of schools releases him to the jurisdiction of the district in which he resides.

HISTORY: GC § 4849-9; 120 v 475(564); Bureau of Code Revision. Eff 10-1-53.

§ 3321.11 Availability or accessibility of part-time schools.

The superintendent of schools shall be the judge of the availability or accessibility of part-time schools for children who are holders of age and schooling certificates.

HISTORY: GC § 4849-10; 120 v 475(564); Bureau of Code Revision. Eff 10-1-53.

§ 3321.12 Report to treasurer of board.

Notwithstanding division (D) of section 3311.19 and division (D) of section 3311.52 of the Revised Code, the provisions of this section that require reporting to the treasurer of a city school district do not require reporting to the treasurer of any joint vocational or cooperative education school district.

The principal or teacher in charge of any public, private, or parochial school, shall report to the treasurer of the board of education of the city, local, or exempted village school district in which the school is situated, the names, ages, and places of residence of all pupils below eighteen years of age in attendance at their schools together with such other facts as said treasurer requires to facilitate the carrying out of the laws relating to compulsory education and the employment of minors. Such report shall be made within the first two weeks of the beginning of school in each school year, and shall be corrected with the entry of such items as are prescribed by the state board of education within the first week of each subsequent school month of the year.

Nothing in this section shall require any person to release, or to permit access to, public school records in violation of section 3319.321 [3319.32.1] of the Revised Code.

HISTORY: GC § 4849-11; 120 v 475(564); Bureau of Code Revision, 10-1-53; 126 v 655 (682) (Eff 1-3-56); 136 v S 367 (Eff 8-24-76); 138 v H 1 (Eff 5-16-79); 144 v S 195. Eff 4-16-93.

§ 3321.13 Duties of teacher and superintendent upon child's withdrawal from school or habitual absence; forms.

(A) Whenever any child of compulsory school age withdraws from school the teacher of that child shall

ascertain the reason for withdrawal. The fact of the withdrawal and the reason for it shall be immediately transmitted by the teacher to the superintendent of schools of the city or exempted village school district or the educational service center as the case may be. If the child who has withdrawn from school has done so because of change of residence, the next residence shall be ascertained and shall be included in the notice thus transmitted. The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of the child's new residence to the superintendent of schools of the district to which the child has moved.

The superintendent of public instruction may prescribe the forms to be used in the operation of this division.

(B)(1) Upon receipt of information that a child of compulsory school age has withdrawn from school for a reason other than because of change of residence and is not enrolled in and attending in accordance with school policy an approved program to obtain a diploma or its equivalent, the superintendent shall notify the registrar of motor vehicles and the juvenile judge of the county in which the district is located of the withdrawal and failure to enroll in and attend an approved program to obtain a diploma or its equivalent. A notification to the registrar required by this division shall be given in the manner the registrar by rule requires and a notification to the juvenile judge required by this division shall be given in writing. Each notification shall be given within two weeks after the withdrawal and failure to enroll in and attend an approved program or its equivalent.

(2) The board of education of a school district may adopt a resolution providing that the provisions of division (B)(2) of this section apply within the district. The provisions of division (B)(2) of this section do not apply within any school district, and no superintendent of a school district shall send a notification of the type described in division (B)(2) of this section to the registrar of motor vehicles or the juvenile judge of the county in which the district is located, unless the board of education of the district has adopted such a resolution. If the board of education of a school district adopts a resolution providing that the provisions of division (B)(2) of this section apply within the district, and if the superintendent of schools of that district receives information that, during any semester or term, a child of compulsory school age has been absent without legitimate excuse from the school the child is supposed to attend for more than ten consecutive school days or for at least fifteen total school days, the superintendent shall notify the child and the child's parent, guardian, or custodian, in writing, that the information has been provided to the superintendent, that as a result of that information the child's temporary instruction permit or driver's license will be suspended or the opportunity to obtain such a permit or license will be denied, and that the child and the child's parent, guardian, or custodian may appear in person at a scheduled date, time, and place before the superintendent or a designee to challenge the information provided to the superintendent.

The notification to the child and the child's parent, guardian, or custodian required by division (B)(2) of this section shall set forth the information received by the superintendent and shall inform the child and the child's parent, guardian, or custodian of the scheduled date, time, and place of the appearance that they may have

before the superintendent or a designee. The date scheduled for the appearance shall be no earlier than three and no later than five days after the notification is given, provided that an extension may be granted upon request of the child or the child's parent, guardian, or custodian. If an extension is granted, the superintendent shall schedule a new date, time, and place for the appearance and shall inform the child and the child's parent, guardian, or custodian of the new date, time, and place.

If the child and the child's parent, guardian, or custodian do not appear before the superintendent or a designee on the scheduled date and at the scheduled time and place, or if the child and the child's parent, guardian, or custodian appear before the superintendent or a designee on the scheduled date and at the scheduled time and place but the superintendent or a designee determines that the information the superintendent received indicating that, during the semester or term, the child had been absent without legitimate excuse from the school the child was supposed to attend for more than ten consecutive school days or for at least fifteen total school days, the superintendent shall notify the registrar of motor vehicles and the juvenile judge of the county in which the district is located that the child has been absent for that period of time and that the child does not have any legitimate excuse for the habitual absence. A notification to the registrar required by this division shall be given in the manner the registrar by rule requires and a notification to the juvenile judge required by this division shall be given in writing. Each notification shall be given within two weeks after the receipt of the information of the habitual absence from school without legitimate excuse, or, if the child and the child's parent, guardian, or custodian appear before the superintendent or a designee to challenge the information, within two weeks after the appearance.

For purposes of division (B)(2) of this section, a legitimate excuse for absence from school includes, but is not limited to, the fact that the child in question has enrolled in another school or school district in this or another state, the fact that the child in question was excused from attendance for any of the reasons specified in section 3321.04 of the Revised Code, or the fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(3) Whenever a pupil is suspended or expelled from school pursuant to section 3313.66 of the Revised Code and the reason for the suspension or expulsion is the use or possession of alcohol, a drug of abuse, or alcohol and a drug of abuse, the superintendent of schools of that district may notify the registrar and the juvenile judge of the county in which the district is located of such suspension or expulsion. Any such notification of suspension or expulsion shall be given to the registrar, in the manner the registrar by rule requires and shall be given to the juvenile judge in writing. The notifications shall be given within two weeks after the suspension or expulsion.

(4) Whenever a pupil is suspended, expelled, removed, or permanently excluded from a school for misconduct included in a policy that the board of education of a city, exempted village, or local school district has adopted under division (A) of section 3313.661 [3313.66.1] of the Revised Code, and the misconduct involves a firearm or a knife or other weapon as defined in that policy, the superintendent of schools of that district shall notify the registrar and the juvenile judge of

the county in which the district is located of the suspension, expulsion, removal, or permanent exclusion. The notification shall be given to the registrar in the manner the registrar, by rule, requires and shall be given to the juvenile judge in writing. The notifications shall be given within two weeks after the suspension, expulsion, removal, or permanent exclusion.

(C) A notification of withdrawal, habitual absence without legitimate excuse, suspension, or expulsion given to the registrar or a juvenile judge under division (B)(1), (2), (3), or (4) of this section shall contain the name, address, date of birth, school, and school district of the child. If the superintendent finds, after giving a notification of withdrawal, habitual absence without legitimate excuse, suspension, or expulsion to the registrar and the juvenile judge under division (B)(1), (2), (3), or (4) of this section, that the notification was given in error, the superintendent immediately shall notify the registrar and the juvenile judge of that fact.

HISTORY: GC § 4849-12; 120 v 475(565); Bureau of Code Revision, 10-1-53; 143 v H 204 (Eff 5-2-90); 146 v H 117 (Eff 9-29-95); 148 v S 1. Eff 8-6-99.

[ATTENDANCE OFFICERS]

§ 3321.14 Attendance officer; pupil-personnel workers.

Notwithstanding division (D) of section 3311.19 and division (D) of section 3311.52 of the Revised Code, the provisions of this section and sections 3321.15 to 3321.21 of the Revised Code that apply to a city school district or its superintendent do not apply to any joint vocational or cooperative education school district or its superintendent unless otherwise specified.

The board of education of every city school district and of every exempted village school district shall employ an attendance officer, and may employ or appoint any assistants that the board deems advisable. In cities of one hundred thousand population or over, the board may appoint, subject to the nomination of the superintendent of schools, one or more pupil-personnel workers and make provision for the traveling expenses within the school district of those employees.

HISTORY: GC § 4852; 120 v 475(574); Bureau of Code Revision, 10-1-53; 144 v S 195 (Eff 4-16-93); 148 v S 181. Eff 9-4-2000.

§ 3321.15 Service center attendance officer and assistants.

Every governing board of an educational service center shall employ an educational service center attendance officer, and may employ or appoint such assistants as the board deems advisable. The compensation and necessary traveling expenses of such attendance officer and assistants shall be paid out of the educational service center governing board fund. With the consent and approval of the judge of the juvenile court, a probation officer of the court may be designated as the service center attendance officer or as an assistant. The compensation of the probation officers of the juvenile court so designated shall be fixed and paid in the same manner as salaries of other probation officers of the juvenile court; their traveling expenses as attendance officers which would not be incurred as probation officers shall be paid out of the

educational service center governing board fund. In addition to the compensation provided in this section the board may pay such additional compensation as it deems advisable, to any probation officer designated as attendance officer and such additional amount shall be paid from the educational service center governing board fund. The attendance officer and assistants shall work under the direction of the educational service center superintendent. The authority of such attendance officer and assistants shall extend to all the local school districts served by the service center. This section does not confine their authority to investigate employment to that within the territory of the service center.

HISTORY: GC § 4852-1; 120 v 475(574); Bureau of Code Revision, 10-1-53; 146 v H 117. Eff 9-29-95.

The effective date is set by section 197 of HB 117.

§ 3321.16 Investigation of nonattendance.

An attendance officer or assistant provided for by section 3321.14 or 3321.15 of the Revised Code may investigate any case of nonattendance at school or part-time school of a child under eighteen years of age or supposed to be under eighteen years of age resident in the district for which such attendance officer or assistant is employed, or of any such child found in the district or enrolled in any school within the district and of any child above eighteen years of age if enrolled in any school within the district, and may take such action as the superintendent of schools directs or as such attendance officer or assistant deems proper in the absence of specific direction.

HISTORY: GC § 4852-2; 120 v 475(575); Bureau of Code Revision, 10-1-53; 126 v 392. Eff 3-17-55.

§ 3321.17 Powers of officer and assistants.

The attendance officer and assistants provided for by section 3321.14 or 3321.15 of the Revised Code shall be vested with police powers, may serve warrants, and may enter workshops, factories, stores, and all other places where children are employed and do whatever is necessary in the way of investigation or otherwise to enforce the laws relating to compulsory education and the employment of minors. The attendance officer or assistant may also take into custody any youth of compulsory school age not legally employed on an age and schooling certificate who is not attending school and shall conduct such youth to the school he has been attending or should rightfully attend.

HISTORY: GC § 4852-3; 120 v 475(575); Bureau of Code Revision, 10-1-53; 126 v 392. Eff 3-17-55.

§ 3321.18 Enforcement proceedings.

The attendance officer provided for by section 3321.14 or 3321.15 of the Revised Code shall institute proceedings against any officer, parent, guardian, or other person violating laws relating to compulsory education and the employment of minors, and otherwise discharge the duties described in sections 3321.14 to 3321.21 of the Revised Code, and perform any other service that the superintendent of schools or board of education of the district by which the attendance officer is employed considers necessary to preserve the morals and secure the

good conduct of school children, and to enforce those laws.

The attendance officer shall be furnished with copies of the enumeration in each school district in which the attendance officer serves and of the lists of pupils enrolled in the schools and shall report to the superintendent discrepancies between these lists and the enumeration.

The attendance officer and assistants shall cooperate with the director of commerce in enforcing the laws relating to the employment of minors. The attendance officer shall furnish upon request any data that the attendance officer and the attendance officer's assistants have collected in their reports of children from six to eighteen years of age and also concerning employers to the director and upon request to the state board of education. The attendance officer shall keep a record of the attendance officer's transactions for the inspection and information of the superintendent of schools and the board of education; and shall make reports to the superintendent of schools as often as required by the superintendent. The state board of education may prescribe forms for the use of attendance officers in the performance of their duties. The blank forms and record books or indexes shall be furnished to the attendance officers by the boards of education by which they are employed.

HISTORY: GC § 4852-4; 120 v 475(575); Bureau of Code Revision, 10-1-53; 126 v 655(682) (Eff 1-3-56); 137 v H 811 (Eff 8-21-78); 146 v S 162 (Eff 10-29-95); 148 v H 471 (Eff 7-1-2000); 148 v S 181. Eff 9-4-2000.

§ 3321.19 Truancy; actions directed at parent, guardian or responsible person.

(A) As used in this section and section 3321.191 [3321.19.1] of the Revised Code:

(1) "Habitual truant" has the same meaning as in section 2151.011 [2151.01.1] of the Revised Code.

(2) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.

(B) When a board of education of any city, exempted village, local, joint vocational, or cooperative education school district or the governing board of any educational service center determines that a student in its district has been truant and the parent, guardian, or other person having care of the child has failed to cause the student's attendance at school, the board may require the parent, guardian, or other person having care of the child pursuant to division (B) of this section to attend an educational program established pursuant to rules adopted by the state board of education for the purpose of encouraging parental involvement in compelling the attendance of the child at school.

No parent, guardian, or other person having care of a child shall fail without good cause to attend an educational program described in this division if the parent, guardian, or other person has been served notice pursuant to division (C) of this section.

(C) On the request of the superintendent of schools, the superintendent of any educational service center, the board of education of any city, exempted village, local, joint vocational, or cooperative education school district, or the governing board of any educational service center or when it otherwise comes to the notice of the attendance officer or other appropriate officer of the school district, the attendance officer or other appropriate officer shall examine into any case of supposed truancy within the district and shall warn the child, if found

truant, and the child's parent, guardian, or other person having care of the child, in writing, of the legal consequences of being an habitual or chronic truant. When any child of compulsory school age, in violation of law, is not attending school, the attendance or other appropriate officer shall notify the parent, guardian, or other person having care of that child of the fact, and require the parent, guardian, or other person to cause the child to attend school immediately. The parent, guardian, or other person having care of the child shall cause the child's attendance at school. Upon the failure of the parent, guardian, or other person having care of the child to do so, the attendance officer or other appropriate officer, if so directed by the superintendent, the district board, or the educational service center governing board, shall send notice requiring the attendance of that parent, guardian, or other person at a parental education program established pursuant to division (B) of this section and, subject to divisions (D) and (E) of this section, may file a complaint against the parent, guardian, or other person having care of the child in any court of competent jurisdiction.

(D) Upon the failure of the parent, guardian, or other person having care of the child to cause the child's attendance at school, if the child is considered an habitual truant, the board of education of the school district or the governing board of the educational service center shall do either or both of the following:

(1) Take any appropriate action as an intervention strategy contained in the policy developed by the board pursuant to section 3321.191 [3321.19.1] of the Revised Code;

(2) File a complaint in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend school jointly against the child and the parent, guardian, or other person having care of the child. A complaint filed in the juvenile court under this division shall allege that the child is an unruly child for being an habitual truant or is a delinquent child for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has violated section 3321.38 of the Revised Code.

(E) Upon the failure of the parent, guardian, or other person having care of the child to cause the child's attendance at school, if the child is considered a chronic truant, the board of education of the school district or the governing board of the educational service center shall file a complaint in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend school jointly against the child and the parent, guardian, or other person having care of the child. A complaint filed in the juvenile court under this division shall allege that the child is a delinquent child for being a chronic truant and that the parent, guardian, or other person having care of the child has violated section 3321.38 of the Revised Code.

HISTORY: GC § 4852-5; 120 v 475(576); Bureau of Code Revision, 10-1-53; 143 v S 140 (Eff 10-2-89); 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 3321.19.1] § 3321.191 Board to adopt policy concerning habitual truancy; intervention strategies.

(A) No later than August 31, 2000, the board of education of each city, exempted village, local, joint

vocational, and cooperative education school district and the governing board of each educational service center shall adopt a policy to guide employees of the school district or service center in addressing and ameliorating the attendance practice of any pupil who is an habitual truant. In developing the policy, the appropriate board shall consult with the judge of the juvenile court of the county or counties in which the district or service center is located, with the parents, guardians, or other persons having care of the pupils attending school in the district, and with appropriate state and local agencies. The board shall incorporate into the policy as an intervention strategy the assignment of an habitual truant to an alternative school pursuant to section 3313.533 [3313.53.3] of the Revised Code if an alternative school has been established by the board under that section.

(B) The policy developed under division (A) of this section may include as an intervention strategy any of the following actions, if appropriate:

(1) Providing a truancy intervention program for an habitual truant;

(2) Providing counseling for an habitual truant;

(3) Requesting or requiring a parent, guardian, or other person having care of an habitual truant to attend parental involvement programs, including programs adopted under section 3313.472 [3313.47.2] or 3313.663 [3313.66.3] of the Revised Code;

(4) Requesting or requiring a parent, guardian, or other person having care of an habitual truant to attend truancy prevention mediation programs;

(5) Notification of the registrar of motor vehicles under section 3321.13 of the Revised Code;

(6) Taking legal action under section 2919.222 [2919.22.2], 3321.20, or 3321.38 of the Revised Code.

(C) Nothing in this section shall be construed to limit the duty or authority of a district board of education or governing body of an educational service center to develop other policies related to truancy or to limit the duty or authority of any employee of the school district or service center to respond to pupil truancy.

HISTORY: 148 v S 181. Eff 9-4-2000.

§ 3321.20 Warnings concerning failure to attend part-time school or class; complaint.

When any child, in violation of section 3321.08 or 3321.09 of the Revised Code, is not attending a part-time school or class, the attendance officer shall warn the child and the child's parent, guardian, or other person in charge of the child in writing of the legal consequences of the child's failure to attend the part-time school or class. If the parent, guardian, or other person in charge of that child fails to cause the child's attendance at the part-time school or class, the attendance officer shall make complaint against the parent, guardian, or other person in charge of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend the part-time school or class.

HISTORY: GC § 4852-6; 120 v 475(576); Bureau of Code Revision, 10-1-53; 148 v S 181. Eff 9-4-2000.

§ 3321.21 Notice.

A notice under section 3321.19 or 3321.20 of the Revised Code, sent by registered mail, is a legal notice.

HISTORY: GC § 4852-7; 120 v 475(576); Bureau of Code Revision, Eff 10-1-53.

§ 3321.22 Juvenile court proceedings.

(A) Except as provided in division (B) of this section, if a complaint is filed against the parent, guardian, or other person in charge of a child for a failure to cause the child to attend school or a part-time school or class and if the parent, guardian, or other person proves an inability to do so, then the parent, guardian, or other person in charge of a child shall be discharged. Upon the discharge, the attendance officer shall file a complaint before the judge of the juvenile court of the county alleging that the child is a delinquent child, unruly child, or dependent child within the meaning of section 2151.022 [2151.02.2], 2151.04, or 2152.02 of the Revised Code. The judge shall hear the complaint and if the judge determines that the child is a delinquent, unruly, or dependent child within one of those sections the judge shall deal with the child according to section 2151.35 or 2151.36 of the Revised Code.

(B) Division (A) of this section does not apply regarding a complaint filed under division (D) or (E) of section 3321.19 of the Revised Code or otherwise filed and alleging that a child is an habitual truant or chronic truant.

HISTORY: GC § 4852-8; 120 v 475(577); Bureau of Code Revision, 10-1-53; 148 v S 181 (Eff 9-4-2000); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[FAILURE TO SEND CHILD TO SCHOOL]

§ 3321.38 Violation of compulsory attendance laws; bond.

(A) No parent, guardian, or other person having care of a child of compulsory school age shall violate any provision of section 3321.01, 3321.03, 3321.04, 3321.07, 3321.10, 3321.19, 3321.20, or 3331.14 of the Revised Code. The juvenile court, which has exclusive original jurisdiction over any violation of this section pursuant to section 2151.23 of the Revised Code, may require a person convicted of violating this division to give bond in a sum of not more than five hundred dollars with sureties to the approval of the court, conditioned that the person will cause the child under the person's charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law. If the juvenile court adjudicates the child as an unruly or delinquent child for being an habitual or chronic truant pursuant to section 2151.35 of the Revised Code, the court shall warn the parent, guardian, or other person having care of the child that any subsequent adjudication of that nature involving the child may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of division (C) of section 2919.21 or section 2919.24 of the Revised Code.

(B) This section does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation of any provision in any of the sections specified in division (A) of this section, any provision of section 2919.222 [2919.22.2] or 2919.24 of the Revised Code, or division (C) of section 2919.21 of the Revised Code. A forfeiture of the bond shall not relieve that

parent, guardian, or other person from prosecution and conviction upon further violation of any provision in any of those sections or that division.

(C) Section 4109.13 of the Revised Code applies to this section.

(D) No parent, guardian, or other person having care of a child of compulsory school age shall fail to give bond as required by division (A) of this section in the sum of one hundred dollars with sureties as required by the court.

HISTORY: RS §§ 4022-1, 4022-2; 86 v 333, 334; 87 v 143; 87 v 316; 89 v 389; 90 v 285; 95 v 615; 97 v 365; GC §§ 12974, 12975; Bureau of Code Revision, 10-1-53; 126 v 655(684) (Eff 1-3-56); 129 v 582(781) (Eff 1-10-61); 137 v H 883 (Eff 1-12-79); 143 v S 140 (Eff 10-2-89); 146

v S 2 (Eff 7-1-96); 148 v S 181. Eff 9-4-2000; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

While GC § 12975 as enacted in 109 v 376 purports to amend former GC § 12975, it is not, in fact, an amendment thereof.

§ 3321.99 Penalty.

Whoever violates division (A) of section 3321.38 of the Revised Code may be fined not more than five hundred dollars or may be ordered to perform not more than seventy hours of community service work.

HISTORY: Bureau of Code Revision, 10-1-53; 132 v S 191 (Eff 11-14-67); 146 v S 2 (Eff 7-1-96); 148 v S 181. Eff 9-4-2000.

TITLE 41: LABOR AND INDUSTRY

CHAPTER 4109: EMPLOYMENT OF MINORS

Section

- 4109.01 Definitions.
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- 4109.21 Door-to-door sales activity; registration of employer.
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§ 4109.01 Definitions.

As used in this chapter:

(A) "Employ" means to permit or suffer to work.

(B) "Employer" means the state, its political subdivisions, and every person who employs any individual.

(C) "Enforcement official" means the director of commerce or the director's authorized representative, the superintendent of public instruction or the superintendent's authorized representative, any school attendance officer, any probation officer, the director of health or the director of health's authorized representative, and any representative of a local department of health.

(D) "Minor" means any person less than eighteen years of age.

(E) "Seasonal amusement or recreational establishment" means both of the following:

(1) An amusement or recreational establishment that does not operate for more than seven months in any calendar year;

(2) An amusement or recreational establishment whose average receipts for any six months during the preceding calendar year were not more than thirty-three and one-third per cent of its average receipts for the other six months of that calendar year.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

Not analogous to former RC § 4109.01 (GC § 12993-2; 120 v 475; Bureau of Code Revision, 10-1-53), repealed 137 v H 883, § 2, eff 1-12-79.

The effective date is set by section 12(A) of HB 471.

§ 4109.02 Employment of minor without age and schooling certificate prohibited; exceptions.

(A) Except as provided in division (B) of this section or in section 4109.06 of the Revised Code, no minor of compulsory school age shall be employed by any employer unless the minor presents to the employer a proper age and schooling certificate as a condition of employment.

A valid certificate constitutes conclusive evidence of the age of the minor and of the employer's right to employ the minor in occupations not denied by law to minors of that age under section 4109.06 of the Revised Code or rules adopted under that section.

(B) Minors aged sixteen or seventeen are not required to provide an age and schooling certificate as a condition of employment if they are to be employed during summer vacation months after the last day of the school term in the spring and before the first day of the school term in the fall, in nonagricultural and nonhazardous employment as defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, and similar state statutes, or in other employment not prohibited to minors age sixteen or seventeen by law.

(C) To be hired for the type of employment described in division (B) of this section, minors shall provide the employer with the following:

(1) Evidence of proof of age in the same manner as proof of age is provided the superintendent of schools or chief administrative officer under division (A)(3) of section 3331.02 of the Revised Code;

(2) A statement signed by the minor's parent or guardian consenting to the proposed employment. For the purposes of this section, in the absence of a parent or guardian, a person over eighteen years of age with whom the minor resides may sign the statement.

HISTORY: 137 v H 883 (Eff 1-12-79); 138 v H 1002 (Eff 4-30-80); 148 v H 93 (Eff 5-25-99); 148 v S 52 (Eff 11-2-99); 149 v H 402. Eff 8-28-2002; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

Not analogous to former RC § 4109.02 (RS § 4022-7; 86 v 336; 90 v 287; 95 v 618; GC § 12978; 109 v 376; Bureau of Code Revision, 10-1-53), repealed 137 v H 883, § 2, eff 1-12-79.

The provisions of § 3 of HB 402 (149 v —) read as follows:

SECTION 3. On and before August 31, 2002, an employer who employs minors of compulsory school age shall do all of the following:

(A) Before employing a minor, extract from the minor the minor's age and schooling certificate and keep the certificate of each minor the employer employs on file in the establishment where the minor is employed or in the office of the business or in the residence in or about which the minor is employed for inspection by any enforcement official;

(B) Return a minor's age and schooling certificate to the superintendent of schools or the superintendent's authorized representative, or give notice of the nonuse of the certificate within five working days after the minor's withdrawal or dismissal from the employer's service;

(C) Permit an enforcement official to examine the age and schooling certificate of each minor employed by the employer.

§ 4109.03 Prohibitions.

No employer shall employ a minor before thoroughly reviewing the minor's age and schooling certificate, required by law, or fail to give notice to the superintendent of schools or chief administrative officer who issued such certificate of the nonuse of the certificate within five working days from such minor's withdrawal or dismissal from the employer's service, or continue to employ a minor after the minor's age and schooling certificate is void, or refuse to permit an enforcement official to observe the conditions under which minors are employed, or to make reasonable inquiry of minors or persons supposed by such official to be under eighteen in regard to matters pertaining to their age, employment, or schooling.

HISTORY: RS § 4022-3; 86 v 334, §§ 3, 4; 87 v 143; 90 v 286, § 3; 95 v 617; GC § 12976; 109 v 376(397); 121 v 619; Bureau of Code Revision, 10-1-53; 137 v H 883 (Eff 1-12-79); 149 v H 402. Eff 8-28-2002.

See provisions, § 3 of HB 402 (149 v —), following RC § 4109.02.

§ 4109.04 Participation or acquiescence in violations prohibited.

No employer or officer or agent of an employer shall participate or acquiesce in any violation of law relating to compulsory education or employment of minors.

HISTORY: RS §§ 4022-7, 4022-8; 86 v 336, §§ 8, 9; 86 v 337, § 8; 87 v 144; 87 v 325; 90 v 287, § 7; 90 v 288; 95 v 618; 95 v 619; GC § 12977; 101 v 310; 109 v 376(397); Bureau of Code Revision, 10-1-53; 137 v H 883. Eff 1-12-79.

§ 4109.05 Rules prohibiting employment of minors in hazardous or detrimental occupations.

(A) The director of commerce, after consultation with the director of health, shall adopt rules, in accordance

with Chapter 119. of the Revised Code, prohibiting the employment of minors in occupations which are hazardous or detrimental to the health and well-being of minors.

In adopting the rules, the director of commerce shall consider the orders issued pursuant to the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended.

(B) No minor may be employed in any occupation found hazardous or detrimental to the health and well-being of minors under the rules adopted pursuant to division (A) of this section.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

Not analogous to former RC § 4109.05 (RS § 4022-11; 86 v 338; 87 v 145; 87 v 326; 90 v 290; 95 v 621; GC § 12981; 109 v 376; Bureau of Code Revision, 10-1-53; 129 v 582; 136 v H 837), repealed 137 v H 883, § 2, eff 1-12-79.

The effective date is set by section 12(A) of HB 471.

§ 4109.06 Exceptions to coverage.

(A) This chapter does not apply to the following:

(1) Minors who are students working on any properly guarded machines in the manual training department of any school when the work is performed under the personal supervision of an instructor;

(2) Students participating in a vocational program approved by the Ohio department of education;

(3) A minor participating in a play, pageant, or concert produced by an outdoor historical drama corporation, a professional traveling theatrical production, a professional concert tour, or a personal appearance tour as a professional motion picture star, or as an actor or performer in motion pictures or in radio or television productions in accordance with the rules adopted pursuant to division (A) of section 4109.05 of the Revised Code;

(4) The participation without remuneration of a minor and with the consent of a parent or guardian, in a performance given by a church, school, or academy, or at a concert or entertainment given solely for charitable purposes, or by a charitable or religious institution;

(5) Minors who are employed by their parents in occupations other than occupations prohibited by rule adopted under this chapter;

(6) Minors engaged in the delivery of newspapers to the consumer;

(7) Minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence;

(8) Minors who are currently heads of households or are parents contributing to the support of their children;

(9) Minors engaged in lawn mowing, snow shoveling, and other related employment;

(10) Minors employed in agricultural employment in connection with farms operated by their parents, grandparents, or guardians where they are members of the guardians' household. Minors are not exempt from this chapter if they reside in agricultural labor camps as defined in section 3733.41 of the Revised Code;

(11) Students participating in a program to serve as precinct officers as authorized by section 3501.22 of the Revised Code.

(B) Sections 4109.02, 4109.08, 4109.09, and 4109.11 of the Revised Code do not apply to the following:

(1) Minors who work in a sheltered workshop operated by a county board of mental retardation;

(2) Minors performing services for a nonprofit organization where the minor receives no compensation, except for any expenses incurred by the minor or except for meals provided to the minor;

(3) Minors who are employed in agricultural employment and who do not reside in agricultural labor camps.

(C) Division (D) of section 4109.07 of the Revised Code does not apply to minors who have their employment hours established as follows:

(1) A minor adjudicated to be an unruly child or delinquent child who, as a result of the adjudication, is placed on probation may either file a petition in the juvenile court in whose jurisdiction the minor resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section 3331.01 of the Revised Code alleging the restrictions on the hours of employment described in division (D) of section 4109.07 of the Revised Code will cause a substantial hardship or are not in the minor's best interests. Upon receipt of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, shall consult with the person required to supervise the minor on probation. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has failed to show the restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish differing hours of employment for the minor and notify the minor and the minor's employer of those hours, which shall be binding in lieu of the restrictions on the hours of employment described in division (D) of section 4109.07 of the Revised Code.

(2) Any minor to whom division (C)(1) of this section does not apply may either file a petition in the juvenile court in whose jurisdiction the person resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section 3331.01 of the Revised Code, alleging the restrictions on the hours of employment described in division (D) of section 4109.07 of the Revised Code will cause a substantial hardship or are not in the minor's best interests.

If, as a result of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, finds the minor has failed to show such restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish the hours of employment for the minor and shall notify the minor and the minor's employer of those hours.

(D) Section 4109.03, divisions (A) and (C) of section 4109.02, and division (B) of section 4109.08 of the

Revised Code do not apply to minors who are sixteen or seventeen years of age and who are employed at a seasonal amusement or recreational establishment.

(E) As used in this section, "certificate of high school equivalence" means a statement issued by the state board of education or an equivalent agency of another state that the holder of the statement has achieved the equivalent of a high school education as measured by scores obtained on the tests of general educational development published by the American council on education.

HISTORY: 137 v H 883 (Eff 1-12-79); 138 v S 36 (Eff 1-18-80); 143 v S 40 (Eff 7-26-89); 143 v H 578 (Eff 4-10-91); 145 v H 107 (Eff 10-20-93); 146 v S 105 (Eff 11-24-95); 149 v H 402, Eff 8-28-2002; 151 v H 234, § 1, eff. 1-27-06; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

Not analogous to former RC § 4109.06 (RS § 4022-11; 86 v 338; 87 v 145; 87 v 326; 90 v 290; 95 v 621; GC § 12982; 109 v 376; Bureau of Code Revision, 10-1-53; 136 v H 837), repealed 137 v H 883, § 2, eff 1-12-79.

§ 4109.07 Restrictions on hours of employment.

(A) No person under sixteen years of age shall be employed:

(1) During school hours except where specifically permitted by this chapter;

(2) Before seven a.m.;

(3) After nine p.m. from the first day of June to the first day of September or during any school holiday of five school days or more duration, or after seven p.m. at any other time;

(4) For more than three hours a day in any school day;

(5) For more than eighteen hours in any week while school is in session;

(6) For more than eight hours in any day which is not a school day;

(7) For more than forty hours in any week that school is not in session.

(B) No person under sixteen years of age may be employed more than forty hours in any one week nor during school hours unless employment is incidental to bona fide programs of vocational cooperative training, work-study, or other work-oriented programs with the purpose of educating students, and the program meets standards established by the state board of education.

(C) No employer shall employ a minor more than five consecutive hours without allowing the minor a rest period of at least thirty minutes. The rest period need not be included in the computation of the number of hours worked by the minor.

(D) No person sixteen or seventeen years of age who is required to attend school under Chapter 3321. of the Revised Code shall be employed:

(1) Before seven a.m. on any day that school is in session, except such person may be employed after six a.m. if the person was not employed after eight p.m. the previous night;

(2) After eleven p.m. on any night preceding a day that school is in session.

(E) As used in this section, "school" refers to either a school the child actually attends or a school he is required to attend pursuant to Chapter 3321. of the Revised Code.

HISTORY: 137 v H 883 (Eff 1-12-79); 143 v H 446 (Eff 9-25-90); 143 v H 578, Eff 4-10-91.

Not analogous to former RC § 4109.07 (RS § 4022-12; 90 v 290; 95 v 622; GC § 12986; 109 v 376; Bureau of Code Revision, 10-1-53; 129

v 582; 133 v S 460; 136 v H 205), repealed 137 v H 883, § 2, eff 1-12-79.

§ 4109.08 Posting of list of minors employed, abstract of provisions; official may require proof of age; false statements prohibited.

(A) No minor shall be employed unless the employer keeps on the premises a complete list of all minors employed by the employer at a particular establishment and a printed abstract to be furnished by the director of commerce summarizing the provisions of this chapter.

The list and abstract shall be posted in plain view in a conspicuous place which is frequented by the largest number of minor employees, and to which all minor employees have access.

(B) An enforcement official may require any employer, in or about whose establishment an employee apparently under eighteen years of age is employed and whose age and schooling certificate is not on file with the director of commerce as required by section 3331.01 of the Revised Code, to furnish the enforcement official satisfactory evidence that the employee is in fact eighteen years of age or older. The enforcement official shall require from the employer the same evidence of age of the employee as is required by section 3331.02 of the Revised Code upon the issuance of an age and schooling certificate. No employer shall fail to produce the evidence.

(C) Any employee apparently under eighteen years of age, working in any occupation or establishment with respect to which there are restrictions by rule or law governing the employment of minors, with respect to whom the employer has not furnished satisfactory evidence that the person is at or above the age required for performance of employment with the employer after being requested to do so, and who refuses to give to an enforcement official the employee's name, age, and place of residence may be taken into custody and charged with being an unruly child or other appropriate charge under Chapter 2151. or 2152. of the Revised Code.

(D) No person shall, with the intent to assist a minor to procure employment, make a false statement by any means, including by submitting falsified forms electronically, to any employer or to any person authorized to issue an age and schooling certificate.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471 (Eff 7-1-2000); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 402. Eff 8-28-2002.

Not analogous to former RC § 4109.08 (GC § 12982-1; 109 v 376; Bureau of Code Revision, 10-1-53; 136 v H 837), repealed 137 v H 883, § 2, eff 1-12-79.

§ 4109.09 Forfeiture for failure to return certificate upon request; return of certificate upon absence from employment.

(A) After a minor employee has made a written request that an employer give notice of the nonuse of the minor's age and schooling certificate, should the employer fail to mail the document to the issuing authority within three days of receipt of the request, the minor shall be entitled to recover from the employer an amount equal to the wages which would have been earned had the minor continued in employment for the period between the receipt of the request by the employer and

the initiation of the suit or compliance with the request by the employer.

(B) If any minor fails to appear for work without explanation for three days, an employer shall consider the employment terminated, and shall give notice of the nonuse of the age and schooling certificate to the issuing authority.

HISTORY: 137 v H 883 (Eff 1-12-79); 149 v H 402. Eff 8-28-2002.

Not analogous to former RC § 4109.09 (RS § 4022-11; 86 v 338; 87 v 145; 87 v 326; 90 v 290; 95 v 621; GC § 12983; 109 v 376; 111 v 69; Bureau of Code Revision, 10-1-53), repealed 137 v H 883, § 2, eff 1-12-79.

§ 4109.10 Agreement as to wages; statement of earnings; withholding wages or receiving security deposit prohibited.

(A) No employer shall give employment to a minor, without agreeing with him as to the wages or compensation he shall receive for each day, week, month, or year; or per piece, for work performed. The employer shall furnish the minor with written evidence of the agreement and, on or before each payday, with a statement of the earnings due and the amount to be paid to him. No employer shall reduce the wages or compensation of any minor without giving him notice at least twenty-four hours previous to the reduction, at which time a written agreement shall be entered into with the minor as in the case of original employment.

(B) No employer shall retain or withhold from a minor in his employ the wages or compensation, or any part thereof, agreed to be paid and due the minor for work performed or services rendered because of presumed negligence or failure to comply with rules, breakage of machinery, or alleged incompetence to produce work or perform labor according to any standard of merit.

(C) No employer shall receive a guarantee, bonus, money deposit, or other form of security to obtain or secure employment for a minor or to ensure faithful performance of labor, guarantee strict observance of rules, or make good losses which may be charged to the minor's incompetence, negligence, or inability.

HISTORY: 137 v H 883. Eff 1-12-79.

Not analogous to former RC § 4109.10 (GC § 12993; 99 v 30; 99 v 32; 103 v 864; 109 v 376; 111 v 69; 121 v 619; Bureau of Code Revision, 10-1-53; 135 v S 1; 137 v H 1), repealed 137 v H 883, § 2, eff 1-12-79.

§ 4109.11 Records required to be kept; official access; false statements prohibited.

Every employer shall keep a time book or other written records which shall state the name, address, and occupation of each minor employed, the number of hours worked by such minor on each day of the week, the hours of beginning and ending work, the hours of beginning and ending meal periods, and the amount of wages paid each pay period to each minor. The director of commerce or the director's authorized representative shall have access to and the right to copy from the time book or records. Records shall be kept for a period of two years. No employer shall fail to keep such time book or records, or knowingly make false statements therein, or refuse to make the time book and records accessible, upon request, to the director or the director's authorized representative.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

Not analogous to former RC § 4109.11 (GC § 12993-3; 120 v 475; Bureau of Code Revision, 10-1-53), repealed 137 v H 883, § 2, eff 1-12-79.

The effective date is set by section 12(A) of HB 471.

§ 4109.12 Continuing violation after notice prohibited; violations for which penalty not otherwise provided.

(A) No person shall continue to employ any minor in violation of any law relating to the employment of minors after being notified of the violation in writing by the director of commerce or other enforcement official.

Failure of the director or other enforcement official to give such notice does not excuse or negate a conviction for any offense except a violation of this division.

(B) No employer shall employ, and no person having under the person's control as parent, guardian, or custodian, any minor, shall permit or suffer a minor to be employed in violation of any law relating to the employment of minors for which a penalty is not otherwise provided by law.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

Not analogous to former RC § 4109.12 (GC § 13007-3; 103 v 864; 122 v 742; Bureau of Code Revision, 10-1-53; 125 v 609; 126 v 173; 130 v 910; 132 v S 256; 132 v S 457; 135 v S 354; 137 v H 275), repealed 137 v H 883, § 2, eff 1-12-79.

The effective date is set by section 12(A) of HB 471.

§ 4109.13 Enforcement officials; complaints; jurisdiction of courts; security, costs; disposition of fines.

(A) The director of commerce shall designate enforcement officials to enforce this chapter.

(B) An enforcement official, upon discovery of a violation of this chapter and after notice to the employer, shall make a complaint against the offending employer in any court of competent jurisdiction.

(C) Enforcement officials shall make complaint by filing a complaint before a court having competent jurisdiction against any person violating any law relating to the employment of minors. This section shall not be construed to limit the right of other persons to make those complaints.

(D) County courts, municipal courts, and juvenile courts have jurisdiction to try offenses under this chapter. Juvenile courts have exclusive original jurisdiction to try offenses under section 3321.38 of the Revised Code.

(E) No person or enforcement official instituting proceedings under this section shall be required to file or give security for the costs. If a defendant is acquitted, the judge before whom the case is brought shall certify the costs to the county auditor. The county auditor shall examine the amount and, if necessary, correct it. The county auditor shall issue a warrant on the county treasurer in favor of the persons to whom the costs are due.

(F) Fines collected for violations of this chapter and section 3321.38 of the Revised Code shall be paid into the funds of the school district in which the offense was committed.

HISTORY: 137 v H 883 (Eff 1-12-79); 146 v S 162 (Eff 10-29-95); 148 v H 471 (Eff 7-1-2000); 148 v S 181. Eff 9-4-2000.

Not analogous to former RC § 4109.13 (GC § 13001; 99 v 31, 32; 103 v 864; Bureau of Code Revision, 10-1-53), repealed 137 v H 883, § 2, eff 1-12-79.

Publisher's Note:

The amendments made by HB 471 (148 v —) and SB 181 (148 v —) have been combined. See provisions of RC § 1.52.

§ 4109.21 Door-to-door sales activity; registration of employer.

(A) No employer shall employ any minor who is under sixteen years of age in any door-to-door sales activity unless that employer is registered pursuant to this section and otherwise is in compliance with the requirements of this chapter.

(B) To obtain registration as a door-to-door employer, an employer shall apply to the director of commerce, on forms provided by the director. The application form shall include all of the following:

(1) The name, principal business address, and telephone number of the applicant. If the applicant is a partnership or association, the names of all the members also shall be stated and, if the applicant is a corporation, the names of its president and each of its officers also shall be stated.

(2) A certification that the applicant and its employees:

(a) Are in compliance with and will comply with all applicable Ohio and federal laws and regulations relating to the employment of minors;

(b) Will provide at least one supervisor who is over the age of eighteen, for each six minor employees, who is at all times available and responsible for assuring the minor's well-being, and who remains in the general area and in visual contact with each minor employed in door-to-door sales activities at least once every twenty minutes;

(c) Will require all minors to work at least in pairs with others who are engaged in substantially the same activity, employing insofar as possible canvassing techniques that keep the persons working in pairs in close proximity and view of each other;

(d) Are in compliance with Ohio's motor vehicle financial responsibility, workers' compensation, unemployment compensation, and all other applicable laws; and

(e) Will not employ any minor who does not have an appropriate age and schooling certificate if that minor is required by Ohio law to have the certificate to be employed.

(3) A certification, as evidenced by a current official inspection sticker issued by the Ohio state highway patrol, that each motor vehicle used by the applicant and the applicant's employees for the purpose of transport of minors for door-to-door sales activities complies with all applicable motor vehicle safety laws;

(4) A certification that any person who transports by motor vehicle minors for purposes of door-to-door sales activities possesses a valid and properly issued Ohio motor vehicle driver's license, which license is not under suspension.

(C)(1) The director shall issue a registration to each applicant who satisfactorily submits an application pursuant to this section and otherwise meets all of the requirements of this section. If the director fails to issue or deny a registration or its renewal within fifteen days of submission of the application or renewal, the applicant is

deemed registered under this section. Each registration expires one year after its issuance. To obtain a renewal of registration, the holder of the registration shall apply for renewal to the director according to the procedures of division (B) of this section for the initial issuance of the registration.

(2) Each employer issued a registration pursuant to this section shall provide each minor employee who is engaged in door-to-door sales, prior to beginning employment with the employer, an identification card in a form prescribed by the director. The card shall include, at a minimum, a picture of the minor employee, the minor employee's name, the name and address of the employer, a statement that the employer is registered with the director of commerce, and the employer's registration number.

(D) The director, pursuant to a hearing conducted in accordance with Chapter 119. of the Revised Code, may refuse to issue or renew a door-to-door sales registration or revoke a door-to-door sales registration if the director determines that the applicant, registrant, any member of an applicant's or registrant's partnership or association, or any officer or employee of an applicant or registrant has done any of the following:

(1) Obtained or attempted to obtain a registration by fraud or misrepresentation;

(2) Been guilty of gross misconduct in the pursuit of the door-to-door sales profession;

(3) Violated or is threatening to violate any provision of this or any other state or federal law or regulation which regulates the employment of minors.

(E) No employer whose registration has been revoked under this section may apply for registration for two years from the date of the revocation. The director may require such employer upon application for a registration to meet conditions in addition to those provided in this section for registration and renewal as the director determines necessary to safeguard the interests of minors to be employed by the employer.

(F) No employer may employ:

(1) Any minor who is under sixteen years of age in any door-to-door sales activity before seven a.m. or after seven p.m. or during school hours except where specifically permitted by this chapter;

(2) Any minor who is sixteen or seventeen years of age in any door-to-door sales activity before seven a.m. or after eight p.m. or during school hours except where specifically permitted by this chapter.

(G) As used in this section, "door-to-door sales activity" means any activity involving selling or offering to sell any candy, cookies, flowers, newspapers, magazines, newspaper or magazine subscriptions, household cleaning products, or any other merchandise or commodity at a place of business other than the employer's place of business but does not mean any such activity conducted in connection with a bona fide educational, charitable, or religious activity or for a newspaper subscription drive provided that the minor also is engaged in the delivery of newspapers to the consumer for the newspaper in which the subscription drive is conducted and further provided that the subscription drive is supervised by an individual who is eighteen years of age or older and an employee of the newspaper's subscription drive.

HISTORY: 143 v H 446 (Eff 9-25-90); 143 v H 578 (Eff 4-10-91); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

Somewhat analogous to former RC § 4109.21 (GC § 13005; 99 v 31, 32; 103 v 864(910); Bureau of Code

Revision, 10-1-53; 135 v S 1), repealed 137 v H 883, § 2, eff 1-12-79.

The effective date is set by section 12(A) of HB 471.

§ 4109.99 Penalties.

(A) Whoever violates section 4109.04, division (C) of section 4109.07, division (A), (B), or (D) of section 4109.08, section 4109.11, or division (B) of section 4109.12 of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates section 4109.05 of the Revised Code is guilty of a misdemeanor of the third degree.

(C) Whoever violates section 4109.03, division (A), (B), or (D) of section 4109.07, or section 4109.10 of the Revised Code is guilty of a minor misdemeanor on a first offense and a misdemeanor of the third degree on each subsequent offense.

(D) Whoever violates division (A) of section 4109.12 of the Revised Code is guilty of a minor misdemeanor for each day the violation continues.

(E) Whoever violates division (A) of section 4109.21 of the Revised Code is guilty of a misdemeanor of the fourth degree on a first offense and a first degree misdemeanor on each subsequent offense. If, however, the violation on a first offense contains aggravating circumstances, including, but not limited to, threats to a minor, reckless operation of a motor vehicle, or abandonment of or endangerment to a minor but not including circumstances that are the basis of a felony violation of section 2919.22 of the Revised Code, then the person is guilty of a misdemeanor of the first degree. If the offender previously has been convicted under this section and if the subsequent offense contains aggravating circumstances other than circumstances that are the basis of a felony violation of section 2919.22 of the Revised Code, then the person is guilty of a felony of the fourth degree.

HISTORY: Bureau of Code Revision, 10-1-53; 132 v S 256 (Eff 12-12-67); 136 v H 837 (Eff 5-25-76); 137 v H 883 (Eff 1-12-79); 143 v H 446 (Eff 9-25-90); 143 v H 578 (Eff 4-10-91); 146 v S 2. Eff 7-1-96.

The effective date is set by section 6 of SB 2.

CHAPTER 4113: MISCELLANEOUS LABOR PROVISIONS

§ 4113.10 Conducting child to juvenile court.

A child working in or in connection with a factory, workshop, business office, telephone or telegraph office, restaurant, bakery, hotel, apartment house, or mercantile or other establishment, or in the distribution or transmission of merchandise or messages, who appears to an inspector of workshops and factories to be under the legal age, or refuses to give to such inspector his name, age, and place of residence, shall be forthwith conducted by such inspector to the office of the juvenile judge or the probate judge for examination. If such inspector is in doubt as to the physical fitness of a boy under sixteen years of age or a girl under eighteen years of age found working in or in connection with any of such establishments, or in the distribution or transmission of merchandise or messages, he shall require a certificate signed by a medical officer of the board of health certifying that such child is of sound health and physically able to

perform the work or service such child is required to do. Such certificate shall be signed by the child in whose name it is issued in the presence of the officer issuing it, and such examination shall be made and certificate issued without expense to said child.

HISTORY: GC § 6246; Bates, § 6986-7; 99 v 30; Bureau of Code Revision. Eff 10-1-53.

TITLE 43: LIQUOR

CHAPTER 4301: LIQUOR CONTROL LAW

§ 4301.22 Restrictions on sale of beer and liquor.

Sales of beer and intoxicating liquor under all classes of permits and from state liquor stores are subject to the following restrictions, in addition to those imposed by the rules or orders of the division of liquor control:

(A)(1) Except as otherwise provided in this chapter, no beer or intoxicating liquor shall be sold to any person under twenty-one years of age.

(2) No low-alcohol beverage shall be sold to any person under eighteen years of age. No permit issued by the division shall be suspended, revoked, or canceled because of a violation of division (A)(2) of this section.

(3) No intoxicating liquor shall be handled by any person under twenty-one years of age, except that a person eighteen years of age or older employed by a permit holder may handle or sell beer or intoxicating liquor in sealed containers in connection with wholesale or retail sales, and any person nineteen years of age or older employed by a permit holder may handle intoxicating liquor in open containers when acting in the capacity of a server in a hotel, restaurant, club, or night club, as defined in division (B) of section 4301.01 of the Revised Code, or in the premises of a D-7 permit holder. This section does not authorize persons under twenty-one years of age to sell intoxicating liquor across a bar. Any person employed by a permit holder may handle beer or intoxicating liquor in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading, and may handle beer or intoxicating liquor in open containers in connection with cleaning tables or handling empty bottles or glasses.

(B) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(C) No sales of intoxicating liquor shall be made after two-thirty a.m. on Sunday except under either of the following circumstances:

(1) Intoxicating liquor may be sold on Sunday under authority of a permit that authorizes Sunday sale.

(2) Spirituous liquor may be sold on Sunday by any person awarded an agency contract under section 4301.17 of the Revised Code if the sale of spirituous liquor is authorized in the applicable precinct as the result of an election on question (B)(1) or (2) of section 4301.351 [4301.35.1] of the Revised Code and if the agency contract authorizes the sale of spirituous liquor on Sunday.

This section does not prevent a municipal corporation from adopting a closing hour for the sale of intoxicating liquor earlier than two-thirty a.m. on Sunday or to

provide that no intoxicating liquor may be sold prior to that hour on Sunday.

(D) No holder of a permit shall give away any beer or intoxicating liquor of any kind at any time in connection with the permit holder's business.

(E) Except as otherwise provided in this division, no retail permit holder shall display or permit the display on the outside of any licensed retail premises, or on any lot of ground on which the licensed premises are situated, or on the exterior of any building of which the licensed premises are a part, any sign, illustration, or advertisement bearing the name, brand name, trade name, trade-mark, designation, or other emblem of or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of any beer or intoxicating liquor. Signs, illustrations, or advertisements bearing the name, brand name, trade name, trade-mark, designation, or other emblem of or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of beer or intoxicating liquor may be displayed and permitted to be displayed on the interior or in the show windows of any licensed premises, if the particular brand or type of product so advertised is actually available for sale on the premises at the time of such display. The liquor control commission shall determine by rule the size and character of such signs, illustrations, or advertisements.

(F) No retail permit holder shall possess on the licensed premises any barrel or other container from which beer is drawn, unless there is attached to the spigot or other dispensing apparatus the name of the manufacturer of the product contained in the barrel or other container, provided that if the beer is served at a bar the manufacturer's name or brand shall appear in full view of the purchaser. The commission shall regulate the size and character of the devices provided for in this section.

(G) Except as otherwise provided in this division, no sale of any gift certificate shall be permitted whereby beer or intoxicating liquor of any kind is to be exchanged for the certificate, unless the gift certificate can be exchanged only for food, and beer or intoxicating liquor, for on-premises consumption and the value of the beer or intoxicating liquor for which the certificate can be exchanged does not exceed more than thirty per cent of the total value of the gift certificate. The sale of gift certificates for the purchase of beer, wine, or mixed beverages shall be permitted for the purchase of beer, wine, or mixed beverages for off-premises consumption. Limitations on the use of a gift certificate for the purchase of beer, wine, or mixed beverages for off-premises consumption may be expressed by clearly stamping or typing on the face of the certificate that the certificate may not be used for the purchase of beer, wine, or mixed beverages.

HISTORY: GC § 6064-22; 115 v P.H. 118(140), § 22; 116 v 511(535); 117 v 628(644); Bureau of Code Revision, 10-1-53; 128 v 1282 (Eff 10-23-59); 129 v 1211 (Eff 10-7-61); 133 v H 616 (Eff

11-17-69); 134 v H 859 (Eff 4-28-72); 136 v H 158 (Eff 8-13-76); 139 v H 357 (Eff 8-19-82); 140 v S 74 (Eff 7-4-84); 142 v H 419 (Eff 7-31-87); 145 v S 82 (Eff 5-4-94); 145 v S 167 (Eff 11-1-94); 145 v S 209 (Eff 11-9-94); 146 v H 511, § 1 (Eff 8-20-96); 146 v S 162 (Eff 7-1-97); 146 v H 511, § 3, Eff 7-1-97; 150 v H 306, § 1, eff. 7-23-04; 150 v S 164, § 1, 3, eff. 9-16-04.

The effective date is set by section 3 of S.B. 164 (150 v —).

§ 4301.63 Persons under twenty-one not to purchase beer or intoxicating liquor.

Except as otherwise provided in this chapter, no person under the age of twenty-one years shall purchase beer or intoxicating liquor.

HISTORY: GC § 6064-57a; 118 v 691; Bureau of Code Revision, 10-1-53; 125 v 113 (Eff 10-2-53); 136 v H 315 (Eff 4-25-75); 139 v H 357 (Eff 8-19-82); 142 v H 419, Eff 7-31-87.

[§ 4301.63.4] § 4301.634 Misrepresentation by person under twenty-one.

Except as otherwise provided in this chapter, no person under the age of twenty-one years shall knowingly show or give false information concerning the person's name, age, or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this state where beer or intoxicating liquor is sold under a permit issued by the division of liquor control or sold by the division.

HISTORY: 130 v 999 (Eff 9-20-63); 139 v H 357 (Eff 8-19-82); 142 v H 419 (Eff 7-31-87); 146 v S 162, Eff 7-1-97.

The effective date is set by section 10 of SB 162.

[§ 4301.63.5] § 4301.635 Notice to permit holder after compliance check.

(A) As used in this section:

(1) "Compliance check" means an attempt on behalf of a law enforcement agency or the division of liquor control to purchase any beer, wine, mixed beverages, or intoxicating liquor in the enforcement of any section of this chapter or any rule of the liquor control commission in which the age of the purchaser is an element of the offense.

(2) "Confidential informant" means a person who is under twenty-one years of age and who is engaged in conducting compliance checks.

(3) "Law enforcement agency" means an organization or unit made up of law enforcement officers authorized to enforce this chapter and also includes the investigative unit of the department of public safety described in section 5502.13 of the Revised Code.

(B) Within a reasonable period of time after the conduct of a compliance check, the law enforcement agency that conducted the compliance check, or the division of liquor control if the division conducted the compliance check, shall send written notification of it to the permit holder that was its subject. If the confidential informant who participated in the compliance check was able to purchase beer, wine, mixed beverages, or intoxicating liquor, the citation issued for the violation constitutes that notification. If the confidential informant who participated in the compliance check was unable to purchase beer, wine, mixed beverages, or intoxicating liquor, the notification shall indicate the date and time of

the compliance check, the law enforcement agency that conducted the compliance check or, when applicable, that the division of liquor control conducted the compliance check, and the permit holder or a general description of the employee of the permit holder who refused to make the sale.

HISTORY: 150 v S 23, § 1, eff. 4-7-04.

Not analogous to former § 4301.635, repealed 142 v H 419, § 2 [130 v 999], eff 7-31-87.

[§ 4301.63.9] § 4301.639 Good faith acceptance of false identification.

(A) No permit holder, agent or employee of a permit holder, or any other person may be found guilty of a violation of any section of this chapter or any rule of the liquor control commission in which age is an element of the offense, if the liquor control commission or any court of record finds all of the following:

(1) That the person buying, at the time of so doing, exhibited to the permit holder, the agent or employee of the permit holder, or the other person a driver's or commercial driver's license or an identification card issued under sections 4507.50 to 4507.52 of the Revised Code showing that the person buying was then at least twenty-one years of age if the person was buying beer as defined in section 4301.01 of the Revised Code or intoxicating liquor or that the person was then at least eighteen years of age if the person was buying any low-alcohol beverage;

(2) That the permit holder, the agent or employee of the permit holder, or the other person made a bona fide effort to ascertain the true age of the person buying by checking the identification presented, at the time of the purchase, to ascertain that the description on the identification compared with the appearance of the buyer and that the identification presented had not been altered in any way;

(3) That the permit holder, the agent or employee of the permit holder, or the other person had reason to believe that the person buying was of legal age.

(B) In any hearing before the liquor control commission and in any action or proceeding before a court of record in which a defense is raised under division (A) of this section, the registrar of motor vehicles or deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records, in the registrar's or deputy's possession, of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles at the hearing, action, or proceeding.

(C) The defense provided by division (A) of this section is in addition to the affirmative defense provided by section 4301.611 [4301.61.1] of the Revised Code.

HISTORY: 134 v H 453 (Eff 9-28-72); 137 v H 90 (Eff 1-17-78); 143 v H 381 (Eff 7-1-89); 145 v S 209 (Eff 11-9-94); 148 v S 200, Eff 9-21-2000.

§ 4301.69 Offenses involving underage persons.

(A) Except as otherwise provided in this chapter, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage

person, unless given by a physician in the regular line of the physician's practice or given for established religious purposes or unless the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian.

In proceedings before the liquor control commission, no permit holder, or no employee or agent of a permit holder, charged with a violation of this division shall be charged, for the same offense, with a violation of division (A)(1) of section 4301.22 of the Revised Code.

(B) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(C) No person shall engage or use accommodations at a hotel, inn, cabin, campground, or restaurant when the person knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and is not an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person;

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and has the drug of abuse in the original container in which it was dispensed to the person.

(D)(1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin, or campground by an underage person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not supervised by a parent, spouse who is not an underage person, or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin, or campground by presenting identification that falsely indicates that the underage person is twenty-one years of age or older for the purpose of violating this section.

(E)(1) No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, possess, or consume any beer or intoxicating liquor in any public or private place. No underage person shall knowingly be under the influence of any beer or intoxicating liquor in

any public place. The prohibitions set forth in division (E)(1) of this section against an underage person knowingly possessing, consuming, or being under the influence of any beer or intoxicating liquor shall not apply if the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

(2)(a) If a person is charged with violating division (E)(1) of this section in a complaint filed under section 2151.27 of the Revised Code, the court may order the child into a diversion program specified by the court and hold the complaint in abeyance pending successful completion of the diversion program. A child is ineligible to enter into a diversion program under division (E)(2)(a) of this section if the child previously has been diverted pursuant to division (E)(2)(a) of this section. If the child completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the child's record in the case sealed under sections 2151.356 [2151.35.6] to 2151.358 [2151.35.8] of the Revised Code. If the child fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(b) If a person is charged in a criminal complaint with violating division (E)(1) of this section, section 2935.36 of the Revised Code shall apply to the offense, except that a person is ineligible for diversion under that section if the person previously has been diverted pursuant to division (E)(2)(a) or (b) of this section. If the person completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the record in the case sealed under section 2953.52 of the Revised Code. If the person fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or section 4301.63, 4301.633 [4301.63.3], or 4301.634 [4301.63.4] of the Revised Code.

(G) The operator of any hotel, inn, cabin, or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin, or campground.

(H) As used in this section:

(1) "Drug of abuse" has the same meaning as in section 3719.011 [3719.01.1] of the Revised Code.

(2) "Hotel" has the same meaning as in section 3731.01 of the Revised Code.

(3) "Licensed health professional authorized to prescribe drugs" and "prescription" have the same meanings as in section 4729.01 of the Revised Code.

(4) "Minor" means a person under the age of eighteen years.

(5) "Underage person" means a person under the age of twenty-one years.

HISTORY: RS § 6943; 63 v 149, § 2; GC § 12960; 113 v 495; 115 v PU1, 118(161), § 62; 116 v 279; Bureau of Code Revision, 10-1-53; 132 v S 128 (Eff 11-24-67); 136 v H 315 (Eff 4-25-75); 139 v H 357 (Eff 8-19-82); 142 v H 419 (Eff 7-31-87); 142 v H 306 (Eff 6-9-88); 143 v H 22 (Eff 8-1-89); 145 v S 82 (Eff 5-4-94); 147 v S 66 (Eff 7-22-98); 149 v H 17. Eff 10-11-2002; 151 v S 131, § 1, eff. 9-21-06; 151 v H 137, § 1, eff. 10-12-06.

The effective date is set by § 6 of 151 v H 137.

Comment, Legislative Service Commission

Section 4301.69 of the Revised Code is amended by Am. Sub. H.B. 137 and Sub. S.B. 131 of the 126th General Assembly.

Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[§ 4301.69.1] § 4301.691 Alternate prohibitions if federal mandate is no longer in force.

If the United States congress repeals the mandate established by the "Surface Transportation Assistance Act of 1982" relating to a national uniform drinking age of twenty-one or if a court of competent jurisdiction declares the mandate to be unconstitutional or otherwise invalid, then upon the certification by the secretary of state that this mandate has been repealed or invalidated, the following shall apply:

(A) Beer or intoxicating liquor may be served to a person not seated at a table unless there is reason to believe that the beer will be consumed by a person under nineteen years of age or that the intoxicating liquor will be consumed by a person under twenty-one years of age.

(B) No person under the age of twenty-one years shall purchase intoxicating liquor, nor shall a person under the age of nineteen years purchase beer.

(C) No person under the age of nineteen years shall order, pay for, share the cost of, or attempt to purchase any beer or intoxicating liquor, or consume any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, in any public or private place, except as provided in section 4301.69 of the Revised Code.

(D) No person under the age of twenty-one years shall order, pay for, share the cost of, or attempt to purchase any intoxicating liquor, or consume any intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, except as provided in section 4301.69 of the Revised Code.

(E) No person shall knowingly furnish any false information as to the name, age, or other identification of any person under twenty-one years of age for the purpose of obtaining or with the intent to obtain, beer or intoxicating liquor for a person under nineteen years of age, or intoxicating liquor for a person under twenty-one years of age, by purchase, or as a gift.

(F) No person under the age of nineteen years shall knowingly show or give false information concerning the person's name, age, or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this state where beer or intoxicating liquor is sold under a permit issued by the division of liquor control or sold by the division.

(G) No person under the age of twenty-one years shall knowingly show or give false information concerning the person's name, age, or other identification for the purpose of purchasing or otherwise obtaining intoxicating liquor in any place in this state where intoxicating liquor is sold under a permit issued by the division or sold by the division.

(H) No person shall sell intoxicating liquor to a person under the age of twenty-one years or sell beer to a person under the age of nineteen, or buy intoxicating liquor for, or furnish it to, a person under the age of twenty-one years, or buy beer for or furnish it to a person under the age of nineteen, unless given by a physician in the regular line of his practice, or by a parent or legal guardian.

In proceedings before the liquor control commission, no permit holder or the permit holder's employee or

agent charged with a violation of this section shall, for the same offense, be charged with a violation of division (A)(1) of section 4301.22 of the Revised Code.

(I) No person who is the owner or occupant of any public or private place shall knowingly allow any person under the age of twenty-one to remain in or on the place while possessing or consuming intoxicating liquor, or knowingly allow any person under the age of nineteen to remain in or on the place while possessing or consuming beer, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent or legal guardian and the parent or legal guardian is present at the time of the person's possession or consumption of the intoxicating liquor or beer.

(J) The division shall revise the warning sign required by section 4301.637 [4301.63.7] of the Revised Code so that the sign conforms to this section.

HISTORY: 142 v H 419 (Eff 7-31-87); 142 v H 306 (Eff 6-9-88); 143 v H 22 (Eff 8-1-89); 145 v S 82 (Eff 5-4-94); 146 v S 162, Eff 7-1-97.

The effective date is set by section 10 of SB 162.

§ 4301.99 Penalties.

(A) Whoever violates section 4301.47, 4301.48, 4301.49, 4301.62, or 4301.70 or division (C) of section 4301.65 or division (B) of section 4301.691 [4301.69.1] of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates section 4301.15, division (A)(2) or (C) of section 4301.22, division (C), (D), (E), (F), (G), (H), or (I) of section 4301.631 [4301.63.1], or section 4301.64 or 4301.67 of the Revised Code is guilty of a misdemeanor of the fourth degree.

If an offender who violates section 4301.64 of the Revised Code was under the age of eighteen years at the time of the offense, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit, probationary driver's license, or driver's license for a period of not less than six months and not more than one year. If the offender is fifteen years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be issued such a license or permit for a period of six months. If the offender has not attained the age of fifteen years and six months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen years.

(C) Whoever violates division (D) of section 4301.21, or section 4301.251 [4301.25.1], 4301.58, 4301.59, 4301.60, 4301.633 [4301.63.3], 4301.66, 4301.68, or 4301.74, division (B), (C), (D), (E)(1), or (F) of section 4301.69, or division (C), (D), (E), (F), (G), or (I) of section 4301.691 [4301.69.1] of the Revised Code is guilty of a misdemeanor of the first degree.

If an offender who violates division (E)(1) of section 4301.69 of the Revised Code was under the age of eighteen years at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit or probationary driver's license for a period of not less than six months and not more than one year. If the offender is fifteen years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be

issued such a license or permit for a period of six months. If the offender has not attained the age of fifteen years and six months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen years.

(D) Whoever violates division (B) of section 4301.14, or division (A)(1) or (3) or (B) of section 4301.22 of the Revised Code is guilty of a misdemeanor of the third degree.

(E) Whoever violates section 4301.63 or division (B) of section 4301.631 [4301.63.1] of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars. The court imposing a fine for a violation of section 4301.63 or division (B) of section 4301.631 [4301.63.1] of the Revised Code may order that the fine be paid by the performance of public work at a reasonable hourly rate established by the court. The court shall designate the time within which the public work shall be completed.

(F)(1) Whoever violates section 4301.634 [4301.63.4] of the Revised Code is guilty of a misdemeanor of the first degree. If, in committing a first violation of that section, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than two hundred fifty and not more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months.

(2) On a second violation in which, for the second time, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred nor more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(3) On a third or subsequent violation in which, for the third or subsequent time, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred nor more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months. The court also shall impose a class six suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code, and the court may order that the suspension or denial remain in effect until the offender attains the age of twenty-one years. The court also may order the

offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform.

(G) Whoever violates section 4301.636 [4301.63.6] of the Revised Code is guilty of a felony of the fifth degree.

(H) Whoever violates division (A)(1) of section 4301.22 of the Revised Code is guilty of a misdemeanor, shall be fined not less than five hundred and not more than one thousand dollars, and, in addition to the fine, may be imprisoned for a definite term of not more than sixty days.

(I) Whoever violates division (A) of section 4301.69 or division (H) of section 4301.691 [4301.69.1] of the Revised Code is guilty of a misdemeanor, shall be fined not less than five hundred and not more than one thousand dollars, and, in addition to the fine, may be imprisoned for a definite term of not more than six months.

(J) Whoever violates division (B) of section 4301.65 of the Revised Code is guilty of a misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree.

HISTORY: 135 v H 352 (Eff 9-30-74); 135 v H 496 (Eff 9-30-74); 136 v H 1 (Eff 6-13-75); 136 v H 158 (Eff 8-13-76); 137 v S 49 (Eff 11-14-77); 140 v S 74 (Eff 7-4-84); 142 v H 419 (Eff 7-31-87); 142 v H 562 (Eff 6-29-88); 142 v H 306 (Eff 6-9-88); 143 v S 131 (Eff 7-25-90); 145 v S 82 (Eff 5-4-94); 145 v S 209 (Eff 11-9-94); 146 v S 2 (Eff 7-1-96); 147 v S 35 (Eff 1-1-99); 149 v H 17 (Eff 10-11-2002); 149 v S 123. Eff 1-1-2004; 150 v H 306, § 1, eff. 7-23-04; 151 v S 131, § 1, eff. 9-21-06.

The provisions of § 3 of H.B. 306 (150 v —) read as follows:

SECTION 3. * * * Section 4301.99 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 17 and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite versions of these sections are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

Analogous to former RC § 4301.99 (Bureau of Code Revision, 10-1-53; 125 v 113; 126 v 324; 130 v 1000; 130 v 1003; 130 v 1002; 132 v H 345) repealed 135 v H 352 and H 496, eff 9-30-74.

The effective date is set by section 4 of SB 123.

The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:

SECTION 5. (A) Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

Comment, Legislative Service Commission

* * * Section 4301.99 of the Revised Code is amended by this act [Am. Sub. S.B. 123] (effective January 1, 2004) and also by Am. Sub. H.B. 17, both of the 124th General Assembly. * * * Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

TITLE 45: MOTOR VEHICLES — AERONAUTICS — WATERCRAFT

CHAPTER 4507: DRIVER'S LICENSE LAW

§ 4507.01 Definitions; deputy registrars; laminating equipment, materials.

(A) As used in this chapter, "motor vehicle," "motorized bicycle," "state," "owner," "operator," "chauffeur," and "highways" have the same meanings as in section 4501.01 of the Revised Code.

"Driver's license" means a class D license issued to any person to operate a motor vehicle or motor-driven cycle, other than a commercial motor vehicle, and includes "probationary license," "restricted license," and any operator's or chauffeur's license issued before January 1, 1990.

"Probationary license" means the license issued to any person between sixteen and eighteen years of age to operate a motor vehicle.

"Restricted license" means the license issued to any person to operate a motor vehicle subject to conditions or restrictions imposed by the registrar of motor vehicles.

"Commercial driver's license" means the license issued to a person under Chapter 4506. of the Revised Code to operate a commercial motor vehicle.

"Commercial motor vehicle" has the same meaning as in section 4506.01 of the Revised Code.

"Motorized bicycle license" means the license issued under section 4511.521 [4511.52.1] of the Revised Code to any person to operate a motorized bicycle including a "probationary motorized bicycle license."

"Probationary motorized bicycle license" means the license issued under section 4511.521 [4511.52.1] of the Revised Code to any person between fourteen and sixteen years of age to operate a motorized bicycle.

"Identification card" means a card issued under sections 4507.50 and 4507.51 of the Revised Code.

"Resident" means a person who, in accordance with standards prescribed in rules adopted by the registrar, resides in this state on a permanent basis.

"Temporary resident" means a person who, in accordance with standards prescribed in rules adopted by the registrar, resides in this state on a temporary basis.

(B) In the administration of this chapter and Chapter 4506. of the Revised Code, the registrar has the same authority as is conferred on the registrar by section 4501.02 of the Revised Code. Any act of an authorized deputy registrar of motor vehicles under direction of the registrar is deemed the act of the registrar.

To carry out this chapter, the registrar shall appoint such deputy registrars in each county as are necessary.

The registrar also shall provide at each place where an application for a driver's or commercial driver's license or identification card may be made the necessary equipment to take a color photograph of the applicant for such license or card as required under section 4506.11 or 4507.06 of the Revised Code, and to conduct the vision screenings required by section 4507.12 of the Revised Code, and equipment to laminate licenses, motorized bicycle licenses, and identification cards as required by

sections 4507.13, 4507.52, and 4511.521 [4511.52.1] of the Revised Code.

The registrar shall assign one or more deputy registrars to any driver's license examining station operated under the supervision of the state highway patrol, whenever the registrar considers such assignment possible. Space shall be provided in the driver's license examining station for any such deputy registrar so assigned. The deputy registrars shall not exercise the powers conferred by such sections upon the registrar, unless they are specifically authorized to exercise such powers by such sections.

(C) No agent for any insurance company, writing automobile insurance, shall be appointed deputy registrar, and any such appointment is void. No deputy registrar shall in any manner solicit any form of automobile insurance, nor in any manner advise, suggest, or influence any licensee or applicant for license for or against any kind or type of automobile insurance, insurance company, or agent, nor have the deputy registrar's office directly connected with the office of any automobile insurance agent, nor impart any information furnished by any applicant for a license or identification card to any person, except the registrar. This division shall not apply to any nonprofit corporation appointed deputy registrar.

(D) The registrar shall immediately remove a deputy registrar who violates the requirements of this chapter.

(E) The registrar shall periodically solicit bids and enter into a contract for the provision of laminating equipment and laminating materials to the registrar and all deputy registrars. The registrar shall not consider any bid that does not provide for the supplying of both laminating equipment and laminating materials. The laminating materials selected shall contain a security feature so that any tampering with the laminating material covering a license or identification card is readily apparent. In soliciting bids and entering into a contract for the provision of laminating equipment and laminating materials, the registrar shall observe all procedures required by law.

HISTORY: GC § 6296-2; 116 v P.H., 33, § 2; Bureau of Code Revision, 10-1-53; 127 v 839 (Eff 9-16-57); 129 v 421 (Eff 10-19-61); 130 v 1053 (Eff 9-27-63); 132 v H 380 (Eff 1-1-68); 132 v S 43 (Eff 1-1-69); 135 v S 1 (Eff 1-1-74); 135 v S 313 (Eff 7-26-74); 136 v S 435 (Eff 8-24-76); 137 v S 100 (Eff 4-1-78); 140 v S 169 (Eff 1-1-85); 140 v H 58 (Eff 3-1-85); 141 v H 428 (Eff 12-23-86); 142 v S 1 (Eff 11-28-88); 143 v H 381 (Eff 7-1-89); 143 v S 131 (Eff 7-25-90); 147 v S 60. Eff 10-21-97.

[§ 4507.02.1] § 4507.021 Repealed, 149 v S 123, § 2 [RC § 4507.40, 127 v 525; 128 v 469; 130 v 1061; 130 v 1064; 132 v S 37; 132 v H 380; 134 v H 1010; 135 v S 325; 135 v S 313; 136 v S 65; 136 v H 451; 137 v H 219; 139 v S 432; 141 v S 54; RC § 4507.02.1, 141 v S 356; 141 v S 262; 142 v H 493; 142 v H 643; 143 v H 329; 143 v H 330; 143 v H 381; 143 v S 49; 143 v S 131; 144 v S 98; 144 v S 331; 144 v S 275; 145 v S 62, §§ 1, 49-1-93; 145 v S 82; 145 v H 687; 146 v H 107; 146 v H 353; 146 v H 438; 147 v S 60; 148 v S 107]. Eff. 1-1-04.

This section concerned the point system for license suspension. The effective date is set by section 4 of S.B. 123.

[§ 4507.06.1] § 4507.061 Amended and renumbered RC § 4510.32 in 149 v SB 123. Eff 1-1-04.

HISTORY: 143 v H 204 (Eff 5-2-90); 145 v H 687 (Eff 10-12-94); 148 v S 1. Eff 8-6-99; 149 v S 123, § 1, eff. 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4507.07 Minor's application for license or permit; liability of signing adult.

(A) The registrar of motor vehicles shall not grant the application of any minor under eighteen years of age for a probationary license, a restricted license, or a temporary instruction permit, unless the application is signed by one of the minor's parents, the minor's guardian, another person having custody of the applicant, or, if there is no parent or guardian, a responsible person who is willing to assume the obligation imposed under this section.

At the time a minor under eighteen years of age submits an application for a license or permit at a driver's license examining station, the adult who signs the application shall present identification establishing that the adult is the individual whose signature appears on the application. The registrar shall prescribe, by rule, the types of identification that are suitable for the purposes of this paragraph. If the adult who signs the application does not provide identification as required by this paragraph, the application shall not be accepted.

When a minor under eighteen years of age applies for a probationary license, a restricted license, or a temporary instruction permit, the registrar shall give the adult who signs the application notice of the potential liability that may be imputed to the adult pursuant to division (B) of this section and notice of how the adult may prevent any liability from being imputed to the adult pursuant to that division.

(B) Any negligence, or willful or wanton misconduct, that is committed by a minor under eighteen years of age when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a probationary license, restricted license, or temporary instruction permit, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or the willful or wanton misconduct. This joint and several liability is not subject to section 2307.22 or 2315.36 of the Revised Code with respect to a tort claim that otherwise is subject to that section.

There shall be no imputed liability imposed under this division if a minor under eighteen years of age has proof of financial responsibility with respect to the operation of a motor vehicle owned by the minor or, if the minor is not the owner of a motor vehicle, with respect to the minor's operation of any motor vehicle, in the form and in the amounts required under Chapter 4509. of the Revised Code.

(C) Any person who has signed the application of a minor under eighteen years of age for a license or permit subsequently may surrender to the registrar the license or temporary instruction permit of the minor and request that the license or permit be canceled. The registrar then shall cancel the license or temporary instruction permit, and the person who signed the application of the minor shall be relieved from the liability imposed by division (B) of this section.

(D) Any minor under eighteen years of age whose probationary license, restricted license, or temporary instruction permit is surrendered to the registrar by the person who signed the application for the license or permit and whose license or temporary instruction permit subsequently is canceled by the registrar may obtain a new license or temporary instruction permit without having to undergo the examinations otherwise required by sections 4507.11 and 4507.12 of the Revised Code and without having to tender the fee for that license or temporary instruction permit, if the minor is able to produce another parent, guardian, other person having custody of the minor, or other adult, and that adult is willing to assume the liability imposed under division (B) of this section. That adult shall comply with the procedures contained in division (A) of this section.

HISTORY: GC § 6296-10; 116 v PHIL, 33, § 10; 119 v 701; 120 v 289; Bureau of Code Revision, 10-1-53; 127 v 839 (Eff 9-16-57); 130 v 1054 (Eff 9-27-63); 132 v S 95 (Eff 11-24-67); 138 v H 522 (Eff 10-29-79); 142 v H 1 (Eff 1-5-88); 143 v H 71 (Eff 9-22-89); 146 v H 350 (Eff 1-27-97); 147 v S 35 (Eff 1-1-99); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 120. Eff 4-9-2003; 150 v S 80, § 1, eff. 4-7-05.

The provisions of § 3 of SB 120 (149 v —) read as follows:
SECTION 3. Sections 1775.14, 2307.011, 2307.22, 2307.23, 2307.24, 2307.25, 2307.26, 2307.27, 2307.28, 2307.29, 2315.32, 2315.33, 2315.34, 2315.35, 2315.36, 2315.41, 2315.42, 2315.43, 2315.44, 2315.45, 2315.46, 4171.10, 4507.07, and 5703.54 of the Revised Code, as amended or enacted, by this act, apply only to causes of action that accrue on or after the effective date of this act. Any cause of action that accrues prior to the effective date of this act is governed by the law in effect when the cause of action accrued.

[§ 4507.07.1] § 4507.071 Probationary license for minor; restricted license for fourteen or fifteen-year-old; restrictions on stops for violations.

(A) No driver's license shall be issued to any person under eighteen years of age, except that a probationary license may be issued to a person who is at least sixteen years of age and has held a temporary instruction permit for a period of at least six months.

(B)(1)(a) No holder of a probationary driver's license who has not attained the age of seventeen years shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and six a.m. unless the holder is accompanied by the holder's parent or guardian.

(b) No holder of a probationary driver's license who has attained the age of seventeen years but has not attained the age of eighteen years shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of one a.m. and five a.m. unless the holder is accompanied by the holder's parent or guardian.

(2)(a) Subject to division (D)(1)(a) of this section, division (B)(1)(a) of this section does not apply to the holder of a probationary driver's license who is traveling to or from work between the hours of midnight and six a.m. and has in the holder's immediate possession written documentation from the holder's employer.

(b) Division (B)(1)(b) of this section does not apply to the holder of a probationary driver's license who is traveling to or from work between the hours of one a.m.

and five a.m. and has in the holder's immediate possession written documentation from the holder's employer.

(3) An employer is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the fact that the employer provided an employee who is the holder of a probationary driver's license with the written documentation described in division (B)(2) of this section.

The registrar of motor vehicles shall make available at no cost a form to serve as the written documentation described in division (B)(2) of this section, and employers and holders of probationary driver's licenses may utilize that form or may choose to utilize any other written documentation to meet the requirements of that division.

(4) No holder of a probationary driver's license who is less than seventeen years of age shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking with more than one person who is not a family member occupying the vehicle unless the probationary license holder is accompanied by the probationary license holder's parent, guardian, or custodian.

(C) It is an affirmative defense to a violation of division (B)(1)(a) or (b) of this section if, at the time of the violation, the holder of the probationary driver's license was traveling to or from an official function sponsored by the school the holder attends, or an emergency existed that required the holder to operate a motor vehicle in violation of division (B)(1)(a) or (b) of this section, or the holder was an emancipated minor.

(D)(1)(a) If a person is issued a probationary driver's license prior to attaining the age of seventeen years and the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed a moving violation during the six-month period commencing on the date on which the person is issued the probationary driver's license, the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular parking during whichever of the following time periods applies:

(i) If, on the date the holder of the probationary driver's license pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation, the holder has not attained the age of sixteen years six months, during the six-month period commencing on that date;

(ii) If, on the date the holder pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation, the holder has attained the age of sixteen years six months but not seventeen years, until the person attains the age of seventeen years.

(b) If the holder of a probationary driver's license commits a moving violation during the six-month period after the person is issued the probationary driver's license and before the person attains the age of seventeen years and on the date the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation the person has attained the age of seventeen years, or if the person commits the moving violation during the six-month period after the person is issued the probationary driver's license and after the person attains the age of seventeen years, the holder is not subject to the restriction described in divisions (D)(1)(a)(i) and (ii) of this section unless the court or juvenile court imposes such a restriction upon the holder.

(2) No person shall violate division (D)(1)(a) of this section.

(E) No holder of a probationary license shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking unless the total number of occupants of the vehicle does not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle is wearing all of the available elements of a properly adjusted occupant restraining device.

(F) A restricted license may be issued to a person who is fourteen or fifteen years of age upon proof of hardship satisfactory to the registrar of motor vehicles.

(G) Notwithstanding any other provision of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether each occupant of the motor vehicle is wearing all of the available elements of a properly adjusted occupant restraining device as required by division (E) of this section, or for the sole purpose of issuing a ticket, citation, or summons if the requirement in that division has been or is being violated, or for causing the arrest of or commencing a prosecution of a person for a violation of that requirement.

(H) Notwithstanding any other provision of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of division (B)(1)(a) or (b) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for such a violation or for causing the arrest of or commencing a prosecution of a person for such violation.

(I) As used in this section:

(1) "Occupant restraining device" has the same meaning as in section 4513.263 [4513.26.3] of the Revised Code.

(2) "Family member" of a probationary license holder includes any of the following:

(a) A spouse;

(b) A child or stepchild;

(c) A parent, stepparent, grandparent, or parent-in-law;

(d) An aunt or uncle;

(e) A sibling, whether of the whole or half blood or by adoption, a brother-in-law, or a sister-in-law;

(f) A son or daughter of the probationary license holder's stepparent if the stepparent has not adopted the probationary license holder;

(g) An eligible adult, as defined in section 4507.05 of the Revised Code.

(3) "Moving violation" means any violation of any statute or ordinance that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets. "Moving violation" does not include a violation of section 4513.263 [4513.26.3] of the Revised Code or a substantially equivalent municipal ordinance, or a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, vehicle size or load limitations, vehicle fitness requirements, or vehicle registration.

(J) Whoever violates division (B)(1) or (4), (D)(2), or (E) of this section is guilty of a minor misdemeanor.

HISTORY: 147 v S 35, Eff 1-1-99; 149 v S 123, § 1, eff. 1-1-04; 151 v H 343, § 1, eff. 4-6-07.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4507.08 Restrictions on issuance of license or temporary instruction permit; reinstatement prohibited for person subject to active arrest warrant.

(A) No probationary license shall be issued to any person under the age of eighteen who has been adjudicated an unruly or delinquent child or a juvenile traffic offender for having committed any act that if committed by an adult would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, a violation of division (B) of section 2917.11, or a violation of division (A) of section 4511.19 of the Revised Code, unless the person has been required by the court to attend a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court and has satisfactorily completed the program.

(B) No temporary instruction permit or driver's license shall be issued to any person whose license has been suspended, during the period for which the license was suspended, nor to any person whose license has been canceled, under Chapter 4510. or any other provision of the Revised Code.

(C) No temporary instruction permit or driver's license shall be issued to any person whose commercial driver's license is suspended under Chapter 4510. or any other provision of the Revised Code during the period of the suspension.

No temporary instruction permit or driver's license shall be issued to any person when issuance is prohibited by division (A) of section 4507.091 of the Revised Code.

(D) No temporary instruction permit or driver's license shall be issued to, or retained by, any of the following persons:

(1) Any person who is an alcoholic, or is addicted to the use of controlled substances to the extent that the use constitutes an impairment to the person's ability to operate a motor vehicle with the required degree of safety;

(2) Any person who is under the age of eighteen and has been adjudicated an unruly or delinquent child or a juvenile traffic offender for having committed any act that if committed by an adult would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, a violation of division (B) of section 2917.11, or a violation of division (A) of section 4511.19 of the Revised Code, unless the person has been required by the court to attend a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court and has satisfactorily completed the program;

(3) Any person who, in the opinion of the registrar, is afflicted with or suffering from a physical or mental disability or disease that prevents the person from exercising reasonable and ordinary control over a motor vehicle while operating the vehicle upon the highways, except that a restricted license effective for six months may be issued to any person otherwise qualified who is or has been subject to any condition resulting in episodic impairment of consciousness or loss of muscular control and whose condition, in the opinion of the registrar, is dormant or is sufficiently under medical control that the person is capable of exercising reasonable and ordinary control over a motor vehicle. A restricted license effective for six months shall be issued to any person who other-

wise is qualified and who is subject to any condition that causes episodic impairment of consciousness or a loss of muscular control if the person presents a statement from a licensed physician that the person's condition is under effective medical control and the period of time for which the control has been continuously maintained, unless, thereafter, a medical examination is ordered and, pursuant thereto, cause for denial is found.

A person to whom a six-month restricted license has been issued shall give notice of the person's medical condition to the registrar on forms provided by the registrar and signed by the licensee's physician. The notice shall be sent to the registrar six months after the issuance of the license. Subsequent restricted licenses issued to the same individual shall be effective for six months.

(4) Any person who is unable to understand highway warnings or traffic signs or directions given in the English language;

(5) Any person making an application whose driver's license or driving privileges are under cancellation, revocation, or suspension in the jurisdiction where issued or any other jurisdiction, until the expiration of one year after the license was canceled or revoked or until the period of suspension ends. Any person whose application is denied under this division may file a petition in the municipal court or county court in whose jurisdiction the person resides agreeing to pay the cost of the proceedings and alleging that the conduct involved in the offense that resulted in suspension, cancellation, or revocation in the foreign jurisdiction would not have resulted in a suspension, cancellation, or revocation had the offense occurred in this state. If the petition is granted, the petitioner shall notify the registrar by a certified copy of the court's findings and a license shall not be denied under this division.

(6) Any person who is under a class one or two suspension imposed for a violation of section 2903.01, 2903.02, 2903.04, 2903.06, 2903.08, 2903.11, 2921.331 [2921.33.1], or 2923.02 of the Revised Code or whose driver's or commercial driver's license or permit was permanently revoked prior to January 1, 2004, for a substantially equivalent violation pursuant to section 4507.16 of the Revised Code;

(7) Any person who is not a resident or temporary resident of this state.

(E) No person whose driver's license or permit has been suspended under Chapter 4510. of the Revised Code or any other provision of the Revised Code shall have driving privileges reinstated if the registrar determines that a warrant has been issued in this state or any other state for the person's arrest and that warrant is an active warrant.

HISTORY: GC § 6296-7; 116 v PHIL 33, § 7; 119 v 701; 120 v 289; 123 v 246; Bureau of Code Revision, 10-1-53; 127 v 839 (Eff 9-16-57); 127 v 789 (Eff 9-17-57); 128 v 539 (Eff 11-2-59); 129 v 582(896) (Eff 1-10-61); 129 v 1448 (Eff 10-25-61); 130 v 1057 (Eff 9-27-63); 130 v 1055 (Eff 10-10-63); 131 v 1084 (Eff 10-30-65); 131 v 1082 (Eff 11-9-65); 135 v S 1 (Eff 1-1-74); 135 v S 313 (Eff 7-26-74); 136 v H 300 (Eff 7-1-76); 137 v H 71 (Eff 8-26-77); 138 v H 328 (Eff 9-13-79); 138 v H 965 (Eff 4-9-81); 141 v S 262 (Eff 3-20-87); 142 v H 643 (Eff 3-17-89); 143 v H 329 (Eff 6-30-89); 143 v H 330 (Eff 6-30-89); 143 v H 381 (Eff 7-1-89); 144 v S 275 (Eff 9-1-93); 145 v S 62, §§ 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 146 v H 167 (Eff 5-15-97); 147 v S 60 (Eff 10-21-97); 147 v H 141 (Eff 3-3-98); 147 v S 35 (Eff 1-1-99); 148 v S 180, Eff 3-22-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v S 9, § 1, eff. 4-14-06; 151 v H 461, § 1, eff. 4-4-07.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.2] § 4507.162 Amended and renumbered RC § 4510.31 in 149 v SB 123. Eff 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.3] § 4507.163 Amended and renumbered RC § 4510.33 in 149 v SB 123. Eff 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.7] § 4507.167 Amended and renumbered RC § 4510.34 in 149 v SB 1236. Eff 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.9] § 4507.169 Amended and renumbered RC § 4510.17 in 149 v SB 123. Eff 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.12] § 4507.1612 Reinstatement fee after illegally conveying or possessing deadly weapon or dangerous ordnance on school premises.

The registrar shall not restore any operating privileges or reissue a probationary driver's license, restricted license, driver's license, or probationary commercial driver's license suspended under section 2923.122 [2923.12.2] of the Revised Code until the person whose license was suspended pays a reinstatement fee of thirty dollars to the bureau of motor vehicles.

The bureau of motor vehicles shall pay all fees collected under this section into the state treasury to the credit of the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code.

HISTORY: 146 v H 124. Eff 3-31-97.

The effective date is set by section 3 of HB 124.
=sn [§ 4507.16.13] 4507.1613 Amended and renumbered RC § 4510.07 in 149 v SB 123. Eff 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4507.16.14] § 4507.1614 Suspension based on juvenile court disposition.

The registrar shall suspend the person's license or permit under division (A) of section 4507.162 [4507.16.2]† of the Revised Code regardless of whether

the disposition of the case in juvenile court occurred after the person's eighteenth birthday.

HISTORY: 150 v H 230, § 1, eff. 9-16-04.

† RC § 4507.162 was renumbered to RC § 4510.31.

[§ 4507.21.2] § 4507.212 Statement of proof of financial responsibility; warning form.

(A) As used in this section, "motor vehicle" has the same meaning as in section 4509.01 of the Revised Code.

(B) An application for a driver's, commercial driver's, restricted, or probationary license, or renewal of such license shall contain a statement, to be signed by the applicant, that does all of the following:

(1) States that the applicant maintains, or has maintained on his behalf, proof of financial responsibility at the time of application, and will not operate a motor vehicle in this state, unless he maintains, or has maintained on his behalf, proof of financial responsibility;

(2) Contains a brief summary of the purposes and operation of section 4509.101 [4509.10.1] of the Revised Code, the rights and duties of the applicant under that section, and the penalties for violation of that section;

(3) Warns the applicant that the financial responsibility law does not prevent the possibility that the applicant may be involved in an accident with an owner or operator of a motor vehicle who is without proof of financial responsibility.

(C) The registrar of motor vehicles shall prescribe the form of the statement, and the manner in which the statement shall be presented to the applicant. The statement shall be designed to enable the applicant to retain a copy of it.

(D) Nothing within this section shall be construed to excuse a violation of section 4509.101 [4509.10.1] of the Revised Code.

(E) At the time a person submits an application for a driver's, commercial driver's, restricted, or probationary license, or renewal of such a license, the applicant also shall be furnished with a form that lists in plain language all the possible penalties to which the applicant could be subject for a violation of the financial responsibility law, including driver's license suspensions; all fees, including nonvoluntary compliance and reinstatement fees; and vehicle immobilization or impoundment. The applicant shall sign the form, which shall be submitted along with the application. The form shall be retained by the registrar or deputy registrar who issues the license or renewal or his successor for a period of two years from the date of issuance of the license or renewal. The registrar shall prescribe the manner in which the form shall be presented to the applicant, and the format of the form, which shall be such that the applicant can retain a copy of it.

HISTORY: 139 v S 250 (Eff 1-1-84); 140 v H 767 (Eff 8-1-84); 143 v H 381 (Eff 7-1-89); 145 v S 20. Eff 10-20-94.

[§ 4507.23.2] § 4507.232 "Student driver" sticker or banner.

When the registrar of motor vehicles or a deputy registrar issues a temporary instruction permit under this chapter, the registrar or deputy registrar also shall issue to the applicant a sticker or banner that reads "student driver." When the holder of the temporary instruction

permit operates a motor vehicle, the sticker or banner may be displayed on the motor vehicle to inform other motor vehicle operators that the motor vehicle is being operated by a holder of a temporary instruction permit, but such display is not required.

The sticker or banner may be displayed on a side window or the rear window of the motor vehicle notwithstanding section 4513.24 and division (F) of section 4513.241 [4513.24.1] of the Revised Code or any rule adopted thereunder.

The registrar shall determine the size of the sticker or banner, which shall not exceed four inches in height by twelve inches in length, and the material and all other properties of the sticker or banner, but shall select a material so that the sticker or banner can be transferred readily from one motor vehicle to another.

HISTORY: 150 v H 54, § 1, eff. 4-7-04.

CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION

§ 4510.07 Violation of ordinance equivalent to vehicular homicide or manslaughter or solicitation offense.

The court imposing a sentence upon an offender for any violation of a municipal ordinance that is substantially equivalent to a violation of section 2903.06 or 2907.24 of the Revised Code or for any violation of a municipal OVI ordinance also shall impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (B) of section 4510.02 of the Revised Code that is equivalent in length to the suspension required for a violation of section 2903.06 or 2907.24 or division (A) or (B) of section 4511.19 of the Revised Code under similar circumstances.

HISTORY: 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4507.1613. It was renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.17 Suspension upon drug offense conviction under federal law or in another state or for OVI offense in another state; application to minors; limited driving privileges.

(A) The registrar of motor vehicles shall impose a class D suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code on any person who is a resident of this state and is convicted of or pleads guilty to a violation of a statute of any other state or any federal statute that is substantially similar to section 2925.02, 2925.03, 2925.04, 2925.041 [2925.04.1], 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.14, 2925.22,

2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code. Upon receipt of a report from a court, court clerk, or other official of any other state or from any federal authority that a resident of this state was convicted of or pleaded guilty to an offense described in this division, the registrar shall send a notice by regular first class mail to the person, at the person's last known address as shown in the records of the bureau of motor vehicles, informing the person of the suspension, that the suspension will take effect twenty-one days from the date of the notice, and that, if the person wishes to appeal the suspension or denial, the person must file a notice of appeal within twenty-one days of the date of the notice requesting a hearing on the matter. If the person requests a hearing, the registrar shall hold the hearing not more than forty days after receipt by the registrar of the notice of appeal. The filing of a notice of appeal does not stay the operation of the suspension that must be imposed pursuant to this division. The scope of the hearing shall be limited to whether the person actually was convicted of or pleaded guilty to the offense for which the suspension is to be imposed.

The suspension the registrar is required to impose under this division shall end either on the last day of the class D suspension period or of the suspension of the person's nonresident operating privilege imposed by the state or federal court, whichever is earlier.

The registrar shall subscribe to or otherwise participate in any information system or register, or enter into reciprocal and mutual agreements with other states and federal authorities, in order to facilitate the exchange of information with other states and the United States government regarding persons who plead guilty to or are convicted of offenses described in this division and therefore are subject to the suspension or denial described in this division.

(B) The registrar shall impose a class D suspension of the person's driver's license, commercial driver's license, or temporary instruction permit, probationary license, or nonresident operating privilege for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code on any person who is a resident of this state and is convicted of or pleads guilty to a violation of a statute of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to section 4511.19 of the Revised Code. Upon receipt of a report from another state made pursuant to section 4510.61 of the Revised Code indicating that a resident of this state was convicted of or pleaded guilty to an offense described in this division, the registrar shall send a notice by regular first class mail to the person, at the person's last known address as shown in the records of the bureau of motor vehicles, informing the person of the suspension, that the suspension or denial will take effect twenty-one days from the date of the notice, and that, if the person wishes to appeal the suspension, the person must file a notice of appeal within twenty-one days of the date of the notice requesting a hearing on the matter. If the person requests a hearing, the registrar shall hold the hearing not more than forty days after receipt by the registrar of the notice of appeal. The filing of a notice of appeal does not stay the operation of the suspension that must be imposed pursuant to this division. The scope of the hearing shall be limited to whether the person actually was convicted of or pleaded guilty to the offense for which the suspension is to be imposed.

The suspension the registrar is required to impose under this division shall end either on the last day of the class D suspension period or of the suspension of the person's nonresident operating privilege imposed by the state or federal court, whichever is earlier.

(C) The registrar shall impose a class D suspension of the child's driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code on any child who is a resident of this state and is convicted of or pleads guilty to a violation of a statute of any other state or any federal statute that is substantially similar to section 2925.02, 2925.03, 2925.04, 2925.041 [2925.04.1], 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code. Upon receipt of a report from a court, court clerk, or other official of any other state or from any federal authority that a child who is a resident of this state was convicted of or pleaded guilty to an offense described in this division, the registrar shall send a notice by regular first class mail to the child, at the child's last known address as shown in the records of the bureau of motor vehicles, informing the child of the suspension, that the suspension or denial will take effect twenty-one days from the date of the notice, and that, if the child wishes to appeal the suspension, the child must file a notice of appeal within twenty-one days of the date of the notice requesting a hearing on the matter. If the child requests a hearing, the registrar shall hold the hearing not more than forty days after receipt by the registrar of the notice of appeal. The filing of a notice of appeal does not stay the operation of the suspension that must be imposed pursuant to this division. The scope of the hearing shall be limited to whether the child actually was convicted of or pleaded guilty to the offense for which the suspension is to be imposed.

The suspension the registrar is required to impose under this division shall end either on the last day of the class D suspension period or of the suspension of the child's nonresident operating privilege imposed by the state or federal court, whichever is earlier. If the child is a resident of this state who is sixteen years of age or older and does not have a current, valid Ohio driver's or commercial driver's license or permit, the notice shall inform the child that the child will be denied issuance of a driver's or commercial driver's license or permit for six months beginning on the date of the notice. If the child has not attained the age of sixteen years on the date of the notice, the notice shall inform the child that the period of denial of six months shall commence on the date the child attains the age of sixteen years.

The registrar shall subscribe to or otherwise participate in any information system or register, or enter into reciprocal and mutual agreements with other states and federal authorities, in order to facilitate the exchange of information with other states and the United States government regarding children who are residents of this state and plead guilty to or are convicted of offenses described in this division and therefore are subject to the suspension or denial described in this division.

(D) The registrar shall impose a class D suspension of the child's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code on any child who is a resident of this state

and is convicted of or pleads guilty to a violation of a statute of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to section 4511.19 of the Revised Code. Upon receipt of a report from another state made pursuant to section 4510.61 of the Revised Code indicating that a child who is a resident of this state was convicted of or pleaded guilty to an offense described in this division, the registrar shall send a notice by regular first class mail to the child, at the child's last known address as shown in the records of the bureau of motor vehicles, informing the child of the suspension, that the suspension will take effect twenty-one days from the date of the notice, and that, if the child wishes to appeal the suspension, the child must file a notice of appeal within twenty-one days of the date of the notice requesting a hearing on the matter. If the child requests a hearing, the registrar shall hold the hearing not more than forty days after receipt by the registrar of the notice of appeal. The filing of a notice of appeal does not stay the operation of the suspension that must be imposed pursuant to this division. The scope of the hearing shall be limited to whether the child actually was convicted of or pleaded guilty to the offense for which the suspension is to be imposed.

The suspension the registrar is required to impose under this division shall end either on the last day of the class D suspension period or of the suspension of the child's nonresident operating privilege imposed by the state or federal court, whichever is earlier. If the child is a resident of this state who is sixteen years of age or older and does not have a current, valid Ohio driver's or commercial driver's license or permit, the notice shall inform the child that the child will be denied issuance of a driver's or commercial driver's license or permit for six months beginning on the date of the notice. If the child has not attained the age of sixteen years on the date of the notice, the notice shall inform the child that the period of denial of six months shall commence on the date the child attains the age of sixteen years.

(E) Any person whose license or permit has been suspended pursuant to this section may file a petition in the municipal or county court, or in case the person is under eighteen years of age, the juvenile court, in whose jurisdiction the person resides, agreeing to pay the cost of the proceedings and alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the judge may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed, except that the judge shall not grant limited driving privileges for employment as a driver of a commercial motor vehicle to any person who would be disqualified from operating a commercial motor vehicle under section 4506.16 of the Revised Code if the violation had occurred in this state, or during any of the following periods of time:

(1) The first fifteen days of a suspension under division (B) or (D) of this section, if the person has not been convicted within six years of the date of the offense giving rise to the suspension under this section of a violation of any of the following:

(a) Section 4511.19 of the Revised Code, or a municipal ordinance relating to operating a vehicle while under

the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(b) A municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma breath, or urine;

(c) Section 2903.04 of the Revised Code in a case in which the person was subject to the sanctions described in division (D) of that section;

(d) Division (A) (1) of section 2903.06 or division (A)(1) of section 2903.08 of the Revised Code or a municipal ordinance that is substantially similar to either of those divisions;

(e) Division (A)(2), (3), or (4) of section 2903.06, division (A)(2) of section 2903.08, or as it existed prior to March 23, 2000 section 2903.07 of the Revised Code, or a municipal ordinance that is substantially similar to any of those divisions or that former section, in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.

(2) The first thirty days of a suspension under division (B) or (D) of this section, if the person has been convicted one time within six years of the date of the offense giving rise to the suspension under this section of any violation identified in division (E)(1) of this section.

(3) The first one hundred eighty days of a suspension under division (B) or (D) of this section, if the person has been convicted two times within six years of the date of the offense giving rise to the suspension under this section of any violation identified in division (E)(1) of this section.

(4) No limited driving privileges may be granted if the person has been convicted three or more times within five years of the date of the offense giving rise to a suspension under division (B) or (D) of this section of any violation identified in division (E)(1) of this section.

If a person petitions for limited driving privileges under division (E) of this section, the registrar shall be represented by the county prosecutor of the county in which the person resides if the petition is filed in a juvenile court or county court, except that if the person resides within a city or village that is located within the jurisdiction of the county in which the petition is filed, the city director of law or village solicitor of that city or village shall represent the registrar. If the petition is filed in a municipal court, the registrar shall be represented as provided in section 1901.34 of the Revised Code.

In granting limited driving privileges under division (E) of this section, the court may impose any condition it considers reasonable and necessary to limit the use of a vehicle by the person. The court shall deliver to the person a permit card, in a form to be prescribed by the court, setting forth the time, place, and other conditions limiting the person's use of a motor vehicle. The grant of limited driving privileges shall be conditioned upon the person's having the permit in the person's possession at all times during which the person is operating a vehicle.

A person granted limited driving privileges who operates a vehicle for other than limited purposes, in violation of any condition imposed by the court or without having the permit in the person's possession, is guilty of a violation of section 4510.11 of the Revised Code.

(F) As used in divisions (C) and (D) of this section:

(1) "Child" means a person who is under the age of eighteen years, except that any person who violates a

statute or ordinance described in division (C) or (D) of this section prior to attaining eighteen years of age shall be deemed a "child" irrespective of the person's age at the time the complaint or other equivalent document is filed in the other state or a hearing, trial, or other proceeding is held in the other state on the complaint or other equivalent document, and irrespective of the person's age when the period of license suspension or denial prescribed in division (C) or (D) of this section is imposed.

(2) "Is convicted of or pleads guilty to" means, as it relates to a child who is a resident of this state, that in a proceeding conducted in a state or federal court located in another state for a violation of a statute or ordinance described in division (C) or (D) of this section, the result of the proceeding is any of the following:

(a) Under the laws that govern the proceedings of the court, the child is adjudicated to be or admits to being a delinquent child or a juvenile traffic offender for a violation described in division (C) or (D) of this section that would be a crime if committed by an adult;

(b) Under the laws that govern the proceedings of the court, the child is convicted of or pleads guilty to a violation described in division (C) or (D) of this section;

(c) Under the laws that govern the proceedings of the court, irrespective of the terminology utilized in those laws, the result of the court's proceedings is the functional equivalent of division (F)(2)(a) or (b) of this section.

HISTORY: 145 v H 377 (Eff 9-30-93); 146 v S 2 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 147 v S 60 (Eff 10-21-97); 148 v S 107 (Eff 3-23-2000); 149 v H 7, Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4507.169. It was renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.31 Suspension of probationary or restricted license or temporary instruction permit; juvenile driver improvement programs.

(A)(1) Except as provided in division (C) of this section, the registrar of motor vehicles shall suspend the probationary driver's license, restricted license, or temporary instruction permit issued to any person when the person has been convicted of, pleaded guilty to, or been adjudicated in juvenile court of having committed, prior to the person's eighteenth birthday, any of the following:

(a) Three separate violations of section 2903.06, 2903.08, 2921.331 [2921.33.1], 4511.12, 4511.13, 4511.15, 4511.191 [4511.19.1], 4511.20, 4511.201 [4511.20.1], 4511.202 [4511.20.2], 4511.21, 4511.22, 4511.23, 4511.25 to 4511.48, 4511.57 to 4511.65, 4511.75, 4549.02, 4549.021 [4549.02.1], or 4549.03 of the Revised Code, section 4510.14 of the Revised Code involving a suspension imposed under section 4511.191 [4511.19.1] or 4511.196 [4511.19.1] of the Revised Code, section 2903.04 of the Revised Code in a case in which the person would have been subject to the sanctions described in division (D) of that section had the person been convicted of the violation of that section, former section 2903.07 of the Revised Code, or any municipal ordinances similarly relating to the offenses referred to in those sections;

(b) One violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance;

(c) Two separate violations of any of the Revised Code sections referred to in division (A)(1)(a) of this section, or any municipal ordinance that is substantially similar to any of those sections.

(2) Any person whose license or permit is suspended under division (A)(1)(a), (b), or (c) of this section shall mail or deliver the person's probationary driver's license, restricted license, or temporary instruction permit to the registrar within fourteen days of notification of the suspension. The registrar shall retain the license or permit during the period of the suspension. A suspension pursuant to division (A)(1)(a) of this section shall be a class C suspension, a suspension pursuant to division (A)(1)(b) of this section shall be a class D suspension, and a suspension pursuant to division (A)(1)(c) of this section shall be a class E suspension, all for the periods of time specified in division (B) of section 4510.02 of the Revised Code. If the person's probationary driver's license, restricted license, or temporary instruction permit is under suspension on the date the court imposes sentence upon the person for a violation described in division (A)(1)(b) of this section, the suspension shall take effect on the next day immediately following the end of that period of suspension. If the person is sixteen years of age or older and pleads guilty to or is convicted of a violation described in division (A)(1)(b) of this section and the person does not have a current, valid probationary driver's license, restricted license, or temporary instruction permit, the registrar shall deny the issuance to the person of a probationary driver's license, restricted license, driver's license, commercial driver's license, or temporary instruction permit, as the case may be, for six months beginning on the date the court imposes sentence upon the person for the violation. If the person has not attained the age of sixteen years on the date the court imposes sentence upon the person for the violation, the period of denial shall commence on the date the person attains the age of sixteen years.

(3) The registrar shall suspend the person's license or permit under division (A) of this section regardless of whether the disposition of the case in juvenile court occurred after the person's eighteenth birthday.

(B) The registrar also shall impose a class D suspension for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code of the temporary instruction permit or probationary driver's license of any person under the age of eighteen who has been adjudicated an unruly child, delinquent child, or juvenile traffic offender for having committed any act that if committed by an adult would be a drug abuse offense or a violation of division (B) of section 2917.11 of the Revised Code. The registrar, in the registrar's discretion, may terminate the suspension if the child, at the discretion of the court, attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. Any person whose temporary instruction permit or probationary driver's license is suspended under this division shall mail or deliver the person's permit or license to the registrar within fourteen days of notification of the suspension. The registrar shall retain the permit or license during the period of the suspension.

(C)(1) Except as provided in division (C)(3) of this section, for any person who is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed

a second or third violation of section 4511.12, 4511.13, 4511.15, 4511.20 to 4511.23, 4511.25, 4511.26 to 4511.48, 4511.57 to 4511.65, or 4511.75 of the Revised Code or any similar municipal ordinances and whose license or permit is suspended under division (A)(1)(a) or (c) of this section, the court in which the second or third conviction, finding, plea, or adjudication resulting in the suspension was made, upon petition of the person, may grant the person limited driving privileges during the period which the suspension otherwise would be imposed under division (A)(1)(a) or (c) of this section if the court finds reasonable cause to believe that the suspension will seriously affect the person's ability to continue in employment, educational training, vocational training, or treatment. In granting the limited driving privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other conditions upon the person's driving a motor vehicle that the court considers reasonable and necessary.

A court that grants limited driving privileges to a person under this division shall retain the person's probationary driver's license, restricted license, or temporary instruction permit during the period the license or permit is suspended and also during the period for which limited driving privileges are granted, and shall deliver to the person a permit card, in a form to be prescribed by the court, setting forth the date on which the limited driving privileges will become effective, the purposes for which the person may drive, the times and places at which the person may drive, and any other conditions imposed upon the person's use of a motor vehicle.

The court immediately shall notify the registrar, in writing, of a grant of limited driving privileges under this division. The notification shall specify the date on which the limited driving privileges will become effective, the purposes for which the person may drive, the times and places at which the person may drive, and any other conditions imposed upon the person's use of a motor vehicle. The registrar shall not suspend the probationary driver's license, restricted license, or temporary instruction permit of any person pursuant to division (A) of this section during any period for which the person has been granted limited driving privileges as provided in this division, if the registrar has received the notification described in this division from the court.

(2) Except as provided in division (C)(3) of this section, in any case in which the temporary instruction permit or probationary driver's license of a person under eighteen years of age has been suspended under division (A) or (B) of this section or any other provision of law, the court may grant the person limited driving privileges for the purpose of the person's practicing of driving with the person's parent, guardian, or other custodian during the period of the suspension. Any grant of limited driving privileges under this division shall comply with division (D) of section 4510.021 [4510.02.1] of the Revised Code.

(3) A court shall not grant limited driving privileges to a person identified in division (C)(1) or (2) of this section if the person, within the preceding six years, has been convicted of, pleaded guilty to, or adjudicated in juvenile court of having committed three or more violations of one or more of the divisions or sections set forth in divisions (C)(2)(b) to (g) of section 2919.22 of the Revised Code.

(D) If a person who has been granted limited driving privileges under division (C) of this section is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed, a violation of chapter 4510. of the

Revised Code, or a subsequent violation of any of the sections of the Revised Code listed in division (A)(1)(a) of this section or any similar municipal ordinance during the period for which the person was granted limited driving privileges, the court that granted the limited driving privileges shall suspend the person's permit card. The court or the clerk of the court immediately shall forward the person's probationary driver's license, restricted license, or temporary instruction permit together with written notification of the court's action to the registrar. Upon receipt of the license or permit and notification, the registrar shall impose a class C suspension of the person's probationary driver's license, restricted license, or temporary instruction permit for the period of time specified in division (B)(3) of section 4510.02 of the Revised Code. The registrar shall retain the license or permit during the period of suspension, and no further limited driving privileges shall be granted during that period.

(E) No application for a driver's or commercial driver's license shall be received from any person whose probationary driver's license, restricted license, or temporary instruction permit has been suspended under this section until each of the following has occurred:

(1) The suspension period has expired;

(2) A temporary instruction permit or commercial driver's license temporary instruction permit has been issued;

(3) The person successfully completes a juvenile driver improvement program approved by the registrar under section 4510.311 [4510.31.1] of the Revised Code;

(4) The applicant has submitted to the examination for a driver's license as provided for in section 4507.11 or a commercial driver's license as provided in Chapter 4506 of the Revised Code.

HISTORY: 127 v 839 (EFF 9-16-57); 128 v 539 (EFF 11-2-59); 129 v 1599 (EFF 10-11-61); 130 v 1060 (EFF 9-27-63); 132 v H 380 (EFF 1-1-68); 135 v S 1 (EFF 1-1-74); 140 v H 252 (EFF 4-4-85); 142 v H 643 (EFF 3-17-89); 143 v H 329 (EFF 6-30-89); 143 v H 330 (EFF 6-30-89); 143 v H 381 (EFF 7-1-89); 143 v S 49 (EFF 11-3-89); 143 v S 131 (EFF 7-25-90); 144 v S 275 (EFF 9-1-93); 145 v S 62, § 4 (EFF 9-1-93); 145 v H 377 (EFF 9-30-93); 145 v H 236 (EFF 9-29-94); 147 v S 60 (EFF 10-21-97); 147 v S 35 (EFF 1-1-99); 148 v S 107 (EFF 3-23-2000); 149 v H 490, § 6. EFF 4-3-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 230, § 1, eff. 9-16-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

The provisions of § 8 of HB 490 (149 v) read as follows:

SECTION 8. The amendments to section 4507.162 of the Revised Code that are made in Sections 6 and 7 of this act are made for the period of time that section 4507.162 of the Revised Code is in existence under that number until, on January 1, 2004, that section is renumbered by Am. Sub. S.B. 123 of the 124th General Assembly to section 4510.31 of the Revised Code and is amended. On and after January 1, 2004, the amendments to section 4507.16 of the Revised Code that are made in Sections 6 and 7 of this act have no meaning and no force and effect, and do not affect or supersede the renumbering and amendment of section 4507.162 of the Revised Code that was done in Am. Sub. S.B. 123 of the 124th General Assembly.

Publisher's Note:

This section was formerly § 4507.162. It was renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

[§ 4510.31.1] § 4510.311 Juvenile driver improvement programs.

The registrar of motor vehicles shall establish standards for juvenile driver improvement programs and shall approve any programs that meet the established stan-

dards. The standards established by the registrar shall require a minimum of five hours of classroom instruction, with at least three hours devoted to driver skill requirements and two hours devoted to juvenile driver information related to the driving records of drivers under eighteen years of age, driver perceptions, and the value of the traffic laws. The standards also shall require a person whose probationary driver's license was suspended under section 4510.31 of the Revised Code to undertake and pass, as successful completion of an approved juvenile driver improvement program, the driver's license examination that a person who holds a temporary instruction permit is required to undertake and pass in order to be issued a probationary driver's license. The person shall pay the applicable fee that is required to accompany an application for a driver's license as prescribed in division (E) of section 4507.23 of the Revised Code. The registrar shall prescribe the requirements for the curriculum to be provided as well as other program directives. Only those programs approved by the registrar shall be acceptable for reinstatement of the driving privileges of a person whose probationary driver's license was suspended under section 4510.31 of the Revised Code.

HISTORY: 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4510.32 Restrictions where minor withdraws from school or is habitually absent.

(A) The registrar of motor vehicles shall record within ten days of receipt and keep at the main office of the bureau of motor vehicles all information provided to the registrar by the superintendent of a school district in accordance with division (B) of section 3321.13 of the Revised Code.

(B) Whenever the registrar receives a notice under division (B) of section 3321.13 of the Revised Code, the registrar shall impose a class F suspension of the temporary instruction permit or driver's license of the person who is the subject of the notice for the period of time specified in division (B)(6) of section 4510.02 of the Revised Code, or, if the person has not been issued a temporary instruction permit or driver's license, the registrar shall deny to the person the issuance of a permit or license. The requirements of the second paragraph of section 119.06 of the Revised Code do not apply to a suspension of a person's temporary instruction permit or driver's license or a denial of a person's opportunity to obtain a temporary instruction permit or driver's license by the registrar under this division.

(C) Upon suspending the temporary instruction permit or driver's license of any person or denying any person the opportunity to be issued such a license or permit as provided in division (B) of this section, the registrar immediately shall notify the person in writing of the suspension or denial and inform the person that the person may petition for a hearing as provided in division (E) of this section.

(D) Any person whose permit or license is suspended under this section shall mail or deliver the person's permit or license to the registrar of motor vehicles within twenty days of notification of the suspension; however, the person's permit or license and the person's driving privileges shall be suspended immediately upon receipt of the

notification. The registrar may retain the permit or license during the period of the suspension or the registrar may destroy it under section 4510.52 of the Revised Code.

(E) Any person whose temporary instruction permit or driver's license has been suspended, or whose opportunity to obtain such a permit or license has been denied pursuant to this section, may file a petition in the juvenile court in whose jurisdiction the person resides alleging error in the action taken by the registrar under division (B) of this section or alleging one or more of the matters within the scope of the hearing, as described in this division, or both. The petitioner shall notify the registrar and the superintendent of the school district who gave the notice to the registrar and juvenile judge under division (B) of section 3321.13 of the Revised Code of the filing of the petition and send them copies of the petition. The scope of the hearing is limited to the issues of whether the notice given by the superintendent to the registrar was in error and whether the suspension or denial of driving privileges will result in substantial hardship to the petitioner.

The registrar shall furnish the court a copy of the record created in accordance with division (A) of this section. The registrar and the superintendent shall furnish the court with any other relevant information required by the court.

In hearing the matter and determining whether the petitioner has shown that the petitioner's temporary instruction permit or driver's license should not be suspended or that the petitioner's opportunity to obtain such a permit or license should not be denied, the court shall decide the issue upon the information furnished by the registrar and the superintendent and any such additional evidence that the registrar, the superintendent, or the petitioner submits.

If the court finds from the evidence submitted that the petitioner has failed to show error in the action taken by the registrar under division (B) of this section and has failed to prove any of the matters within the scope of the hearing, then the court may assess the cost of the proceeding against the petitioner and shall uphold the suspension of the petitioner's permit or license or the denial of the petitioner's opportunity to obtain a permit or license. If the court finds that the petitioner has shown error in the action taken by the registrar under division (B) of this section or has proved one or more of the matters within the scope of the hearing, or both, the cost of the proceeding shall be paid out of the county treasury of the county in which the proceedings were held, and the suspension of the petitioner's permit or license or the denial of the person's opportunity to obtain a permit or license shall be terminated.

(F) The registrar shall cancel the record created under this section of any person who is the subject of a notice given under division (B) of section 3321.13 of the Revised Code and shall terminate the suspension of the person's permit or license or the denial of the person's opportunity to obtain a permit or license, if any of the following applies:

(1) The person is at least eighteen years of age.

(2) The person provides evidence, as the registrar shall require by rule, of receipt of a high school diploma or a general educational development certificate of high school equivalence.

(3) The superintendent of a school district informs the registrar that the notification of withdrawal, habitual

absence without legitimate excuse, suspension, or expulsion concerning the person was in error.

(4) The suspension or denial was imposed subsequent to a notification given under division (B)(3) or (4) of section 3321.13 of the Revised Code, and the superintendent of a school district informs the registrar that the person in question has satisfied any terms or conditions established by the school as necessary to terminate the suspension or denial of driving privileges.

(5) The suspension or denial was imposed subsequent to a notification given under division (B)(1) of section 3321.13 of the Revised Code, and the superintendent of a school district informs the registrar that the person in question is now attending school or enrolled in and attending an approved program to obtain a diploma or its equivalent to the satisfaction of the school superintendent.

(6) The suspension or denial was imposed subsequent to a notification given under division (B)(2) of section 3321.13 of the Revised Code, the person has completed at least one semester or term of school after the one in which the notification was given, the person requests the superintendent of the school district to notify the registrar that the person no longer is habitually absent without legitimate excuse, the superintendent determines that the person has not been absent from school without legitimate excuse in the current semester or term, as determined under that division, for more than ten consecutive school days or for more than fifteen total school days, and the superintendent informs the registrar of that fact. If a person described in division (F)(6) of this section requests the superintendent of the school district to notify the registrar that the person no longer is habitually absent without legitimate excuse and the superintendent makes the determination described in this division, the superintendent shall provide the information described in division (F) (6) of this section to the registrar within five days after receiving the request.

(7) The suspension or denial was imposed subsequent to a notification given under division (B)(2) of section 3321.13 of the Revised Code, and the superintendent of a school district informs the registrar that the person in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(8) The person filed a petition in court under division (E) of this section and the court found that the person showed error in the action taken by the registrar under division (B) of this section or proved one or more of the matters within the scope of the hearing on the petition, as set forth in division (E) of this section, or both.

At the end of the suspension period under this section and upon the request of the person whose temporary instruction permit or driver's license was suspended, the registrar shall return the driver's license or permit to the person or reissue the person's license or permit under section 4510.52 of the Revised Code, if the registrar destroyed the suspended license or permit under that section.

HISTORY: 143 v H 204 (Eff 5-2-90); 145 v H 687 (Eff 10-12-94); 148 v S 1, Eff 8-6-99; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4507.061. It was amended and renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.33 Underage persons using license to purchase liquor or beer.

(A) No person of insufficient age to purchase intoxicating liquor or beer, contrary to division (A) or (C) of section 4507.30 of the Revised Code, shall display as proof that the person is of sufficient age to purchase intoxicating liquor or beer, a driver's or commercial driver's license, knowing the same to be fictitious, altered, or not the person's own. The registrar of motor vehicles shall impose a class C suspension of the person's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or commercial driver's license temporary instruction permit for the period of for the period of time specified in division (B)(3) of section 4510.02 of the Revised Code upon the offender and shall not issue or reissue a license or permit of that type to the offender during the suspension period.

(B) In any prosecution, or in any proceeding before the liquor control commission, in which the defense authorized by section 4301.639 of the Revised Code is sustained, the clerk of the court in which the prosecution was had, or the clerk of the liquor control commission, shall certify to the registrar the facts ascertainable from the clerk's records evidencing violation of division (A) or (C) of section 4507.30 of the Revised Code by a person of insufficient age to purchase intoxicating liquor or beer, including in the certification the person's name and residence address.

(C) The registrar, upon receipt of the certification, shall suspend the person's license or permit to drive subject to review as provided in this section, and shall mail to the person, at the person's last known address, a notice of the suspension and of the hearing provided in division (D) of this section.

(D) Any person whose license or permit to drive has been suspended under this section, within twenty days of the mailing of the notice provided above, may file a petition in the municipal court or county court, or in case the person is under the age of eighteen years, in the juvenile court, in whose jurisdiction the person resides, agreeing to pay the cost of the proceedings, and alleging error by the registrar in the suspension of the license or permit to drive, or in one or more of the matters within the scope of the hearing as provided in this section, or both. The petitioner shall notify the registrar of the filing of the petition and send the registrar a copy thereof. The scope of the hearing shall be limited to whether a court of record did in fact find that the petitioner displayed, or, if the original proceedings were before the liquor control commission, whether the petitioner did in fact display, as proof that the person was of sufficient age to purchase intoxicating liquor or beer, a driver's or commercial driver's license knowing the same to be fictitious, altered, or not the person's own, and whether the person was at that time of insufficient age legally to make a purchase of intoxicating liquor or beer.

(E) In any hearing authorized by this section, the registrar shall be represented by the prosecuting attorney of the county where the petitioner resides.

(F) If the court finds from the evidence submitted that the person has failed to show error in the action by the registrar or in one or more of the matters within the scope of the hearing as limited in division (D) of this section, or both, the court shall assess the cost of the proceeding against the person and shall impose the suspension provided in divisions (A) and (C) of this section. If the court finds that the person has shown error in the action

taken by the registrar, or in one or more of the matters within the scope of the hearing as limited in division (B) of this section, or both, the cost of the proceeding shall be paid out of the county treasury of the county in which the proceedings were held, and the suspension provided in divisions (A) and (C) of this section shall not be imposed. The court shall inform the registrar in writing of the action taken.

HISTORY: 134 v H 453 (Eff 9-28-72); 143 v H 381 (Eff 7-1-89); 147 v S 60. Eff 10-21-97; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4507.163. It was amended and renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.34 Suspension of probationary motorized bicycle license.

(A) The registrar of motor vehicles shall impose a class F suspension for the period of time specified in division (B)(6) of section 4510.02 of the Revised Code of the probationary motorized bicycle license issued to any person when the person has been convicted of or has been adjudicated in juvenile court of having committed, a violation of division (A) or (D) of section 4511.521 of the Revised Code, or of any other section of the Revised Code or similar municipal ordinance for which points are chargeable under section 4510.036 of the Revised Code.

(B) Any person whose license is suspended under this section shall mail or deliver the person's probationary motorized bicycle license to the registrar within fourteen days of notification of the suspension. The registrar shall retain the license during the period of suspension.

(C) No application for a motorized bicycle license or probationary motorized bicycle license shall be received from any person whose probationary motorized bicycle license has been suspended under this section until the person reaches sixteen years of age.

HISTORY: RC § 4507.16.3†, 140 v S 169 (Eff 1-1-85); RC § 4507.16.7, 141 v H 356. Eff 9-24-86; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

† This section was inadvertently numbered RC § 4507.16.3 in Am. Sub. S.B. 169; it was renumbered to RC § 4507.16.7 by H.B. 356.

Publisher's Note:

This section was formerly § 4507.167. It was amended and renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.71 Nonresident violator compact.

The nonresident violator compact, hereinafter called "the compact," is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

"NONRESIDENT VIOLATOR COMPACT"

Article I

Findings, Declaration of Policy and Purpose

(A) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(a) Must post collateral or bond to secure appearance for trial at a later date; or

(b) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(c) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in divisions (A) (1) and (2) of this article is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in division (A) (1) of this article causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in division (A) (2) of this article, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(B) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions;

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued;

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction;

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(C) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in division (B) of this article in a uniform and orderly manner;

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Article II

Definitions

(A) In the nonresident violator compact, the following words have the meaning indicated, unless the context requires otherwise.

(B)(1) "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic

violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) "Terms of the citation" means those options expressly stated upon the citation.

Article III

Procedure for Issuing Jurisdiction

(A) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in division (B) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's signed, personal recognizance that he or she will comply with the terms of the citation.

(B) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(C) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(D) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the compact manual.

(E) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(F) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(G) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

Article IV

Procedures for Home Jurisdiction

(A) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(B) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

Article V

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and nonparty jurisdiction.

Article VI

Compact Administrator Procedures

(A) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(B) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(C) The board shall elect annually, from its membership, a chairman and a vice chairman.

(D) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(E) The board may accept for any of its purposes and functions under this compact any and all donations, and

grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

(F) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(G) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

Article VII

Entry into Compact and Withdrawal

(A) This compact shall become effective when it has been adopted by at least two jurisdictions.

(B)(1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(a) A citation of the authority by which the jurisdiction is empowered to become a party to this compact;

(b) Agreement to comply with the terms and provisions of the compact;

(c) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(C) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Article VIII

Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

Article IX

Amendments to the Compact

(A) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(B) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(C) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after

receipt of the proposed amendment shall constitute endorsement.

Article X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

Article XI

Title

This compact shall be known as the Nonresident Violator Compact of 1977."

HISTORY: 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4511.95. It was renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

§ 4510.72 License reinstatement fee; compact administrator.

(A) A fee of thirty dollars shall be charged by the registrar of motor vehicles for the reinstatement of any driver's license suspended pursuant to division (A) of Article IV of the compact enacted in section 4510.71 of the Revised Code.

(B) Pursuant to division (A) of Article VI of the nonresident violator compact of 1977 enacted in section 4510.71 of the Revised Code, the director of public safety shall serve as the compact administrator for Ohio.

HISTORY: 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Publisher's Note:

This section was formerly § 4511.951. It was renumbered by S.B. 123, Acts 2002, effective January 1, 2004.

CHAPTER 4511: TRAFFIC LAWS — OPERATION OF MOTOR VEHICLES

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§ 4511.01 Definitions.

As used in this chapter and in Chapter 4513. of the Revised Code:

(A) "Vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that "vehicle" does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

(B) "Motor vehicle" means every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(C) "Motorcycle" means every motor vehicle, other than a tractor, having a saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," or "motorcycle" without regard to weight or brake horsepower.

(D) "Emergency vehicle" means emergency vehicles of municipal, township, or county departments or public utility corporations when identified as such as required by

law, the director of public safety, or local authorities, and motor vehicles when commandeered by a police officer.

(E) "Public safety vehicle" means any of the following:

(1) Ambulances, including private ambulance companies under contract to a municipal corporation, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under section 4503.49 of the Revised Code;

(2) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(3) Any motor vehicle when properly identified as required by the director of public safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The state fire marshal shall be designated by the director of public safety as the certifying agency for all public safety vehicles described in division (E)(3) of this section.

(4) Vehicles used by fire departments, including motor vehicles when used by volunteer fire fighters responding to emergency calls in the fire department service when identified as required by the director of public safety.

Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a public safety vehicle, shall be considered a public safety vehicle when transporting an ill or injured person to a hospital regardless of whether such vehicle has already passed a hospital.

(5) Vehicles used by the motor carrier enforcement unit for the enforcement of orders and rules of the public utilities commission as specified in section 5503.34 of the Revised Code.

(F) "School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the public utilities commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than fifteen children in the van or bus at any time.

(G) "Bicycle" means every device, other than a tricycle designed solely for use as a play vehicle by a child, propelled solely by human power upon which any person may ride having either two tandem wheels, or one wheel in the front and two wheels in the rear, any of which is more than fourteen inches in diameter.

(H) "Motorized bicycle" means any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled

and is equipped with a helper motor of not more than fifty cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface.

(I) "Commercial tractor" means every motor vehicle having motive power designed or used for drawing other vehicles and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of such other vehicles, or load thereon, or both.

(J) "Agricultural tractor" means every self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

(K) "Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property.

(L) "Bus" means every motor vehicle designed for carrying more than nine passengers and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

(M) "Trailer" means every vehicle designed or used for carrying persons or property wholly on its own structure and for being drawn by a motor vehicle, including any such vehicle when formed by or operated as a combination of a "semitrailer" and a vehicle of the dolly type, such as that commonly known as a "trailer dolly," a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than twenty-five miles per hour, and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour.

(N) "Semitrailer" means every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

(O) "Pole trailer" means every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(P) "Railroad" means a carrier of persons or property operating upon rails placed principally on a private right-of-way.

(Q) "Railroad train" means a steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

(R) "Streetcar" means a car, other than a railroad train, for transporting persons or property, operated upon rails principally within a street or highway.

(S) "Trackless trolley" means every car that collects its power from overhead electric trolley wires and that is not operated upon rails or tracks.

(T) "Explosives" means any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and

combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in such limited quantities, of such nature, or in such packing, that it is impossible to procure a simultaneous or a destructive explosion of such units, to the injury of life, limb, or property by fire, by friction, by concussion, by percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

(U) "Flammable liquid" means any liquid that has a flash point of seventy degrees fahrenheit, or less, as determined by a tagliabue or equivalent closed cup test device.

(V) "Gross weight" means the weight of a vehicle plus the weight of any load thereon.

(W) "Person" means every natural person, firm, co-partnership, association, or corporation.

(X) "Pedestrian" means any natural person afoot.

(Y) "Driver or operator" means every person who drives or is in actual physical control of a vehicle, trackless trolley, or streetcar.

(Z) "Police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

(AA) "Local authorities" means every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state.

(BB) "Street" or "highway" means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

(CC) "Controlled-access highway" means every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway.

(DD) "Private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(EE) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways the term "roadway" means any such roadway separately but not all such roadways collectively.

(FF) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

(GG) "Laned highway" means a highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(HH) "Through highway" means every street or highway as provided in section 4511.65 of the Revised Code.

(II) "State highway" means a highway under the jurisdiction of the department of transportation, outside the limits of municipal corporations, provided that the authority conferred upon the director of transportation in

section 5511.01 of the Revised Code to erect state highway route markers and signs directing traffic shall not be modified by sections 4511.01 to 4511.79 and 4511.99 of the Revised Code.

(JJ) "State route" means every highway that is designated with an official state route number and so marked.

(KK) "Intersection" means:

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If an intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(3) The junction of an alley with a street or highway, or with another alley, shall not constitute an intersection.

(LL) "Crosswalk" means:

(1) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(2) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(3) Notwithstanding divisions (LL)(1) and (2) of this section, there shall not be a crosswalk where local authorities have placed signs indicating no crossing.

(MM) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or marked or indicated by adequate signs as to be plainly visible at all times.

(NN) "Business district" means the territory fronting upon a street or highway, including the street or highway, between successive intersections within municipal corporations where fifty per cent or more of the frontage between such successive intersections is occupied by buildings in use for business, or within or outside municipal corporations where fifty per cent or more of the frontage for a distance of three hundred feet or more is occupied by buildings in use for business, and the character of such territory is indicated by official traffic control devices.

(OO) "Residence district" means the territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business.

(PP) "Urban district" means the territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more, and the character of such territory is indicated by official traffic control devices.

(QQ) "Traffic control devices" means all flaggers, signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways.

(RR) "Traffic control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop, to proceed, to change direction, or not to change direction.

(SS) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(TT) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, trackless trolleys, and other devices, either singly or together, while using any highway for purposes of travel.

(UU) "Right-of-way" means either of the following, as the context requires:

(1) The right of a vehicle, streetcar, trackless trolley, or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it or the individual is moving in preference to another vehicle, streetcar, trackless trolley, or pedestrian approaching from a different direction into its or the individual's path;

(2) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, right-of-way includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

(VV) "Rural mail delivery vehicle" means every vehicle used to deliver United States mail on a rural mail delivery route.

(WW) "Funeral escort vehicle" means any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

(XX) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic, and includes any street or highway that has been declared an "alley" by the legislative authority of the municipal corporation in which such street or highway is located.

(YY) "Freeway" means a divided multi-lane highway for through traffic with all crossroads separated in grade and with full control of access.

(ZZ) "Expressway" means a divided arterial highway for through traffic with full or partial control of access with an excess of fifty per cent of all crossroads separated in grade.

(AAA) "Thruway" means a through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

(BBB) "Stop intersection" means any intersection at one or more entrances of which stop signs are erected.

(CCC) "Arterial street" means any United States or state numbered route, controlled access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(DDD) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver and includes ridesharing arrangements known as carpools, vanpools, and buspools.

(EEE) "Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a handicapped person and that is incapable of a speed in excess of eight miles per hour.

(FFF) "Child day-care center" and "type A family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(GGG) "Multi-wheel agricultural tractor" means a type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

(HHH) "Operate" means to cause or have caused movement of a vehicle, streetcar, or trackless trolley.

(III) "Predicate motor vehicle or traffic offense" means any one of the following:

(1) A violation of section 4511.03, 4511.051 [4511.05.1], 4511.12, 4511.132 [4511.13.2], 4511.16, 4511.20, 4511.201 [4511.20.1], 4511.21, 4511.211 [4511.21.1], 4511.213 [4511.21.3], 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431 [4511.43.1], 4511.432 [4511.43.2], 4511.44, 4511.441 [4511.44.1], 4511.451 [4511.45.1], 4511.452 [4511.45.2], 4511.46, 4511.47, 4511.48, 4511.481 [4511.48.1], 4511.49, 4511.50, 4511.511 [4511.51.1], 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661 [4511.66.1], 4511.68, 4511.70, 4511.701 [4511.70.1], 4511.71, 4511.711 [4511.71.1], 4511.712 [4511.71.2], 4511.713 [4511.71.3], 4511.72, 4511.73, 4511.763 [4511.76.3], 4511.771 [4511.77.1], 4511.78, or 4511.84 of the Revised Code;

(2) A violation of division (A)(2) of section 4511.17, divisions (A) to (D) of section 4511.51, or division (A) of section 4511.74 of the Revised Code;

(3) A violation of any provision of sections 4511.01 TO 4511.76 of the Revised Code for which no penalty otherwise is provided in the section that contains the provision violated;

(4) A violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in division (III)(1), (2), or (3) of this section.

HISTORY: GC § 6307-2; 119 v 766, § 2; 120 v 221; 124 v 514; Bureau of Code Revision, 10-1-53; 126 v 392(408) (Eff 3-17-55); 126 v 790 (Eff 9-14-55); 126 v 115 (Eff 10-1-56); 127 v 54 (Eff 8-27-57); 128 v 1270 (Eff 11-4-59); 129 v 1273 (Eff 10-26-61); 130 v 1068 (Eff 8-5-63); 130 v 1074 (Eff 10-10-63); 131 v 1094 (Eff 10-15-65); 132 v H 634 (Eff 11-24-67); 132 v H 380 (Eff 1-1-68); 132 v H 878 (Eff 12-14-67); 132 v S 451 (Eff 2-29-68); 135 v H 200 (Eff 9-23-73); 135 v S 108 (Eff 11-21-73); 135 v H 995 (Eff 1-1-75); 136 v H 338 (Eff 1-9-76); 136 v S 56 (Eff 5-25-76); 136 v H 235 (Eff 10-1-76); 137 v S 100 (Eff 4-1-78); 138 v S 9 (Eff 6-20-79); 139 v H 53 (Eff 7-1-82); 143 v H 258 (Eff 11-2-89); 143 v H 319 (Eff 7-2-90); 143 v S 272 (Eff 11-28-90); 143 v S 382 (Eff 12-31-90); 144 v H 485 (Eff 10-7-92); 144 v S 98 (Eff 11-12-92); 144 v H 356 (Eff 12-31-92); 146 v S 293 (Eff 9-26-96); 148 v H 484 (Eff 10-5-2000); 149 v S 231. Eff 10-24-2002; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 230, § 1, eff. 9-16-04; 152 v H 9, § 1, eff. 10-18-07.

The provisions of § 3 of 152 v H 9 read as follows:

SECTION 3. Section 4511.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 52 and Sub. H.B. 230 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The provisions of § 3, H.B. 52 (150 v —), and § 10, H.B. 230 (150 v —), read as follows:

SECTION 10. * * * Section 4511.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 123 and Am. Sub. S.B. 231 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that each composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Comment, Legislative Service Commission

Section 4511.01 of the Revised Code is amended by Sub. H.B. 230 and Sub. H.B. 52 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

[§ 4511.01.1] § 4511.011 Designation of freeway, expressway, and thruway.

The director of transportation, the board of county commissioners of a county, and the legislative authority of a municipality may, for highways under their jurisdiction, designate an existing highway in whole or in part as or included in a "freeway," "expressway," or "thruway."

HISTORY: 130 v 1080 (Eff 8-5-63); 135 v H 200. Eff 9-28-73.

§ 4511.03 Emergency vehicles to proceed cautiously past red or stop signal.

(A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-4; 119 v 766, § 4; Bureau of Code Revision, 10-1-53; 132 v H 378. Eff 12-14-67; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.03.1] § 4511.031 Portable signal preemption devices.

(A)(1) No person shall possess a portable signal preemption device.

(2) No person shall use a portable signal preemption device to affect the operation of the traffic control signal.

(B) Division (A)(1) of this section does not apply to any of the following persons and division (A)(2) of this

section does not apply to any of the following persons when responding to an emergency call:

(1) A peace officer, as defined in division (A)(1), (12), (14), or (19) of section 109.71 of the Revised Code;

(2) A state highway patrol trooper;

(3) A person while occupying a public safety vehicle as defined in division (E)(1), (3), or (4) of section 4511.01 of the Revised Code.

(C) Whoever violates division (A)(1) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (A)(2) of this section is guilty of a misdemeanor of the first degree.

(D) As used in this section, "portable signal preemption device" means a device that, if activated by a person, is capable of changing a traffic control signal to green out of sequence.

HISTORY: 150 v H 406, § 1, eff. 3-23-05.

§ 4511.04 Exceptions.

(A) Sections 4511.01 to 4511.18, 4511.20 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway within an area designated by traffic control devices, but apply to such persons and vehicles when traveling to or from such work.

(B) The driver of a highway maintenance vehicle owned by this state or any political subdivision of this state, while the driver is engaged in the performance of official duties upon a street or highway, provided the highway maintenance vehicle is equipped with flashing lights and such other markings as are required by law and such lights are in operation when the driver and vehicle are so engaged, shall be exempt from criminal prosecution for violations of sections 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, 4513.02, and 5577.01 to 5577.09 of the Revised Code.

(C)(1) This section does not exempt a driver of a highway maintenance vehicle from civil liability arising from a violation of section 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, or 4513.02 or sections 5577.01 to 5577.09 of the Revised Code.

(2) This section does not exempt the driver of a vehicle that is engaged in the transport of highway maintenance equipment from criminal liability for a violation of sections 5577.01 to 5577.09 of the Revised Code.

(D) As used in this section, "highway maintenance vehicle" means a vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities.

HISTORY: GC § 6307-4; 119 v 766, § 4; Bureau of Code Revision, 10-1-53; 133 v S 77, Eff 11-17-69; 150 v H 87, § 1, eff. 6-30-03.

The effective date is set by section 26 of H.B. 87.

[§ 4511.04.1] § 4511.041 Exceptions for emergency or public safety vehicle responding to emergency call.

Sections 4511.12, 4511.13, 4511.131 [4511.13.1], 4511.132 [4511.13.2], 4511.14, 4511.15, 4511.202 [4511.20.2], 4511.21, 4511.211 [4511.21.1], 4511.22,

4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431 [4511.43.1], 4511.432 [4511.43.2], 4511.44, 4511.441 [4511.44.1], 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.66, 4511.68, 4511.681 [4511.68.1], and 4511.69 of the Revised Code do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and if the driver of the vehicle is giving an audible signal by siren, exhaust whistle, or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

HISTORY: 145 v H 149, Eff 5-20-93.

[§ 4511.04.2] § 4511.042 Exception for coroner's vehicles.

Sections 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.35, 4511.36, 4511.37, 4511.38, and 4511.66 of the Revised Code do not apply to a coroner, deputy coroner, or coroner's investigator operating a motor vehicle in accordance with section 4513.171 [4513.17.1] of the Revised Code. This section does not relieve a coroner, deputy coroner, or coroner's investigator operating a motor vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

HISTORY: 147 v H 282, Eff 11-12-97.

§ 4511.05 Persons riding or driving animals upon roadways.

Every person riding, driving, or leading an animal upon a roadway is subject to sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, of the Revised Code, applicable to the driver of a vehicle, except those provisions of such sections which by their nature are inapplicable.

HISTORY: GC § 6307-5; 119 v 766, § 5; Bureau of Code Revision, Eff 10-1-53.

[§ 4511.05.1] § 4511.051 Prohibitions on use of freeways.

(A) No person, unless otherwise directed by a police officer, shall:

(1) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway, except: in a rest area; on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle; or to obtain assistance;

(2) Occupy any space within the limits of the right-of-way of a freeway, with: an animal-drawn vehicle; a ridden or led animal; herded animals; a pushcart; a bicycle, except on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for bicycle use; a bicycle with motor

attached; a motor driven cycle with a motor which produces not to exceed five brake horsepower; an agricultural tractor; farm machinery; except in the performance of public works or official duties.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 131 v 1099 (Eff 9-1-65); 132 v H 1 (Eff 2-21-67); 143 v H 258, Eff 11-2-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.06 Uniform application and precedence of traffic law.

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code shall be applicable and uniform throughout this state and in all political subdivisions and municipal corporations of this state. No local authority shall enact or enforce any rule in conflict with such sections, except that this section does not prevent local authorities from exercising the rights granted them by Chapter 4521. of the Revised Code and does not limit the effect or application of the provisions of that chapter.

HISTORY: GC § 6307-6; 119 v 766, § 6; Bureau of Code Revision, 10-1-53; 139 v H 707, Eff 1-1-83.

The effective date is set by section 3 of HB 707.

§ 4511.07 Local traffic regulations.

(A) Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

(1) Regulating the stopping, standing, or parking of vehicles, trackless trolleys, and streetcars;

(2) Regulating traffic by means of police officers, or traffic control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways as one-way highways and requiring that all vehicles, trackless trolleys, and streetcars on the one-way highways be moved in one specific direction;

(5) Regulating the speed of vehicles, streetcars, and trackless trolleys in public parks;

(6) Designating any highway as a through highway and requiring that all vehicles, trackless trolleys, and streetcars stop before entering or crossing a through highway, or designating any intersection as a stop intersection and requiring all vehicles, trackless trolleys, and streetcars to stop at one or more entrances to the intersection;

(7) Regulating or prohibiting vehicles and trackless trolleys from passing to the left of safety zones;

(8) Regulating the operation of bicycles; provided that no such regulation shall be fundamentally inconsistent

with the uniform rules of the road prescribed by this chapter and that no such regulation shall prohibit the use of bicycles on any public street or highway except as provided in section 4511.051 [4511.05.1] of the Revised Code;

(9) Requiring the registration and licensing of bicycles, including the requirement of a registration fee for residents of the local authority;

(10) Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys.

(B) No ordinance or regulation enacted under division (A)(4), (5), (6), (7), (8), or (10) of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrance to the highway or part of the highway affected, as may be most appropriate.

(C) Every ordinance, resolution, or regulation enacted under division (A)(1) of this section shall be enforced in compliance with section 4511.071 [4511.07.1] of the Revised Code, unless the local authority that enacted it also enacted an ordinance, resolution, or regulation pursuant to division (A) of section 4521.02 of the Revised Code that specifies that a violation of it shall not be considered a criminal offense, in which case the ordinance, resolution, or regulation shall be enforced in compliance with Chapter 4521. of the Revised Code.

HISTORY: GC § 6307-7; 119 v 766; Bureau of Code Revision, 10-1-53; 129 v 1037 (Eff 8-11-61); 133 v S 452 (Eff 7-17-70); 135 v H 995 (Eff 1-1-75); 138 v S 257 (Eff 6-25-80); 139 v H 707, Eff 1-1-83; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 3 of HB 707.

[§ 4511.07.1] § 4511.071 Lessor under written lease may establish nonliability for violation.

(A) Except as provided in division (C) of this section, the owner of a vehicle shall be entitled to establish nonliability for prosecution for violation of an ordinance, resolution, or regulation enacted under division (A)(1) of section 4511.07 of the Revised Code by proving the vehicle was in the care, custody, or control of a person other than the owner at the time of the violation pursuant to a written rental or lease agreement or affidavit providing that except for such agreement, no other business relationship with respect to the vehicle in question exists between the operator and owner.

(B) Proof that the vehicle was in the care, custody, or control of a person other than the owner shall be established by sending a copy of such written rental or lease agreement or affidavit to the prosecuting authority within thirty days from the date of receipt by the owner of the notice of violation. The furnishing of a copy of a written rental or lease agreement or affidavit shall be prima-facie evidence that a vehicle was in the care, custody, or control of a person other than the owner.

(C) This section does not apply to a violation of an ordinance, resolution, or regulation enacted under division (A)(1) of section 4511.07 of the Revised Code if the ordinance, resolution, or regulation is one that is required to be enforced in compliance with Chapter 4521 of the Revised Code.

HISTORY: 135 v S 257 (Eff 6-25-80); 139 v H 707, Eff 1-1-83; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 3 of HB 707.

§ 4511.08 Use of private property for vehicular travel.

Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, of the Revised Code do not prevent the owner of real property, used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use or from requiring additional conditions to those specified in such sections, or otherwise regulating such use as may seem best to such owner.

HISTORY: GC § 6307-8; 119 v 766, § 8; Bureau of Code Revision, Eff 10-1-53.

[TRAFFIC CONTROL DEVICES]

§ 4511.09 Uniform system of traffic control devices.

The department of transportation shall adopt a manual and specifications for a uniform system of traffic control devices, including signs denoting names of streets and highways, for use upon highways within this state. Such uniform system shall correlate with, and so far as possible conform to, the system approved by the American Association of State Highway Officials.

HISTORY: GC § 6307-9; 119 v 766, § 9; Bureau of Code Revision, 10-1-53; 135 v H 200. Eff 9-28-73.

[§ 4511.09.1] § 4511.091 Arrest or citation based on radar, timing device or radio message from another officer.

(A) The driver of any motor vehicle that has been checked by radar, or by any electrical or mechanical timing device to determine the speed of the motor vehicle over a measured distance of a highway or a measured distance of a private road or driveway, and found to be in violation of any of the provisions of section 4511.21 or 4511.211 [4511.21.1] of the Revised Code, may be arrested until a warrant can be obtained, provided the arresting officer has observed the recording of the speed of the motor vehicle by the radio microwaves, electrical or mechanical timing device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves, electrical or mechanical timing device; provided, in case of an arrest based on such a message, the radio message has been dispatched immediately after the speed of the motor vehicle was recorded and the arresting officer is furnished a description of the motor vehicle for proper identification and the recorded speed.

(B) If the driver of a motor vehicle being driven on a public street or highway of this state is observed violating any provision of this chapter other than section 4511.21 or 4511.211 [4511.21.1] of the Revised Code by a law enforcement officer situated at any location, including in any type of airborne aircraft or airship, that law enforcement officer may send a radio message to another law enforcement officer, and the other law enforcement officer may arrest the driver of the motor vehicle until a warrant can be obtained or may issue the driver a citation for the violation; provided, if an arrest or citation is based on such a message, the radio message is dispatched immediately after the violation is observed and the law

enforcement officer who observes the violation furnishes to the law enforcement officer who makes the arrest or issues the citation a description of the alleged violation and the motor vehicle for proper identification.

HISTORY: 125 v 396; 129 v 582(898) (Eff 1-10-61); 130 v 1080 (Eff 10-10-63); 132 v H 380 (Eff 1-1-68); 143 v H 171 (Eff 5-31-90); 147 v S 213. Eff 7-29-98.

[§ 4511.09.2] § 4511.092 Leased or rented vehicle traffic law violations detected by photo-monitoring devices.

(A) As used in this section:

(1) "Motor vehicle leasing dealer" has the same meaning as in section 4517.01 of the Revised Code.

(2) "Motor vehicle renting dealer" has the same meaning as in section 4549.65 of the Revised Code.

(3) "Ticket" means any traffic ticket, citation, summons, or other notice of liability issued in response to an alleged traffic law violation detected by a traffic law photo-monitoring device.

(4) "Traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle or its license plate.

(B) A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. A dealer who receives a ticket for such a violation shall notify whoever issued the ticket of the vehicle lessee's or renter's name and address. In no case shall the dealer pay such a ticket and then attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.

HISTORY: 152 v H 67, § 101.01, eff. 6-30-07.

The effective date is set by § 609.10 of 152 v H 67.

[§ 4511.09.3] § 4511.093 Limited secondary traffic offense enforcement at vehicle checkpoints and inspections

(A)(1) No law enforcement officer who stops the operator of a motor vehicle in the course of an authorized sobriety or other motor vehicle checkpoint operation or a motor vehicle safety inspection shall issue a ticket, citation, or summons for a secondary traffic offense unless in the course of the checkpoint operation or safety inspection the officer first determines that an offense other than a secondary traffic offense has occurred and either places the operator or a vehicle occupant under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

(2) A law enforcement agency that operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense shall not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint, but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

(B) As used in this section, "secondary traffic offense" means a violation of division (A) or (F)(2) of section 4507.05, division (B)(1)(a) or (b) or (E) of section 4507.071 [4507.07.1], division (C) of section 4511.81, or division (B) of section 4513.263 [4513.26.3] of the Revised Code.

HISTORY: 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is set by § 812.03 of 152 v H 119.

§ 4511.10 Placing and maintaining traffic control devices.

The department of transportation may place and maintain traffic control devices, conforming to its manual and specifications, upon all state highways as are necessary to indicate and to carry out sections 4511.01 to 4511.78 and 4511.99 of the Revised Code, or to regulate, warn, or guide traffic.

No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department except by permission of the director of transportation.

HISTORY: GC § 6307-10; 119 v 766, § 10; Bureau of Code Revision, 10-1-53; 135 H 200. Eff 9-28-73.

[§ 4511.10.1] § 4511.101 Business logos on directional signs along interstates.

(A) The director of transportation, in accordance with 23 U.S.C.A. 109(d), 131(f), and 315, as amended, shall establish a program for the placement of business logos for identification purposes on state directional signs within the rights-of-way of divided, multi-lane, limited access highways in both rural and urban areas.

(B) All direct and indirect costs of the business logo sign program established pursuant to this section shall be fully paid by the businesses applying for participation in the program. At any interchange where a business logo sign is erected, such costs shall be divided equally among the participating businesses. The direct and indirect costs of the program shall include, but not be limited to, the cost of capital, directional signs, blanks, posts, logos, installation, repair, engineering, design, insurance, removal, replacement, and administration. Nothing in this chapter shall be construed to prohibit the director from establishing such a program.

(C) The director, in accordance with rules adopted pursuant to Chapter 119. of the Revised Code, may contract with any private person to operate, maintain, and market the business logo sign program. The rules shall describe the terms of the contract, and shall allow for a reasonable profit to be earned by the successful applicant. In awarding the contract, the director shall consider the skill, expertise, prior experience, and other qualifications of each applicant.

(D) As used in this section, "urban area" means an area having a population of fifty thousand or more according to the most recent federal census and designated as such on urban maps prepared by the department.

(E) Neither the department nor the director shall do either of the following:

(1) Limit the right of any person to erect, maintain, repair, remove, or utilize any off-premises or on-premises advertising device;

(2) Make participation in the business logo sign program conditional upon a business agreeing to limit, discontinue, withdraw, modify, alter, or change any advertising or sign.

(F) The program shall permit the business logo signs of a seller of motor vehicle fuel to include on the seller's signs a marking or symbol indicating that the seller sells one or more types of alternative fuel so long as the seller in fact sells that fuel.

As used in this division, "alternative fuel" has the same meaning as in section 125.831 [125.83.1] of the Revised Code.

HISTORY: 143 v H 356 (Eff 11-2-89); 143 v H 737 (Eff 4-11-91); 145 v H 154 (Eff 6-30-93); 146 v H 107 (Eff 6-30-95); 146 v H 353 (Eff 9-17-96); 146 v H 670 (Eff 12-2-96); 147 v H 210 (Eff 6-30-97); 147 v H 462. Eff 3-18-99; 151 v H 245, § 1, eff. 10-12-06.

[TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAMS]

[§ 4511.10.2] § 4511.102 Definitions.

As used in sections 4511.102 [4511.10.2] to 4511.106 [4511.10.6] of the Revised Code:

(A) "Tourist-oriented activity" includes any lawful cultural, historical, recreational, educational, or commercial activity a major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the activity and attendance at which is no less than two thousand visitors in any consecutive twelve-month period.

(B) "Eligible attraction" means any tourist-oriented activity that meets all of the following criteria:

(1) Is not eligible for inclusion in the business logo sign program established under section 4511.101 [4511.10.1] of the Revised Code;

(2) If currently advertised by signs adjacent to a highway on the interstate system or state system, those signs are consistent with Chapter 5516. of the Revised Code and the "National Highway Beautification Act of 1965," 79 Stat. 1028, 23 U.S.C. 131, and the national standards, criteria, and rules adopted pursuant to that act;

(3) Is within ten miles of the highway for which signing is sought under sections 4511.102 [4511.10.2] to 4511.105 [4511.10.5] of the Revised Code;

(4) Meets any additional criteria developed by the director of transportation and adopted by the director as rules in accordance with Chapter 119. of the Revised Code.

(C) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(D) "Commercial activity" means a farm market, winery, bed and breakfast, lodging that is not a franchise or part of a national chain, antiques shop, craft store, or gift store.

HISTORY: 145 v H 687 (Eff 10-12-94); 146 v H 217 (Eff 11-1-95); 147 v H 210 (Eff 6-30-97); 147 v H 215. Eff 6-30-97.

[§ 4511.10.3] § 4511.103 Rules for placement of tourist-oriented directional signs and trailblazer markers.

(A) The director of transportation, in accordance with 23 U.S.C. 109(d) and 315, with the provisions of the federal manual of uniform traffic control devices relating

to tourist-oriented directional signs and trailblazer markers, and with Chapter 119. of the Revised Code, shall adopt rules to carry out a program for the placement of tourist-oriented directional signs and trailblazer markers within the rights-of-way of those portions of rural state highways that are not on the interstate system. The rules shall prohibit the placement of tourist-oriented directional signs and trailblazer markers at interchanges on state system expressways and freeways. The rules shall include, but need not be limited to, all of the following:

(1) The form of the application to participate in the program. The form shall include such necessary information as the director requires to ensure that a tourist-oriented activity for which signing is sought is an eligible attraction.

(2) Provisions for covering or otherwise obscuring signs during off-seasons for eligible attractions that operate on a seasonal basis;

(3) A determination as to the circumstances that justify including on a sign the hours of operation of an eligible attraction;

(4) Criteria for use of the signs at at-grade intersections on expressways.

(B) The program established pursuant to division (A) of this section may be operated, maintained, and marketed either by the department of transportation or by any private person with whom the director, in accordance with rules adopted by the director pursuant to Chapter 119. of the Revised Code, contracts for the operation, maintenance, and marketing. The rules shall describe the terms of the contract and shall allow for a reasonable profit to be made by the successful applicant. In awarding the contract, the director shall consider the skill, expertise, prior experience, and other qualifications of each applicant.

(C) All direct and indirect costs of the program shall be fully paid by the eligible attractions that participate in the program. The director shall develop a fee schedule for participation in the program, and shall charge each program participant the appropriate fee. Direct and indirect costs include, but are not limited to, the cost of all of the following:

(1) Capital;

(2) Insurance;

(3) Directional signs, sign blanks, and posts, and the design, engineering, installation, repair, replacement, and removal of directional signs and posts;

(4) Program administration.

HISTORY: 145 v H 687 (Eff 10-12-94); 146 v H 217. Eff 11-1-95.

[§ 4511.10.4] § 4511.104 Advertising agreement with tourist-oriented attractions.

(A) The operator of any tourist-oriented activity who wishes to participate in the tourist-oriented directional sign program established under sections 4511.102 [4511.10.2] to 4511.105 [4511.10.5] of the Revised Code shall forward a completed application, as provided in section 4511.103 [4511.10.3] of the Revised Code, to the director of transportation or person holding a contract under division (B) of section 4511.103 [4511.10.3] of the Revised Code. If the director or person finds the application to be complete and determines that the activity constitutes an eligible attraction, the director or person shall so notify the applicant in writing. Upon receipt of the notice, the applicant shall forward to the director or

person, in a manner determined by the director, the amount of the fee due and thereupon shall execute an advertising agreement in a form prescribed by the director.

(B) The operator of any eligible attraction for which an advertising agreement is in effect under this section immediately shall forward the advertising agreement to the director or person holding a contract under division (B) of section 4511.103 [4511.10.3] of the Revised Code for cancellation if the eligible attraction ceases to be such an attraction.

(C) The director, when having reasonable cause to believe that an eligible attraction for which an advertising agreement is in effect has ceased to be such an attraction, immediately and without conducting an adjudication shall issue an order canceling the advertising agreement and forward notice of the cancellation in writing to the operator of the attraction together with information that the cancellation may be appealed in accordance with section 119.12 of the Revised Code. If no appeal is entered within the period specified in that section or if an appeal is entered but cancellation of the advertising agreement subsequently is affirmed, the director shall order the removal of the signs relating to the former eligible attraction.

(D) Any person holding a contract under division (B) of section 4511.103 [4511.10.3] of the Revised Code, when having reasonable cause to believe that an eligible attraction for which an advertising agreement is in effect has ceased to be such an attraction, immediately shall notify the director in writing of that fact. Upon receipt of the notice, the director shall proceed in accordance with division (C) of this section.

HISTORY: 145 v H 687 (Eff 10-12-94); 146 v H 217. Eff 11-1-95.

[§ 4511.10.5] § 4511.105 Signs to conform to federal manual; logos.

Tourist-oriented directional signs shall conform to the specifications contained in the federal manual of uniform traffic control devices.

If more than one eligible attraction requires a sign at the same location, multiple signs may be combined on the same panel in accordance with the federal manual of uniform traffic control devices.

Advance signing may be installed in those situations where sight distance, intersection vehicle maneuvers, or other vehicle operating characteristics require advance notice of an eligible attraction in order to reduce vehicle conflicts and improve highway safety.

The design, arrangement, size, and location of tourist-oriented directional signs, including advance signs and trailblazer markers, authorized under sections 4511.102 [4511.10.2] to 4511.105 [4511.10.5] of the Revised Code shall conform to the applicable specifications contained in the federal manual of uniform traffic control devices.

HISTORY: 145 v H 687 (Eff 10-12-94); 146 v H 217. Eff 11-1-95.

[§ 4511.10.6] § 4511.106 Local authority programs.

The legislative authority of a local authority may adopt a resolution establishing a program for the placement of tourist-oriented directional signs and trailblazer markers within the rights-of-way of streets and highways under its jurisdiction. Any program established under this section

shall conform to the rules and specifications contained in the program established by the director of transportation pursuant to sections 4511.102 [4511.10.2] to 4511.105 [4511.10.5] of the Revised Code and the applicable provisions of the federal manual of uniform traffic control devices. If a local authority establishes a program under this section, the local authority may request guidance from the department of transportation in structuring, implementing, and administering its program, but the local authority is solely responsible for the structure and actual implementation and administration of its program, including, but not limited to, the evaluation and review of applications to participate in the local program and the execution of advertising agreements with eligible attractions.

HISTORY: 145 v H 687 (Eff 10-12-94); 146 v H 217. Eff 11-1-95.

[§ 4511.10.7] § 4511.107 Acquisition of outdoor advertising devices.

The department of transportation shall not enter into any program to purchase or acquire any outdoor advertising device for which a valid permit has been issued by this state, except in cases of eminent domain involving an appropriation pursuant to Chapter 163. of the Revised Code, unless the purchase or acquisition program is first approved by the general assembly.

HISTORY: 145 v H 687. Eff 10-12-94.

§ 4511.11 Uniformity of traffic control devices.

(A) Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of transportation manual and specifications for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code, upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

(B) The director of transportation may require to be removed any traffic control device that does not conform to the manual and specifications for a uniform system of traffic control devices on the extensions of the state highway system within municipal corporations.

(C) No village shall place or maintain any traffic control signal upon an extension of the state highway system within the village without first obtaining the permission of the director. The director may revoke the permission and may require to be removed any traffic control signal that has been erected without the director's permission on an extension of a state highway within a village, or that, if erected under a permit granted by the director, does not conform to the state manual and specifications, or that is not operated in accordance with the terms of the permit.

(D) All traffic control devices erected on a public road, street, or alley, shall conform to the state manual and specifications.

(E) No person, firm, or corporation shall sell or offer for sale to local authorities any traffic control device that does not conform to the state manual and specifications, except by permission of the director.

(F) No local authority shall purchase or manufacture any traffic control device that does not conform to the

state manual and specifications, except by permission of the director.

(G) Whoever violates division (E) of this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-11; 119 v 766, § 11; 121 v 684; Bureau of Code Revision, 10-1-53; 130 v 1081 (Eff 10-14-63); 130 v PUL, H 5 (Eff 12-16-64); 131 v 1100 (Eff 11-1-65); 135 v H 200 (Eff 9-28-73); 143 v H 258 (Eff 11-2-89); 143 v H 162. Eff 6-28-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.12 Obeying traffic control devices.

(A) No pedestrian, driver of a vehicle, or operator of a streetcar or trackless trolley shall disobey the instructions of any traffic control device placed in accordance with this chapter, unless at the time otherwise directed by a police officer.

No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this chapter does not state that signs are required, that section shall be effective even though no signs are erected or in place.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-12; 119 v 766, § 12; 124 v 514; Bureau of Code Revision, 10-1-53; 143 v H 258. Eff 11-2-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.12.1] § 4511.121 Compliance at scale locations by operator of commercial motor vehicle.

(A)(1) Except as provided in division (B) of this section, any operator of a commercial motor vehicle, upon approaching a scale location established for the purpose of determining the weight of the vehicle and its load, shall comply with any traffic control device or the order of a peace officer directing the vehicle to proceed to be weighed or otherwise inspected.

(2) Any operator of a commercial motor vehicle, upon bypassing a scale location in accordance with division (B) of this section, shall comply with an order of a peace officer to stop the vehicle to verify the use and operation of an electronic clearance device.

(B) Any operator of a commercial motor vehicle that is equipped with an electronic clearance device authorized by the superintendent of the state highway patrol under section 4549.081 [4549.08.1] of the Revised Code may bypass a scale location, regardless of the instruction of a

traffic control device to enter the scale facility, if either of the following apply:

(1) The in-cab transponder displays a green light or other affirmative visual signal and also sounds an affirmative audible signal;

(2) Any other criterion established by the superintendent by rule is met.

(C) Any peace officer may order the operator of a commercial motor vehicle that bypasses a scale location to stop the vehicle to verify the use and operation of an electronic clearance device.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, whoever violates that division is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, whoever violates division (A) is guilty of a misdemeanor of the third degree.

(E) As used in this section and in section 4549.081 [4549.08.1] of the Revised Code, "commercial motor vehicle" means any combination of vehicles with a gross vehicle weight rating or an actual gross vehicle weight of more than ten thousand pounds if the vehicle is used in interstate or intrastate commerce to transport property and also means any vehicle that is transporting hazardous materials for which placarding is required pursuant to 49 C.F.R. Parts 100 to 180.

HISTORY: 150 v H 230, § 1, eff. 9-16-04.

§ 4511.13 Signal lights.

Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying words or symbols, and said lights shall indicate and apply to drivers of vehicles, streetcars, and trackless trolleys, and to pedestrians as follows:

(A) Green indication:

(1) Vehicular traffic, streetcars, and trackless trolleys facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, streetcars, and trackless trolleys, including vehicles, streetcars, and trackless trolleys turning right or left, shall yield the right-of-way to other vehicles, streetcars, trackless trolleys, and pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Vehicular traffic, streetcars, and trackless trolleys facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic, streetcars, and trackless trolleys shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian-control signal, as provided in section 4511.14 of the Revised Code, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(B) Steady yellow indication:

(1) Vehicular traffic, streetcars, and trackless trolleys facing a steady circular yellow or yellow arrow signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic, streetcars, and trackless trolleys shall not enter the intersection.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in section 4511.14 of the Revised Code, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(C) Steady red indication:

(1) Vehicular traffic, streetcars, and trackless trolleys facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in divisions (C)(2) and (3) of this section.

(2) Unless a sign is in place prohibiting a right turn as provided in division (C)(5) of this section, vehicular traffic, streetcars, and trackless trolleys facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by division (C)(1) of this section. Such vehicular traffic, streetcars, and trackless trolleys shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless a sign is in place prohibiting a left turn as provided in division (C)(5) of this section, vehicular traffic, streetcars, and trackless trolleys facing a steady red signal on a one-way street that intersects another one-way street on which traffic moves to the left may cautiously enter the intersection to make a left turn into the one-way street after stopping as required by division (C)(1) of this section, and yielding the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) Unless otherwise directed by a pedestrian-control signal as provided in section 4511.14 of the Revised Code, pedestrians facing a steady red signal alone shall not enter the roadway.

(5) Local authorities may by ordinance, or the director of transportation on state highways may, prohibit a right or a left turn against a steady red signal at any intersection, which shall be effective when signs giving notice thereof are posted at the intersection.

(D) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

HISTORY: GC § 6307-13; 119 v 766, § 13; 124 v 514; Bureau of Code Revision, 10-1-53; 130 v 1081 (Eff 8-9-63); 135 v S 263 (Eff 7-3-74); 135 v H 99 (Eff 7-1-75); 137 v H 171 (Eff 8-26-77); 140 v H 703. Eff 3-28-85.

[§ 4511.13.1] § 4511.131 Signals over reversible lanes.

When lane-use control signals are placed over individual lanes of a street or highway, said signals shall indicate

and apply to drivers of vehicles and trackless trolleys as follows:

(A) A steady downward green arrow:

Vehicular traffic and trackless trolleys may travel in any lane over which a green arrow signal is shown.

(B) A steady yellow "X":

Vehicular traffic and trackless trolleys are warned to vacate in a safe manner any lane over which such signal is shown to avoid occupying that lane when a steady red "X" signal is shown.

(C) A flashing yellow "X":

Vehicular traffic and trackless trolleys may use with proper caution any lane over which such signal is shown for only the purpose of making a left turn.

(D) A steady red "X":

Vehicular traffic and trackless trolleys shall not enter or travel in any lane over which such signal is shown.

HISTORY: 130 v 1083 (Eff 8-9-63); 135 v S 263. Eff 7-3-74.

[§ 4511.13.2] § 4511.132 Malfunctioning traffic signals.

(A) The driver of a vehicle, streetcar, or trackless trolley who approaches an intersection where traffic is controlled by traffic control signals shall do all of the following, if the signal facing the driver either exhibits no colored lights or colored lighted arrows or exhibits a combination of such lights or arrows that fails to clearly indicate the assignment of right-of-way:

(1) Stop at a clearly marked stop line, but if none, stop before entering the crosswalk on the near side of the intersection, or, if none, stop before entering the intersection;

(2) Yield the right-of-way to all vehicles, streetcars, or trackless trolleys in the intersection or approaching on an intersecting road, if the vehicles, streetcars, or trackless trolleys will constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways;

(3) Exercise ordinary care while proceeding through the intersection.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 143 v S 44. Eff 7-25-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.14 Pedestrian control signals.

Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk," or the symbol of a walking person or an upraised palm are in place, such signals shall indicate the following instructions:

(A) "Walk" or the symbol of a walking person: Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right

of way by the operators of all vehicles, streetcars, and trackless trolleys.

(B) "Don't walk" or the symbol of an upraised palm: No pedestrian shall start to cross the roadway in the direction of the signal.

(C) Nothing in this section shall be construed to invalidate the continued use of pedestrian control signals utilizing the word "wait" if those signals were installed prior to the effective date of this act.

HISTORY: GC § 6307-14; 119 v 766, § 14; 124 v 514; Bureau of Code Revision, 10-1-53; 140 v H 703. Eff 3-28-85.

§ 4511.15 Flashing traffic signals.

Whenever an illuminated flashing red or yellow traffic signal is used in a traffic signal or with a traffic sign it shall require obedience as follows:

(A) Flashing red stop signal: Operators of vehicles, trackless trolleys, and streetcars shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(B) Flashing yellow caution signal: Operators of vehicles, trackless trolleys, and streetcars may proceed through the intersection or past such signal only with caution.

This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles, trackless trolleys, and streetcars approaching railroad grade crossings shall be governed by sections 4511.61 and 4511.62 of the Revised Code.

HISTORY: GC § 6307-15; 119 v 766, § 15; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75.

The effective date is set by section 3 of HB 995.

§ 4511.16 Prohibition against unauthorized signs and signals.

(A) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be, is an imitation of, or resembles a traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic or hides from view or interferes with the effectiveness of any traffic control device or any railroad sign or signal, and no person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. This section does not prohibit either the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for traffic control devices or the erection upon private property of traffic control devices by the owner of real property in accordance with sections 4511.211 and 4511.432 of the Revised Code.

Every such prohibited sign, signal, marking, or device is a public nuisance, and the authority having jurisdiction over the highway may remove it or cause it to be removed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misde-

meanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-16; 119 v 766, § 16; Bureau of Code Revision, 10-1-53; 143 v H 171. Eff 5-31-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.17 Tampering with sign, device or manhole cover; driving on freshly applied marking material.

(A) No person, without lawful authority, shall do any of the following:

(1) Knowingly move, deface, damage, destroy, or otherwise improperly tamper with any traffic control device, any railroad sign or signal, or any inscription, shield, or insignia on the device, sign, or signal, or any part of the device, sign, or signal;

(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition and is marked by flags, markers, signs, or other devices intended to protect it;

(3) Knowingly move, damage, destroy, or otherwise improperly tamper with a manhole cover.

(B)(1) Except as otherwise provided in this division, whoever violates division (A)(1) or (3) of this section is guilty of a misdemeanor of the third degree. If a violation of division (A)(1) or (3) of this section creates a risk of physical harm to any person, the offender is guilty of a misdemeanor of the first degree. If a violation of division (A)(1) or (3) of this section causes serious physical harm to property that is owned, leased, or controlled by a state or local authority, the offender is guilty of a felony of the fifth degree.

(2) Except as otherwise provided in this division, whoever violates division (A)(2) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-17; 119 v 766, § 17; 121 v 684; Bureau of Code Revision, 10-1-53; 143 v H 162. Eff 6-28-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.18 Possession or sale of sign or device prohibited.

(A) As used in this section, "traffic control device" means any sign, traffic control signal, or other device conforming to and placed or erected in accordance with

the manual adopted under section 4511.09 of the Revised Code by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting the names of streets and highways, but does not mean any pavement marking.

(B) No individual shall buy or otherwise possess, or sell, a traffic control device, except when one of the following applies:

(1) In the course of the individual's employment by the state or a local authority for the express or implied purpose of manufacturing, providing, erecting, moving, or removing such a traffic control device;

(2) In the course of the individual's employment by any manufacturer of traffic control devices other than a state or local authority;

(3) For the purpose of demonstrating the design and function of a traffic control device to state or local officials;

(4) When the traffic control device has been purchased from the state or a local authority at a sale of property that is no longer needed or is unfit for use;

(5) The traffic control device has been properly purchased from a manufacturer for use on private property and the person possessing the device has a sales receipt for the device or other acknowledgment of sale issued by the manufacturer.

(C) This section does not preclude, and shall not be construed as precluding, prosecution for theft in violation of section 2913.02 of the Revised Code or a municipal ordinance relating to theft, or for receiving stolen property in violation of section 2913.51 of the Revised Code or a municipal ordinance relating to receiving stolen property.

(D) Whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 143 v H 162. Eff 6-28-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Not analogous to former RC § 4511.18 (GC § 6307-18; 119 v 766; Bureau of Code Revision, 10-1-53; 132 v S 37), repealed 134 v H 511, § 2, eff 1-1-74.

§ 4511.18.1 § 4511.181 Definitions.

As used in sections 4511.181 to 4511.197 of the Revised Code:

(A) "Equivalent offense" means any of the following:

(1) A violation of division (A) or (B) of section 4511.19 of the Revised Code;

(2) A violation of a municipal OVI ordinance;

(3) A violation of section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section;

(4) A violation of division (A)(1) of section 2903.06 or 2903.08 of the Revised Code or a municipal ordinance that is substantially equivalent to either of those divisions;

(5) A violation of division (A)(2), (3), or (4) of section 2903.06, division (A)(2) of section 2903.08, or former section 2903.07 of the Revised Code, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

(6) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) or (B) of section 4511.19 of the Revised Code;

(7) A violation of a former law of this state that was substantially equivalent to division (A) or (B) of section 4511.19 of the Revised Code.

(B) "Mandatory jail term" means the mandatory term in jail of three, six, ten, twenty, thirty, or sixty days that must be imposed under division (C)(1)(a), (b), or (c) of section 4511.19 of the Revised Code upon an offender convicted of a violation of division (A) of that section and in relation to which all of the following apply:

(1) Except as specifically authorized under section 4511.19 of the Revised Code, the term must be served in a jail.

(2) Except as specifically authorized under section 4511.19 of the Revised Code, the term cannot be suspended, reduced, or otherwise modified pursuant to sections 2929.21 to 2929.28 or any other provision of the Revised Code.

(C) "Municipal OVI ordinance" and "municipal OVI offense" mean any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(D) "Community residential sanction," "jail," "mandatory prison term," "mandatory term of local incarceration," "sanction," and "prison term" have the same meanings as in section 2929.01 of the Revised Code.

(E) "Drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.

HISTORY: 149 v S 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 4 of H.B. 490.

Not analogous to former RC § 4511.181 (132 v S 37), repealed 134 v H 511, § 2, eff 1-1-74.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

This section concerned homicide by vehicle in the first degree. See RC §§ 2903.06 and 2903.07 concerning vehicular homicide.

[DRIVING WHILE INTOXICATED]

§ 4511.19 Operation while under the influence of alcohol or drug of abuse or with specified concentration of alcohol or drug in certain bodily substances; chemical test; penalties.

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(b) The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(c) The person has a concentration of ninety-six-thousandths of one per cent or more but less than two hundred four-thousandths of one per cent by weight per

unit volume of alcohol in the person's blood serum or plasma.

(d) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(e) The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(f) The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.

(g) The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(h) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

(i) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(j) Except as provided in division (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

(i) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(iv) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite

(6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

(vii) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

(viii) Either of the following applies:

(I) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(II) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(ix) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(x) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

(2) No person who, within twenty years of the conduct described in division (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division, division (A)(1) or (B) of this section, or a municipal OVI offense shall do both of the following:

(a) Operate any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them;

(b) Subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in division (A)(2)(a) of this section, being asked by a law enforcement officer to submit to a chemical test or tests under section 4511.191 [4511.19.1] of the Revised Code, and being advised by the officer in accordance with section 4511.192 [4511.19.2] of the Revised Code of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(B) No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least two-hundredths of one per cent but less than eight-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(4) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1)(a) or (A)(2) and a violation of division (B)(1), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(D)(1)(a) In any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(a) of this section or for an equivalent offense, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in section 2317.02 of the Revised Code, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (A) of section 4511.192 [4511.19.2] of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 [4511.19.1] of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that

person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

The bodily substance withdrawn under division (D)(1)(b) of this section shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director pursuant to section 3701.143 [3701.14.3] of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section or for an equivalent offense, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (A)(1)(b), (c), (d), and (e) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(1)(j) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or for an equivalent offense that is substantially equivalent to that division.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis.

If the chemical test was obtained pursuant to division (D)(1)(b) of this section, the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. The form to be read to the person to be tested, as required under section 4511.192 [4511.19.2] of the Revised Code, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4)(a) As used in divisions (D)(4)(b) and (c) of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States department of transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

(E)(1) Subject to division (E)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(b), (c), (d), (e), (f), (g), (h), (i), or (j) or (B)(1), (2), (3), or (4) of this section or for an equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the department of health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division shall be admitted as prima-facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

(a) The signature, under oath, of any person who performed the analysis;

(b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

(c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

(d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the department of health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (E)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (E)(1) of this section shall not be prima-facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report.

The judge in the case may extend the seven-day time limit in the interest of justice.

(F) Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(G)(1) Whoever violates any provision of divisions (A)(1)(a) to (i) or (A)(2) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates division (A)(1)(j) of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under Chapter 2929. of the Revised Code, except as otherwise authorized or required by divisions (G)(1)(a) to (e) of this section:

(a) Except as otherwise provided in division (G)(1)(b), (c), (d), or (e) of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of three consecutive days. As used in this division, three consecutive days means seventy-two consecutive hours. The court may sentence an offender to both an intervention program and a jail term. The court may impose a jail term in addition to the three-day mandatory jail term or intervention program. However, in no case shall the cumulative jail term imposed for the offense exceed six months.

The court may suspend the execution of the three-day jail term under this division if the court, in lieu of that suspended term, places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code and requires the offender to attend, for three consecutive days, a drivers' intervention program certified under section 3793.10 of the Revised Code. The court also may suspend the execution of any part of the three-day jail term under this division if it places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code for part of the three days, requires the offender to attend for the suspended part of the term a drivers' intervention program so certified, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of community control and in addition to the required attendance at a drivers' intervention program, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose on the offender any other conditions of community control that it considers necessary.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program that is certified pursuant to section 3793.10 of the Revised Code. As used in this division, three consecutive days means seventy-two consecutive hours. If the court determines that the offender is not conducive to treatment in a drivers' intervention program, if the offender refuses to attend a drivers' intervention program, or if the jail at which the offender is to serve the jail term imposed can provide a driver's intervention program, the court shall sentence the offender to a mandatory jail term of at least six consecutive days.

The court may require the offender, under a community control sanction pursuant to section 2929.25 of the Revised Code, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services, in addition to the required attendance at drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of community control on the offender that it considers necessary.

(iii) In all cases, a fine of not less than two hundred fifty and not more than one thousand dollars;

(iv) In all cases, a class five license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code.

(b) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to one violation of division (A) or (B) of this section or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of ten consecutive days. The court shall impose the ten-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court may require the offender to attend a drivers' intervention program that is certified pursuant to section 3793.10 of the Revised Code. If the operator of the program determines that the offender is alcohol dependent, the program shall notify the court, and, subject to division (I) of this section, the court shall order the offender to obtain

treatment through an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of twenty consecutive days. The court shall impose the twenty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the twenty-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court may require the offender to attend a driver's intervention program that is certified pursuant to section 3793.10 of the Revised Code. If the operator of the program determines that the offender is alcohol dependent, the program shall notify the court, and, subject to division (I) of this section, the court shall order the offender to obtain treatment through an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929, of the Revised Code, a fine of not less than three hundred fifty and not more than one thousand five hundred dollars:

(iv) In all cases, a class four license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for ninety days in accordance with section 4503.233 [4503.23.3] of the Revised Code and impoundment of the license plates of that vehicle for ninety days.

(c) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to two violations of division (A) or (B) of this section or other equivalent offenses is guilty of a misdemeanor. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of thirty consecutive days. The court shall impose the thirty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the thirty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory jail term of sixty consecutive days. The court shall impose the sixty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the sixty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929, of the Revised Code, a fine of not less than five hundred fifty and not more than two thousand five hundred dollars;

(iv) In all cases, a class three license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 [4503.23.4] of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(d) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to three or four violations of division (A) or (B) of this section or other equivalent offenses or an offender who, within twenty years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature is guilty of a felony of the fourth degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of sixty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the sixty-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the

offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of one hundred twenty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the one hundred twenty-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than eight hundred nor more than ten thousand dollars;

(iv) In all cases, a class two license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 [4503.23.4] of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(vii) In all cases, if the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court, pursuant to section 2929.17 of the Revised Code, may impose a term of house arrest with electronic monitoring. The term shall not commence until after the offender has served the mandatory term of local incarceration.

(e) An offender who previously has been convicted of or pleaded guilty to a violation of division (A) of this section that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of the third degree. The court shall sentence the offender to all of the following:

(i) If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a sixty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a one hundred twenty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than eight hundred nor more than ten thousand dollars;

(iv) In all cases, a class two license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 [4503.23.4] of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(2) An offender who is convicted of or pleads guilty to a violation of division (A) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in division (F)(2) of section 4511.191 [4511.19.1] of the Revised Code.

(3) If an offender is sentenced to a jail term under division (G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) of this section and if, within sixty days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the sixty-day period following the date of sentencing, the court may impose an alternative sentence under this division that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

As an alternative to a mandatory jail term of ten consecutive days required by division (G)(1)(b)(i) of this section, the court, under this division, may sentence the offender to five consecutive days in jail and not less than eighteen consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the five consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The five consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of twenty consecutive days required by division (G)(1)(b)(ii) of this section, the court, under this division, may sentence the offender to ten consecutive days in jail and not less than thirty-six consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the ten consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The ten consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to a mandatory jail term of thirty consecutive days required by division (G)(1)(c)(i) of this section, the court, under this division, may sentence the offender to fifteen consecutive days in jail and not less than fifty-five consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the fifteen consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year.

The fifteen consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of sixty consecutive days required by division (G)(1)(c)(ii) of this section, the court, under this division, may sentence the offender to thirty consecutive days in jail and not less than one hundred ten consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the thirty consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The thirty consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (G) of this section and if section 4510.13 of the Revised Code permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires that the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under section 4503.231 [4503.23.1] of the Revised Code, except as provided in division (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in division (B) of section 4503.231 [4503.23.1] of the Revised Code.

(5) Fines imposed under this section for a violation of division (A) of this section shall be distributed as follows:

(a) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii), thirty-five dollars of the fine imposed under division (G)(1)(b)(iii), one hundred twenty-three dollars of the fine imposed under division (G)(1)(c)(iii), and two hundred ten dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender, as determined by the court that imposes the fine. The agency shall use this share to pay only those costs it incurs in enforcing this section or a municipal OVI ordinance and in informing the public of the laws governing the operation of a vehicle while under the influence of alcohol, the dangers of the operation of a vehicle under the influence of alcohol, and other information relating to the operation of a vehicle under the influence of alcohol and the consumption of alcoholic beverages.

(b) Fifty dollars of the fine imposed under division (G)(1)(a)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section and was confined as a result of the offense prior to being sentenced for the offense but is not sentenced to a term of incarceration, the fifty dollars shall be paid to the political subdivision that paid the cost of housing the offender during that period of confinement. The political subdivision shall use the share under this division to pay or reimburse incarceration or treatment costs it incurs in

housing or providing drug and alcohol treatment to persons who violate this section or a municipal OVI ordinance, costs of any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(c) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii) and fifty dollars of the fine imposed under division (G)(1)(b)(iii) of this section shall be deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of that court, as created by the county or municipal corporation under division (N) of section 4511.191 [4511.19.1] of the Revised Code.

(d) One hundred fifteen dollars of the fine imposed under division (G)(1)(b)(iii), two hundred seventy-seven dollars of the fine imposed under division (G)(1)(c)(iii), and four hundred forty dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. The political subdivision shall use this share to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who violate this section or a municipal OVI ordinance, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(e) The balance of the fine imposed under division (G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), or (e)(iii) of this section shall be disbursed as otherwise provided by law.

(6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (G)(1)(c), (d), or (e) of this section is assigned or transferred and division (B)(2) or (3) of section 4503.234 [4503.23.4] of the Revised Code applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealers association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(7) As used in division (G) of this section, "electronic monitoring," "mandatory prison term," and "mandatory term of local incarceration" have the same meanings as in section 2929.01 of the Revised Code.

(H) Whoever violates division (B) of this section is guilty of operating a vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in division (H)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code.

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of division (A) or (B) of this section or other equivalent offenses, the offender is guilty of a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating priv-

ilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1416 [2941.14.16] of the Revised Code and if the court imposes a jail term for the violation of division (B) of this section, the court shall impose upon the offender an additional definite jail term pursuant to division (E) of section 2929.24 of the Revised Code.

(I)(1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services.

(2) An offender who stays in a drivers' intervention program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund.

(J) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.

(K) Division (A)(1)(j) of this section does not apply to a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(L) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in division (A)(1)(j) of this section also apply in a prosecution of a violation of division (D) of section 2923.16 of the Revised Code in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(M) All terms defined in section 4510.01 of the Revised Code apply to this section. If the meaning of a term defined in section 4510.01 of the Revised Code conflicts with the meaning of the same term as defined in section 4501.01 or 4511.01 of the Revised Code, the term as defined in section 4510.01 of the Revised Code applies to this section.

(N)(1) The Ohio Traffic Rules in effect on January 1, 2004, as adopted by the supreme court under authority of section 2937.46 of the Revised Code, do not apply to felony violations of this section. Subject to division (N)(2) of this section, the Rules of Criminal Procedure apply to felony violations of this section.

(2) If, on or after January 1, 2004, the supreme court modifies the Ohio Traffic Rules to provide procedures to govern felony violations of this section, the modified rules shall apply to felony violations of this section.

HISTORY: GC § 6307-19; 119 v 766, § 19; Bureau of Code Revision, 10-1-53; 125 v 461; 130 v 1083 (Eff 7-11-63); 132 v H 380 (Eff 1-1-68); 133 v H 874 (Eff 9-16-70); 134 v S 14 (Eff 12-3-71); 135 v H 995 (Eff 1-1-75); 139 v S 432 (Eff 3-16-83); 141 v S 262 (Eff 3-20-87); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 145 v S 82 (Eff 5-4-94); 148 v S 22 (Eff 5-17-2000); 149 v S 163, § 1, Eff 4-9-2003; 149 v S 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04; 149 v S 163, § 3, eff. 1-1-04; 150 v H 87, § 1, eff. 6-30-03; 150 v H 87, § 4, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v S 8, § 1, eff. 8-17-06; 151 v H 461, § 1, eff. 4-4-07.

The provisions of § 5, H.B. 163 (150 v —), read as follows:
SECTION 5. * * * (D) Section 4511.19 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 87 of the 125th General Assembly and Am. Sub. H.B. 490 and Am. Sub. S.B. 163, both of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 26 of H.B. 87.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.1] § 4511.191 Implied consent.

(A)(1) "Physical control" shall have the same meaning as in section 4511.194 [4511.19.4] of the Revised Code.

(2) Any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within this state or who is in physical control of a vehicle, streetcar, or trackless trolley shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance.

(3) The chemical test or tests under division (A)(2) of this section shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley in violation of a division, section, or ordinance identified in division (A)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(4) Any person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in division (A)(2) of this section, and the test or tests may be administered, subject to sections 313.12 to 313.16 of the Revised Code.

(B)(1) Upon receipt of the sworn report of a law enforcement officer who arrested a person for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance that was completed and sent to the registrar and a court pursuant to section 4511.192 [4511.19.2] of the Revised Code in regard to a person who refused to take the designated chemical test, the

registrar shall enter into the registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer under this division and that section and the period of the suspension, as determined under this section. The suspension shall be subject to appeal as provided in section 4511.197 [4511.19.7] of the Revised Code. The suspension shall be for whichever of the following periods applies:

(a) Except when division (B)(1)(b), (c), or (d) of this section applies and specifies a different class or length of suspension, the suspension shall be a class C suspension for the period of time specified in division (B)(3) of section 4510.02 of the Revised Code.

(b) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused one previous request to consent to a chemical test, the suspension shall be a class B suspension imposed for the period of time specified in division (B)(2) of section 4510.02 of the Revised Code.

(c) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused two previous requests to consent to a chemical test, the suspension shall be a class A suspension imposed for the period of time specified in division (B)(1) of section 4510.02 of the Revised Code.

(d) If the arrested person, within six years of the date on which the person refused the request to consent to the chemical test, had refused three or more previous requests to consent to a chemical test, the suspension shall be for five years.

(2) The registrar shall terminate a suspension of the driver's or commercial driver's license or permit of a resident or of the operating privilege of a nonresident, or a denial of a driver's or commercial driver's license or permit, imposed pursuant to division (B)(1) of this section upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, operating a vehicle in violation of section 4511.19 of the Revised Code or in violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial.

The registrar shall credit against any judicial suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to section 4511.19 of the Revised Code, or pursuant to section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance, any time during which the person serves a related suspension imposed pursuant to division (B)(1) of this section.

(C)(1) Upon receipt of the sworn report of the law enforcement officer who arrested a person for a violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance that was completed and sent to the registrar and a court pursuant to section 4511.192 [4511.19.2] of the Revised Code in regard to a person whose test results indicate that the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code or at least the concentration of a listed controlled substance or a listed metabolite of a controlled substance specified in division (A)(1)(j) of section 4511.19 of the Revised Code, the registrar shall enter into the registrar's records the fact that the person's driver's or commercial

driver's license or permit or nonresident operating privilege was suspended by the arresting officer under this division and section 4511.192 [4511.19.2] of the Revised Code and the period of the suspension, as determined under divisions (F)(1) to (4) of this section. The suspension shall be subject to appeal as provided in section 4511.197 [4511.19.7] of the Revised Code. The suspension described in this division does not apply to, and shall not be imposed upon, a person arrested for a violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance who submits to a designated chemical test. The suspension shall be for whichever of the following periods applies:

(a) Except when division (C)(1)(b), (c), or (d) of this section applies and specifies a different period, the suspension shall be a class E suspension imposed for the period of time specified in division (B)(5) of section 4510.02 of the Revised Code.

(b) The suspension shall be a class C suspension for the period of time specified in division (B)(3) of section 4510.02 of the Revised Code if the person has been convicted of or pleaded guilty to, within six years of the date the test was conducted, one violation of division (A) or (B) of section 4511.19 of the Revised Code or one other equivalent offense.

(c) If, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to two violations of a statute or ordinance described in division (C)(1)(b) of this section, the suspension shall be a class B suspension imposed for the period of time specified in division (B)(2) of section 4510.02 of the Revised Code.

(d) If, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to more than two violations of a statute or ordinance described in division (C)(1)(b) of this section, the suspension shall be a class A suspension imposed for the period of time specified in division (B)(1) of section 4510.02 of the Revised Code.

(2) The registrar shall terminate a suspension of the driver's or commercial driver's license or permit of a resident or of the operating privilege of a nonresident, or a denial of a driver's or commercial driver's license or permit, imposed pursuant to division (C)(1) of this section upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, operating a vehicle in violation of section 4511.19 of the Revised Code or in violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial.

The registrar shall credit against any judicial suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to section 4511.19 of the Revised Code, or pursuant to section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance, any time during which the person serves a related suspension imposed pursuant to division (C)(1) of this section.

(D)(1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under this section for the time described in division (B) or (C) of this section is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the

charge that resulted in the person being requested to take the chemical test or tests under division (A) of this section does not affect the suspension.

(2) If a person is arrested for operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance, or for being in physical control of a vehicle, streetcar, or trackless trolley in violation of section 4511.194 [4511.19.7] of the Revised Code or a substantially equivalent municipal ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under division (B) or (C) of this section or Chapter 4510, of the Revised Code, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the person's arrest or the issuance of the citation to the person, subject to any continuance granted by the court pursuant to section 4511.197 [4511.19.7] of the Revised Code regarding the issues specified in that division.

(E) When it finally has been determined under the procedures of this section and sections 4511.192 [4511.19.2] to 4511.197 [4511.19.7] of the Revised Code that a nonresident's privilege to operate a vehicle within this state has been suspended, the registrar shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(F) At the end of a suspension period under this section, under section 4511.194 [4511.19.4], section 4511.196 [4511.19.6], or division (G) of section 4511.19 of the Revised Code, or under section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance and upon the request of the person whose driver's or commercial driver's license or permit was suspended and who is not otherwise subject to suspension, cancellation, or disqualification, the registrar shall return the driver's or commercial driver's license or permit to the person upon the occurrence of all of the conditions specified in divisions (F)(1) and (2) of this section:

(1) A showing that the person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standards set forth in section 4509.51 of the Revised Code, or proof, to the satisfaction of the registrar, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in section 4509.51 of the Revised Code.

(2) Subject to the limitation contained in division (F)(3) of this section, payment by the person to the bureau of motor vehicles of a license reinstatement fee of four hundred twenty-five dollars, which fee shall be deposited in the state treasury and credited as follows:

(a) One hundred twelve dollars and fifty cents shall be credited to the statewide treatment and prevention fund created by section 4301.30 of the Revised Code. The fund shall be used to pay the costs of driver treatment and intervention programs operated pursuant to sections 3793.02 and 3793.10 of the Revised Code. The director of alcohol and drug addiction services shall determine the share of the fund that is to be allocated to alcohol and drug addiction programs authorized by section 3793.02 of the Revised Code, and the share of the fund that is to be allocated to drivers' intervention programs authorized by section 3793.10 of the Revised Code.

(b) Seventy-five dollars shall be credited to the reparations fund created by section 2743.191 [2743.19.1] of the Revised Code.

(c) Thirty-seven dollars and fifty cents shall be credited to the indigent drivers alcohol treatment fund, which is hereby established. Except as otherwise provided in division (F)(2)(c) of this section, moneys in the fund shall be distributed by the department of alcohol and drug addiction services to the county indigent drivers alcohol treatment funds, the county juvenile indigent drivers alcohol treatment funds, and the municipal indigent drivers alcohol treatment funds that are required to be established by counties and municipal corporations pursuant to this section, and shall be used only to pay the cost of an alcohol and drug addiction treatment program attended by an offender or juvenile traffic offender who is ordered to attend an alcohol and drug addiction treatment program by a county, juvenile, or municipal court judge and who is determined by the county, juvenile, or municipal court judge not to have the means to pay for the person's attendance at the program or to pay the costs specified in division (H)(4) of this section in accordance with that division. In addition, a county, juvenile, or municipal court judge may use moneys in the county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund to pay for the cost of the continued use of an electronic continuous alcohol monitoring device as described in divisions (H)(3) and (4) of this section. Moneys in the fund that are not distributed to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund under division (H) of this section because the director of alcohol and drug addiction services does not have the information necessary to identify the county or municipal corporation where the offender or juvenile offender was arrested may be transferred by the director of budget and management to the statewide treatment and prevention fund created by section 4301.30 of the Revised Code, upon certification of the amount by the director of alcohol and drug addiction services.

(d) Seventy-five dollars shall be credited to the Ohio rehabilitation services commission established by section 3304.12 of the Revised Code, to the services for rehabilitation fund, which is hereby established. The fund shall be used to match available federal matching funds where appropriate, and for any other purpose or program of the commission to rehabilitate people with disabilities to help them become employed and independent.

(e) Seventy-five dollars shall be deposited into the state treasury and credited to the drug abuse resistance education programs fund, which is hereby established, to be used by the attorney general for the purposes specified in division (F)(4) of this section.

(f) Thirty dollars shall be credited to the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code.

(g) Twenty dollars shall be credited to the trauma and emergency medical services grants fund created by section 4513.263 [4513.26.3] of the Revised Code.

(3) If a person's driver's or commercial driver's license or permit is suspended under this section, under section 4511.196 [4511.19.6] or division (G) of section 4511.19 of the Revised Code, under section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance or under any combination of the suspensions described in division (F)(3) of this section, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and

shall be required to pay to the bureau, only one reinstatement fee of four hundred twenty-five dollars. The reinstatement fee shall be distributed by the bureau in accordance with division (F)(2) of this section.

(4) The attorney general shall use amounts in the drug abuse resistance education programs fund to award grants to law enforcement agencies to establish and implement drug abuse resistance education programs in public schools. Grants awarded to a law enforcement agency under this section shall be used by the agency to pay for not more than fifty per cent of the amount of the salaries of law enforcement officers who conduct drug abuse resistance education programs in public schools. The attorney general shall not use more than six per cent of the amounts the attorney general's office receives under division (F)(2)(e) of this section to pay the costs it incurs in administering the grant program established by division (F)(2)(e) of this section and in providing training and materials relating to drug abuse resistance education programs.

The attorney general shall report to the governor and the general assembly each fiscal year on the progress made in establishing and implementing drug abuse resistance education programs. These reports shall include an evaluation of the effectiveness of these programs.

(G) Suspension of a commercial driver's license under division (B) or (C) of this section shall be concurrent with any period of disqualification under section 3123.611 [3123.61.1] or 4506.16 of the Revised Code or any period of suspension under section 3123.58 of the Revised Code. No person who is disqualified for life from holding a commercial driver's license under section 4506.16 of the Revised Code shall be issued a driver's license under Chapter 4507. of the Revised Code during the period for which the commercial driver's license was suspended under division (B) or (C) of this section. No person whose commercial driver's license is suspended under division (B) or (C) of this section shall be issued a driver's license under chapter 4507. of the Revised Code during the period of the suspension.

(H)(1) Each county shall establish an indigent drivers alcohol treatment fund, each county shall establish a juvenile indigent drivers alcohol treatment fund, and each municipal corporation in which there is a municipal court shall establish an indigent drivers alcohol treatment fund. All revenue that the general assembly appropriates to the indigent drivers alcohol treatment fund for transfer to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, all portions of fees that are paid under division (F) of this section and that are credited under that division to the indigent drivers alcohol treatment fund in the state treasury for a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, and all portions of fines that are specified for deposit into a county or municipal indigent drivers alcohol treatment fund by section 4511.193 [4511.19.3] of the Revised Code shall be deposited into that county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund in accordance with division (H)(2) of this section. Additionally, all portions of fines that are paid for a violation of section 4511.19 of the Revised Code or of any prohibition contained in chapter 4510. of the Revised Code, and that are required under section 4511.19 or any provisions of

chapter 4510. of the Revised Code to be deposited into a county indigent drivers alcohol treatment fund or municipal indigent drivers alcohol treatment fund shall be deposited into the appropriate fund in accordance with the applicable division.

(2) That portion of the license reinstatement fee that is paid under division (F) of this section and that is credited under that division to the indigent drivers alcohol treatment fund shall be deposited into a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund as follows:

(a) If the suspension in question was imposed under this section, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person who was charged in a county court with the violation that resulted in the suspension, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person who was charged in a juvenile court with the violation that resulted in the suspension, the portion shall be deposited into the county juvenile indigent drivers alcohol treatment fund established in the county served by the court;

(iii) If the fee is paid by a person who was charged in a municipal court with the violation that resulted in the suspension, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(b) If the suspension in question was imposed under section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person whose license or permit was suspended by a county court, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person whose license or permit was suspended by a municipal court, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(3) Expenditures from a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund shall be made only upon the order of a county, juvenile, or municipal court judge and only for payment of the cost of the attendance at an alcohol and drug addiction treatment program of a person who is convicted of, or found to be a juvenile traffic offender by reason of, a violation of division (A) of section 4511.19 of the Revised Code or a substantially similar municipal ordinance, who is ordered by the court to attend the alcohol and drug addiction treatment program, and who is determined by the court to be unable to pay the cost of attendance at the treatment program or for payment of the costs specified in division (H)(4) of this section in accordance with that division. The alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to section 340.02 or 340.021 [340.02.1] of the Revised Code and serving the alcohol, drug addiction, and mental health service district in which the court is located shall administer the indigent drivers alcohol treatment program of the court. When a court orders an offender or juvenile traffic offender to attend an alcohol and drug

addiction treatment program, the board shall determine which program is suitable to meet the needs of the offender or juvenile traffic offender, and when a suitable program is located and space is available at the program, the offender or juvenile traffic offender shall attend the program designated by the board. A reasonable amount not to exceed five per cent of the amounts credited to and deposited into the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund serving every court whose program is administered by that board shall be paid to the board to cover the costs it incurs in administering those indigent drivers alcohol treatment programs.

In addition, a county, juvenile, or municipal court judge may use moneys in the county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund to pay for the continued use of an electronic continuous alcohol monitoring device by an offender or juvenile traffic offender, in conjunction with a treatment program approved by the department of alcohol and drug addiction services, when such use is determined clinically necessary by the treatment program and when the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring of the device.

(4) If a county, juvenile, or municipal court determines, in consultation with the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to section 340.02 or 340.021 [340.02.1] of the Revised Code and serving the alcohol, drug addiction, and mental health district in which the court is located, that the funds in the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund under the control of the court are more than sufficient to satisfy the purpose for which the fund was established, as specified in divisions (H)(1) to (3) of this section, the court may declare a surplus in the fund. If the court declares a surplus in the fund, the court may expend the amount of the surplus in the fund for:

(a) Alcohol and drug abuse assessment and treatment of persons who are charged in the court with committing a criminal offense or with being a delinquent child or juvenile traffic offender and in relation to whom both of the following apply:

(i) The court determines that substance abuse was a contributing factor leading to the criminal or delinquent activity or the juvenile traffic offense with which the person is charged.

(ii) The court determines that the person is unable to pay the cost of the alcohol and drug abuse assessment and treatment for which the surplus money will be used.

(b) All or part of the cost of purchasing electronic continuous alcohol monitoring devices to be used in conjunction with division (H)(3) of this section.

HISTORY: 132 v H 380 (Eff 1-1-68); 132 v S 512 (Eff 3-10-68); 133 v H 1 (Eff 3-18-69); 134 v H 792 (Eff 2-3-72); 136 v H 1 (Eff 6-13-75); 136 v H 451 (Eff 1-3-77); 137 v H 219 (Eff 11-1-77); 137 v H 469 (Eff 10-25-78); 139 v S 432 (Eff 3-16-83); 141 v H 201 (Eff 7-1-85); 141 v S 262 (Eff 3-20-87); 142 v H 303 (Eff 10-20-87); 142 v S 308 (Eff 3-14-89); 142 v H 643 (Eff 3-17-89); 143 v H 329 (Eff 6-30-89); 143 v H 381 (Eff 7-1-89); 143 v H 317 (Eff 10-10-89); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 144 v S 275 (Eff 9-1-93); 145 v H 152 (Eff 7-1-93); 145 v S 62, §§ 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 145 v H 236 (Eff 9-29-94); 145 v H 687 (Eff 10-12-94); 146 v

H 117 (Eff. 6-30-95); 146 v S 2 (Eff. 7-1-96); 146 v H 353, § 1 (Eff. 9-17-96); 146 v S 166, § 1 (Eff. 10-17-96); 146 v H 167 (Eff. 5-15-97); 146 v H 353, § 4 (Eff. 5-15-97); 146 v S 166, § 6 (Eff. 5-15-97); 147 v S 85 (Eff. 5-15-97); 147 v H 210 (Eff. 6-30-97); 147 v S 60 (Eff. 10-21-97); 147 v S 80 (Eff. 9-16-98); 148 v H 283 (Eff. 6-30-99); 148 v S 107 (Eff. 3-23-2000); 148 v S 22 (Eff. 5-17-2000); 148 v H 138 (Eff. 11-3-2000); 148 v S 180, Eff. 3-22-2001; 149 v S 123, § 1, eff. 1-1-04; 150 v H 87, § 1, eff. 6-30-03; 150 v H 163, § 1, eff. 9-23-04; 151 v H 66, § 101.01, eff. 9-29-05; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by § 612.03 of 151 v H 66.

The provisions of § 7, H.B. 87 (150 v —), read as follows:

SECTION 7. The amendment of section 4511.191 of the Revised Code by this act does not supersede the earlier amendment with delayed effective date of that section by Am. Sub. S.B. 123 of the 124th General Assembly.

The effective date is set by section 26 of H.B. 87.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.2] § 4511.192 Arrestee for OVI or having physical control while under influence to receive written and verbal advice; submission or refusal to submit to test or tests; license suspension or seizure; officer's sworn report.

(A) The arresting law enforcement officer shall give advice in accordance with this section to any person under arrest for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance. The officer shall give that advice in a written form that contains the information described in division (B) of this section and shall read the advice to the person. The form shall contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. One or more persons shall witness the arresting officer's reading of the form, and the witnesses shall certify to this fact by signing the form. The person must submit to the chemical test or tests, subsequent to the request of the arresting officer, within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.

(B) If a person is under arrest as described in division (A) of this section, before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine, the arresting officer shall read the following form to the person:

"You now are under arrest for (specifically state the offense under state law or a substantially equivalent municipal ordinance for which the person was arrested — operating a vehicle under the influence of alcohol, a drug, or a combination of them; operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance; operating a vehicle after underage alcohol consumption; or having physical control of a vehicle while under the influence).

If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior of OVI, OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled

substance conviction under state or municipal law within the preceding twenty years, you now are under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.

(Read this part unless the person is under arrest for solely having physical control of a vehicle while under the influence.) If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma, breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated.

If you take a chemical test, you may have an independent chemical test taken at your own expense."

(C) If the arresting law enforcement officer does not ask a person under arrest as described in division (A) of this section to submit to a chemical test or tests under section 4511.191 [4511.19.1] of the Revised Code, the arresting officer shall seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within twenty-four hours after the arrest, and, upon the surrender, the agency immediately shall forward the license or permit to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court shall retain it pending the arrested person's initial appearance and any action taken under section 4511.196 [4511.19.6] of the Revised Code.

(D)(1) If a law enforcement officer asks a person under arrest as described in division (A) of this section to submit to a chemical test or tests under section 4511.191 [4511.19.1] of the Revised Code, if the officer advises the person in accordance with this section of the consequences of the person's refusal or submission, and if either the person refuses to submit to the test or tests or, unless the arrest was for a violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, the person submits to the test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer shall do all of the following:

(a) On behalf of the registrar of motor vehicles, notify the person that, independent of any penalties or sanctions imposed upon the person, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date of the person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance or during the period of time ending thirty days after that initial appearance;

(b) Seize the driver's or commercial driver's license or permit of the person and immediately forward it to the registrar. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer

within twenty-four hours after the person is given notice of the suspension, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the registrar.

(c) Verify the person's current residence and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the registrar of the change;

(1)(d) Send to the registrar, within forty-eight hours after the arrest of the person, a sworn report that includes all of the following statements:

(i) That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance or for being in physical control of a stationary vehicle, streetcar, or trackless trolley in violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance;

(ii) That the person was arrested and charged with a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance;

(iii) That the officer asked the person to take the designated chemical test or tests, advised the person in accordance with this section of the consequences of submitting to, or refusing to take, the test or tests, and gave the person the form described in division (B) of this section;

(iv) That either the person refused to submit to the chemical test or tests or, unless the arrest was for a violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, the person submitted to the chemical test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

(2) Division (D)(1) of this section does not apply to a person who is arrested for a violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance, who is asked by a law enforcement officer to submit to a chemical test or tests under section 4511.191 [4511.19.1] of the Revised Code, and who submits to the test or tests, regardless of the amount of alcohol, a controlled substance, or a metabolite of a controlled substance that the test results indicate is present in the person's whole blood, blood serum or plasma, breath, or urine.

(E) The arresting officer shall give the officer's sworn report that is completed under this section to the arrested person at the time of the arrest, or the registrar of motor vehicles shall send the report to the person by regular first class mail as soon as possible after receipt of the report, but not later than fourteen days after receipt of it. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than forty-eight hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

(F) The sworn report of an arresting officer completed under this section is prima-facie proof of the information and statements that it contains. It shall be admitted and

considered as prima-facie proof of the information and statements that it contains in any appeal under section 4511.197 [4511.19.7] of the Revised Code relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report.

HISTORY: 137 v S 381 (Eff 10-19-78); 139 v S 432 (Eff 3-16-83); 141 v S 262 (Eff 3-20-87); 143 v H 381 (Eff 7-1-89); 145 v S 62, Eff 9-1-93; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.3] § 4511.193 Deposit of \$25 of fine for violating OVI ordinance into indigent drivers alcohol treatment fund; immobilization or forfeiture orders based on prior convictions.

(A) Twenty-five dollars of any fine imposed for a violation of a municipal OVI ordinance shall be deposited into the municipal or county indigent drivers alcohol treatment fund created pursuant to division (H) of section 4511.191 of the Revised Code in accordance with this section and section 733.40, divisions (A) and (B) of section 1901.024, division (F) of section 1901.31, or division (C) of section 1907.20 of the Revised Code. Regardless of whether the fine is imposed by a municipal court, a mayor's court, or a juvenile court, if the fine was imposed for a violation of an ordinance of a municipal corporation that is within the jurisdiction of a municipal court, the twenty-five dollars that is subject to this section shall be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which is located the municipal court that has jurisdiction over that municipal corporation. Regardless of whether the fine is imposed by a county court, a mayor's court, or a juvenile court, if the fine was imposed for a violation of an ordinance of a municipal corporation that is within the jurisdiction of a county court, the twenty-five dollars that is subject to this section shall be deposited into the indigent drivers alcohol treatment fund of the county in which is located the county court that has jurisdiction over that municipal corporation. The deposit shall be made in accordance with section 733.40, divisions (A) and (B) of section 1901.024, division (F) of section 1901.31, or division (C) of section 1907.20 of the Revised Code.

(B)(1) The requirements and sanctions imposed by divisions (B)(1) and (2) of this section are an adjunct to and derive from the state's exclusive authority over the registration and titling of motor vehicles and do not comprise a part of the criminal sentence to be imposed upon a person who violates a municipal OVI ordinance.

(2) If a person is convicted of or pleads guilty to a violation of a municipal OVI ordinance, if the vehicle the offender was operating at the time of the offense is registered in the offender's name, and if, within six years of the current offense, the offender has been convicted of or pleaded guilty to one or more violations of division (A) or (B) of section 4511.19 of the Revised Code or one or more other equivalent offenses, the court in addition to and independent of any sentence that it imposes upon the offender for the offense, shall do whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(2)(b) of this section, if, within six years of the current offense,

the offender has been convicted of or pleaded guilty to one violation described in division (B)(2) of this section, the court shall order the immobilization for ninety days of that vehicle and the impoundment for ninety days of the license plates of that vehicle. The order for the immobilization and impoundment shall be issued and enforced in accordance with section 4503.233 of the Revised Code.

(b) If, within six years of the current offense, the offender has been convicted of or pleaded guilty to two or more violations described in division (B)(2) of this section, or if the offender previously has been convicted of or pleaded guilty to a violation of division (A) of section 4511.19 of the Revised Code under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred, the court shall order the criminal forfeiture to the state of that vehicle. The order of criminal forfeiture shall be issued and enforced in accordance with section 4503.234 of the Revised Code.

HISTORY: 145 v S 62 (Eff 9-1-93); 146 v H 353 (Eff 9-17-96); 146 v S 166 (Eff 10-17-96); 147 v S 60 (Eff 10-21-97); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

The provisions of § 8 of S.B. 123 read as follows:

SECTION 8. Section 4511.193 of the Revised Code is presented in this act as a composite of the section as amended by both Am. H.B. 80 and Am. Sub. S.B. 107 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

Analogous to former RC § 4511.19.3 (143 v S 131; 143 v H 837), repealed 144 v S 275, § 2, eff 9-1-93.

[§ 4511.19.4] § 4511.194 Having physical control of vehicle while under influence.

(A) As used in this section:

(1) "National highway traffic safety administration" has the same meaning as in section 4511.19 of the Revised Code.

(2) "Physical control" means being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device.

(B) No person shall be in physical control of a vehicle, streetcar, or trackless trolley if, at the time of the physical control, any of the following apply:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code.

(3) Except as provided in division (E) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in division (A)(1)(j) of section 4511.19 of the Revised Code.

(C)(1) In any criminal prosecution or juvenile court proceeding for a violation of this section or a substantially equivalent municipal ordinance, if a law enforcement

officer has administered a field sobriety test to the person in physical control of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(a) The officer may testify concerning the results of the field sobriety test so administered.

(b) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(c) If testimony is presented or evidence is introduced under division (C)(1)(a) or (b) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(2) Division (C)(1) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (C)(1) of this section.

(D) Whoever violates this section is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(E) Division (B)(3) of this section does not apply to a person who is in physical control of a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in division (A)(1)(j) of section 4511.19 of the Revised Code, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

HISTORY: 149 v S 123, § 1, eff. 1-1-04; 149 v S 163, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 151 v S 8, § 1, eff. 8-17-06.

The effective date is set by section 5 of S.B. 163 (149 v —).

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.5] § 4511.195 Seizure and detention of vehicle where arrestee has prior conviction; return, immobilization or forfeiture after disposition of charge; rights of vehicle owner.

(A) As used in this section:

(1) "Arrested person" means a person who is arrested for a violation of division (A) of section 4511.19 of the

Revised Code or a municipal OVI ordinance and whose arrest results in a vehicle being seized under division (B) of this section.

(2) "Vehicle owner" means either of the following:

(a) The person in whose name is registered, at the time of the seizure, a vehicle that is seized under division (B) of this section;

(b) A person to whom the certificate of title to a vehicle that is seized under division (B) of this section has been assigned and who has not obtained a certificate of title to the vehicle in that person's name, but who is deemed by the court as being the owner of the vehicle at the time the vehicle was seized under division (B) of this section.

(3) "Interested party" includes the owner of a vehicle seized under this section, all lienholders, the defendant arrested person, the owner of the place of storage at which a vehicle seized under this section is stored, and the person or entity that caused the vehicle to be removed.

(B)(1) The arresting officer or another officer of the law enforcement agency that employs the arresting officer, in addition to any action that the arresting officer is required or authorized to take by section 4511.19 or 4511.191 [4511.19.1] of the Revised Code or by any other provision of law, shall seize the vehicle that a person was operating at the time of the alleged offense and its license plates if the vehicle is registered in the arrested person's name and if either of the following applies:

(a) The person is arrested for a violation of division (A) of section 4511.19 of the Revised Code or of a municipal OVI ordinance and, within six years of the alleged violation, the person previously has been convicted of or pleaded guilty to one or more violations of Division (A) or (B) of section 4511.19 of the Revised Code or one of more other equivalent offenses.

(b) The person is arrested for a violation of division (A) of section 4511.19 of the Revised Code or of a municipal OVI ordinance and the person previously has been convicted of or pleaded guilty to a violation of division (A) of section 4511.19 of the Revised Code under circumstances in which the violation was a felony, regardless of when the prior felony violation of division (A) of section 4511.19 of the Revised Code and the conviction or guilty plea occurred.

(2) A law enforcement agency that employs a law enforcement officer who makes an arrest of a type that is described in division (B)(1) of this section and that involves a rented or leased vehicle that is being rented or lease for a period of thirty days or less shall notify, within twenty-four hours after the officer makes the arrest, the lessor or owner of the vehicle regarding the circumstances of the arrest and the location at which the vehicle may be picked up. At the time of the seizure of the vehicle, the law enforcement officer who made the arrest shall give the arrested person written notice that the vehicle and its license plates have been seized; that the vehicle either will be kept by the officer's law enforcement agency or will be immobilized at least until the operator's initial appearance on the charge of the offense for which the arrest was made; that, at the initial appearance, the court in certain circumstances may order that the vehicle and license plates be released to the arrested person until the disposition of that charge; and that, if the arrested person is convicted of that charge, the court generally must order the immobilization of the vehicle

and the impoundment of its license plates, or the forfeiture of the vehicle.

(3) The arresting officer or a law enforcement officer of the agency that employs the arresting officer shall give written notice of the seizure to the court that will conduct the initial appearance of the arrested person on the charges arising out of the arrest. Upon receipt of the notice, the court promptly shall determine whether the arrested person is the vehicle owner. If the court determines that the arrested person is not the vehicle owner, it promptly shall send by regular mail written notice of the seizure to the vehicle's registered owner. The written notice shall contain all of the information required by division (B)(2) of this section to be in a notice to be given to the arrested person and also shall specify the date, time, and place of the arrested person's initial appearance. The notice also shall inform the vehicle owner that if title to a motor vehicle that is subject to an order for criminal forfeiture under this section is assigned or transferred and division (B)(2) or (3) of section 4503.234 [4503.23.4] of the Revised Code applies, the court may fine the arrested person the value of the vehicle. The notice also shall state that if the vehicle is immobilized under division (A) of section 4503.233 [4503.23.3] of the Revised Code, seven days after the end of the period of immobilization a law enforcement agency will send the vehicle owner a notice, informing the owner that if the release of the vehicle is not obtained in accordance with division (D)(3) of section 4503.233 [4503.23.3] of the Revised Code, the vehicle shall be forfeited. The notice also shall inform the vehicle owner that the vehicle owner may be charged expenses or charges incurred under this section and section 4503.233 [4503.23.3] of the Revised Code for the removal and storage of the vehicle.

The written notice that is given to the arrested person also shall state that if the person is convicted of or pleads guilty to the offense and the court issues an immobilization and impoundment order relative to that vehicle, division (D)(4) of section 4503.233 [4503.23.3] of the Revised Code prohibits the vehicle from being sold during the period of immobilization without the prior approval of the court.

(4) At or before the initial appearance, the vehicle owner may file a motion requesting the court to order that the vehicle and its license plates be released to the vehicle owner. Except as provided in this division and subject to the payment of expenses or charges incurred in the removal and storage of the vehicle, the court, in its discretion, then may issue an order releasing the vehicle and its license plates to the vehicle owner. Such an order may be conditioned upon such terms as the court determines appropriate, including the posting of a bond in an amount determined by the court. If the arrested person is not the vehicle owner and if the vehicle owner is not present at the arrested person's initial appearance, and if the court believes that the vehicle owner was not provided with adequate notice of the initial appearance, the court, in its discretion, may allow the vehicle owner to file a motion within seven days of the initial appearance. If the court allows the vehicle owner to file such a motion after the initial appearance, the extension of time granted by the court does not extend the time within which the initial appearance is to be conducted. If the court issues an order for the release of the vehicle and its license plates, a copy of the order shall be made available to the vehicle owner. If the vehicle owner presents a copy of the order to the law enforcement agency that employs the law

enforcement officer who arrested the arrested person, the law enforcement agency promptly shall release the vehicle and its license plates to the vehicle owner upon payment by the vehicle owner of any expenses or charges incurred in the removal and storage of the vehicle.

(5) A vehicle seized under division (B)(1) of this section either shall be towed to a place specified by the law enforcement agency that employs the arresting officer to be safely kept by the agency at that place for the time and in the manner specified in this section or shall be otherwise immobilized for the time and in the manner specified in this section. A law enforcement officer of that agency shall remove the identification license plates of the vehicle, and they shall be safely kept by the agency for the time and in the manner specified in this section. No vehicle that is seized and either towed or immobilized pursuant to this division shall be considered contraband for purposes of Chapter 2981. of the Revised Code. The vehicle shall not be immobilized at any place other than a commercially operated private storage lot, a place owned by a law enforcement agency or other government agency, or a place to which one of the following applies:

(a) The place is leased by or otherwise under the control of a law enforcement agency or other government agency.

(b) The place is owned by the vehicle operator, the vehicle operator's spouse, or a parent or child of the vehicle operator.

(c) The place is owned by a private person or entity, and, prior to the immobilization, the private entity or person that owns the place, or the authorized agent of that private entity or person, has given express written consent for the immobilization to be carried out at that place.

(d) The place is a street or highway on which the vehicle is parked in accordance with the law.

(C)(1) A vehicle seized under division (B) of this section shall be safely kept at the place to which it is towed or otherwise moved by the law enforcement agency that employs the arresting officer until the initial appearance of the arrested person relative to the charge in question. The license plates of the vehicle that are removed pursuant to division (B) of this section shall be safely kept by the law enforcement agency that employs the arresting officer until the initial appearance of the arrested person relative to the charge in question.

(2)(a) At the initial appearance or not less than seven days prior to the date of final disposition, the court shall notify the arrested person, if title to a motor vehicle that is subject to an order for criminal forfeiture under this section is assigned or transferred and division (B)(2) or (3) of section 4503.234 of the Revised Code applies, the court may fine the arrested person the value of the vehicle. If, at the initial appearance, the arrested person pleads guilty to the violation of division (A) of section 4511.19 of the Revised Code or of the municipal OVI ordinance or pleads no contest to and is convicted of the violation, the court shall impose sentence upon the person as provided by law or ordinance; the court shall order the immobilization of the vehicle the arrested person was operating at the time of the offense if registered in the arrested person's name and the impoundment of its license plates under section 4503.233 [4503.23.3] and section 4511.19 or 4511.193 [4511.19.3] of the Revised Code or the criminal forfeiture to the state of the vehicle if registered in the arrested person's name under section 4503.234 [4503.23.4] and section 4511.19

or 4511.193 [4511.19.3] of the Revised Code, whichever is applicable; and the vehicle and its license plates shall not be returned or released to the arrested person.

(b) If, at any time, the charge that the arrested person violated division (A) of section 4511.19 of the Revised Code or the municipal OVI ordinance is dismissed for any reason, the court shall order that the vehicle seized at the time of the arrest and its license plates immediately be released to the person.

(D) If a vehicle and its license plates are seized under division (B) of this section and are not returned or released to the arrested person pursuant to division (C) of this section, the vehicle and its license plates shall be retained until the final disposition of the charge in question. Upon the final disposition of that charge, the court shall do whichever of the following is applicable:

(1) If the arrested person is convicted of or pleads guilty to the violation of division (A) of section 4511.19 of the Revised Code or of the municipal OVI ordinance, the court shall impose sentence upon the person as provided by law or ordinance and shall order the immobilization of the vehicle the person was operating at the time of the offense if it is registered in the arrested person's name and the impoundment of its license plates under section 4503.233 [4503.23.3] and section 4511.19 or 4511.193 [4511.19.3] of the Revised Code, or the criminal forfeiture of the vehicle if it is registered in the arrested person's name under section 4503.234 [4503.23.4] and section 4511.19 or 4511.193 [4511.19.3] of the Revised Code, whichever is applicable.

(2) If the arrested person is found not guilty of the violation of division (A) of section 4511.19 of the Revised Code or of the municipal OVI ordinance, the court shall order that the vehicle and its license plates immediately be released to the arrested person.

(3) If the charge that the arrested person violated division (A) of section 4511.19 of the Revised Code or the municipal OVI ordinance is dismissed for any reason, the court shall order that the vehicle and its license plates immediately be released to the arrested person.

(4) If the impoundment of the vehicle was not authorized under this section, the court shall order that the vehicle and its license plates be returned immediately to the arrested person or, if the arrested person is not the vehicle owner, to the vehicle owner, and shall order that the state or political subdivision of the law enforcement agency served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage.

(E) If a vehicle is seized under division (B) of this section, the time between the seizure of the vehicle and either its release to the arrested person under division (C) of this section or the issuance of an order of immobilization of the vehicle under section 4503.233 [4503.23.3] of the Revised Code shall be credited against the period of immobilization ordered by the court.

(F)(1) Except as provided in Division (D)(4) of this section, the arrested person may be charged expenses or charges incurred in the removal and storage of the immobilized vehicle. The court with jurisdiction over the case, after notice to all interested parties, including lienholders, and after an opportunity for them to be heard, if the court finds that the arrested person does not intend to seek release of the vehicle at the end of the period of immobilization under section 4503.233 [4503.23.3] of the Revised Code or that the arrested person is not or will not be able to pay the expenses and

charges incurred in its removal and storage, may order that title to the vehicle be transferred, in order of priority, first into the name of the person or entity that removed it, next into the name of a lienholder, or lastly into the name of the owner of the place of storage.

Any lienholder that receives title under a court order shall do so on the condition that it pay any expenses or charges incurred in the vehicle's removal and storage. If the person or entity that receives title to the vehicle is the person or entity that removed it, the person or entity shall receive title on the condition that it pay any lien on the vehicle. The court shall not order that title be transferred to any person or entity other than the owner of the place of storage if the person or entity refuses to receive the title. Any person or entity that receives title either may keep title to the vehicle or may dispose of the vehicle in any legal manner that it considers appropriate, including assignment of the certificate of title to the motor vehicle to a salvage dealer or a scrap metal processing facility. The person or entity shall not transfer the vehicle to the person who is the vehicle's immediate previous owner.

If the person or entity that receives title assigns the motor vehicle to a salvage dealer or scrap metal processing facility, the person or entity shall send the assigned certificate of title to the motor vehicle to the clerk of the court of common pleas of the county in which the salvage dealer or scrap metal processing facility is located. The person or entity shall mark the face of the certificate of title with the words "FOR DESTRUCTION" and shall deliver a photocopy of the certificate of title to the salvage dealer or scrap metal processing facility for its records.

(2) Whenever a court issues an order under division (F)(1) of this section, the court also shall order removal of the license plates from the vehicle and cause them to be sent to the registrar of motor vehicles if they have not already been sent to the registrar. Thereafter, no further proceedings shall take place under this section or under section 4503.233 [4503.23.3] of the Revised Code.

(3) Prior to initiating a proceeding under division (F)(1) of this section, and upon payment of the fee under division (B) of section 4505.14 of the Revised Code, any interested party may cause a search to be made of the public records of the bureau of motor vehicles or the clerk of the court of common pleas, to ascertain the identity of any lienholder of the vehicle. The initiating party shall furnish this information to the clerk of the court with jurisdiction over the case, and the clerk shall provide notice to the arrested person, any lienholder, and any other interested parties listed by the initiating party, at the last known address supplied by the initiating party, by certified mail or, at the option of the initiating party, by personal service or ordinary mail.

HISTORY: 144 v S 275 (Eff 9-1-93); 145 v S 62, §§ 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 145 v H 236 (Eff 9-29-94); 145 v H 687 (Eff 10-12-94); 146 v H 353 (Eff 9-17-96); 146 v H 676 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 147 v S 60 (Eff 10-21-97); 147 v S 213 (Eff 7-29-98); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 151 v H 241, § 1, eff. 7-1-07.

See provisions of § 4 of 151 v H 241 following RC § 4503.233. The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.6] § 4511.196 Initial appearance; new suspension of license.

(A) If a person is arrested for being in physical control of a vehicle, streetcar, or trackless trolley in violation of section 4511.194 [4511.19.4] of the Revised Code or a

substantially equivalent municipal ordinance, or for operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under section 4511.191 [4511.19.1] of the Revised Code, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the person's arrest or the issuance of the citation to the person.

(B)(1) If a person is arrested as described in division (A) of this section, if the person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under section 4511.191 [4511.19.1] of the Revised Code in relation to that arrest, if the person appeals the suspension in accordance with section 4511.197 [4511.19.7] of the Revised Code, and if the judge, magistrate, or mayor terminates the suspension in accordance with that section, the judge, magistrate, or mayor, at any time prior to adjudication on the merits of the charge resulting from the arrest, may impose a new suspension of the person's license, permit, or nonresident operating privilege, notwithstanding the termination, if the judge, magistrate, or mayor determines that the person's continued driving will be a threat to public safety.

(2) If a person is arrested as described in division (A) of this section and if the person's driver's or commercial driver's license or permit or nonresident operating privilege has not been suspended under section 4511.191 [4511.19.1] of the Revised Code in relation to that arrest, the judge, magistrate, or mayor, at any time prior to the adjudication on the merits of the charge resulting from the arrest, may impose a suspension of the person's license, permit, or nonresident operating privilege if the judge, magistrate, or mayor determines that the person's continued driving will be a threat to public safety.

(C) A suspension under division (B)(1) or (2) of this section shall continue until the complaint on the charge resulting from the arrest is adjudicated on the merits. A court that imposes a suspension under division (B)(2) of this section shall send the person's driver's license or permit to the registrar of motor vehicles. If the court possesses the license or permit of a person in the category described in division (B)(2) of this section and the court does not impose a suspension under that division, the court shall return the license or permit to the person if the license or permit has not otherwise been suspended or cancelled.

Any time during which the person serves a suspension of the person's license, permit, or privilege that is imposed pursuant to division (B)(1) or (2) of this section shall be credited against any period of judicial suspension of the person's license, permit, or privilege that is imposed under division (G) of section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a violation of a municipal ordinance substantially equivalent to division (A) section 4511.19 of the Revised Code.

(D) If a person is arrested and charged with a violation of section 2903.08 of the Revised Code or a violation of section 2903.06 of the Revised Code that is a felony offense, the judge at the person's initial appearance, preliminary hearing, or arraignment may suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege if the judge deter-

mines at any of those proceedings that the person's continued driving will be a threat to public safety.

A suspension imposed under this division shall continue until the indictment or information alleging the violation specified in this division is adjudicated on the merits. A court that imposes a suspension under this division shall send the person's driver's or commercial driver's license or permit to the registrar.

HISTORY: 145 v S 62 (Eff 9-1-93); 147 v S 60 (Eff 10-21-97); 148 v H 61 (Eff 8-25-99); 148 v S 107, Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.19.7] § 4511.197 Appeal of suspension under implied consent provisions; length of suspension that is upheld or not appealed; petition for limited driving privileges.

(A) If a person is arrested for operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance or for being in physical control of a vehicle, streetcar, or trackless trolley in violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance and if the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended under section 4511.191 [4511.19.1] of the Revised Code, the person may appeal the suspension at the person's initial appearance on the charge resulting from the arrest or within the period ending thirty days after the person's initial appearance on that charge, in the court in which the person will appear on that charge. If the person appeals the suspension, the appeal itself does not stay the operation of the suspension. If the person appeals the suspension, either the person or the registrar of motor vehicles may request a continuance of the appeal, and the court may grant the continuance. The court also may continue the appeal on its own motion. Neither the request for, nor the granting of, a continuance stays the suspension that is the subject of the appeal, unless the court specifically grants a stay.

(B) A person shall file an appeal under division (A) of this section in the municipal court, county court, juvenile court, mayor's court, or court of common pleas that has jurisdiction over the charge in relation to which the person was arrested.

(C) If a person appeals a suspension under division (A) of this section, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met:

(1) Whether the arresting law enforcement officer had reasonable ground to believe the arrested person was operating a vehicle, streetcar, or trackless trolley in violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance or was in physical control of a vehicle, streetcar, or trackless trolley in violation of section 4511.194 [4511.19.4] of the Revised Code or a substantially equivalent municipal ordinance and whether the arrested person was in fact placed under arrest;

(2) Whether the law enforcement officer requested the arrested person to submit to the chemical test or tests

designated pursuant to division (A) of section 4511.191 [4511.19.1] of the Revised Code;

(3) Whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test or tests;

(4) Whichever of the following is applicable:

(a) Whether the arrested person refused to submit to the chemical test or tests requested by the officer;

(b) Whether the arrest was for a violation of division (A) or (B) of section 4511.19 of the Revised Code or a municipal OVI ordinance and, if it was, whether the chemical test results indicate that the arrested person's whole blood contained a concentration of eight-hundredths of one per cent or more by weight of alcohol, the person's blood serum or plasma contained a concentration of ninety-six-thousandths of one per cent or more by weight of alcohol, the person's breath contained a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or the person's urine contained a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine at the time of the alleged offense.

(D) A person who appeals a suspension under division (A) of this section has the burden of proving, by a preponderance of the evidence, that one or more of the conditions specified in division (C) of this section has not been met. If, during the appeal, the judge or magistrate of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, magistrate, or mayor shall uphold the suspension, continue the suspension, and notify the registrar of motor vehicles of the decision on a form approved by the registrar.

Except as otherwise provided in this section, if a suspension imposed under section 4511.191 [4511.19.1] of the Revised Code is upheld on appeal or if the subject person does not appeal the suspension under division (A) of this section, the suspension shall continue until the complaint alleging the violation for which the person was arrested and in relation to which the suspension was imposed is adjudicated on the merits or terminated pursuant to law. If the suspension was imposed under division (B)(1) of section 4511.191 [4511.19.1] of the Revised Code and it is continued under this section, any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test or tests under division (A) of section 4511.191 [4511.19.1] of the Revised Code does not terminate or otherwise affect the suspension. If the suspension was imposed under division (C) of section 4511.191 [4511.19.1] of the Revised Code in relation to an alleged misdemeanor violation of division (A) or (B) of section 4511.19 of the Revised Code or of a municipal OVI ordinance and it is continued under this section, the suspension shall terminate if, for any reason, the person subsequently is found not guilty of the charge that resulted in the person taking the chemical test or tests.

If, during the appeal, the judge or magistrate of the trial court or the mayor of the mayor's court determines that one or more of the conditions specified in division (C) of this section have not been met, the judge, magistrate, or mayor shall terminate the suspension, subject to the imposition of a new suspension under division (B) of section 4511.196 [4511.19.6] of the Revised Code; shall notify the registrar of motor vehicles of the decision on a form approved by the registrar; and, except as provided in

division (B) of section 4511.196 [4511.19.6] of the Revised Code, shall order the registrar to return the driver's or commercial driver's license or permit to the person or to take any other measures that may be necessary, if the license or permit was destroyed under section 4510.53 of the Revised Code, to permit the person to obtain a replacement driver's or commercial driver's license or permit from the registrar or a deputy registrar in accordance with that section. The court also shall issue to the person a court order, valid for not more than ten days from the date of issuance, granting the person operating privileges for that period.

(E) Any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to section 4511.191 [4511.19.1] of the Revised Code may file a petition requesting limited driving privileges in the common pleas court, municipal court, county court, mayor's court, or juvenile court with jurisdiction over the related criminal or delinquency case. The petition may be filed at any time subsequent to the date on which the arresting law enforcement officer serves the notice of suspension upon the arrested person but no later than thirty days after the arrested person's initial appearance or arraignment. Upon the making of the request, limited driving privileges may be granted under sections 4510.021 [4510.02.1] and 4510.13 of the Revised Code, regardless of whether the person appeals the suspension under this section or appeals the decision of the court on the appeal, and, if the person has so appealed the suspension or decision, regardless of whether the matter has been heard or decided by the court. The person shall pay the costs of the proceeding, notify the registrar of the filing of the petition, and send the registrar a copy of the petition.

The court may not grant the person limited driving privileges when prohibited by section 4510.13 or 4511.191 [4511.19.1] of the Revised Code.

(F) Any person whose driver's or commercial driver's license or permit has been suspended under section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a conviction of a municipal OVI offense and who desires to retain the license or permit during the pendency of an appeal, at the time sentence is pronounced, shall notify the court of record or mayor's court that suspended the license or permit of the person's intention to appeal. If the person so notifies the court, the court, mayor, or clerk of the court shall retain the license or permit until the appeal is perfected, and, if execution of sentence is stayed, the license or permit shall be returned to the person to be held by the person during the pendency of the appeal. If the appeal is not perfected or is dismissed or terminated in an affirmation of the conviction, then the license or permit shall be taken up by the court, mayor, or clerk, at the time of putting the sentence into execution, and the court shall proceed in the same manner as if no appeal was taken.

(G) Except as otherwise provided in this division, if a person whose driver's or commercial driver's license or permit or nonresident operating privilege was suspended under section 4511.191 [4511.19.1] of the Revised Code appeals the suspension under division (A) of this section, the prosecuting attorney of the county in which the arrest occurred shall represent the registrar of motor vehicles in the appeal. If the arrest occurred within a municipal corporation within the jurisdiction of the court in which the appeal is conducted, the city director of law, village solicitor, or other chief legal officer of that municipal

corporation shall represent the registrar. If the appeal is conducted in a municipal court, the registrar shall be represented as provided in section 1901.34 of the Revised Code. If the appeal is conducted in a mayor's court, the city director of law, village solicitor, or other chief legal officer of the municipal corporation that operates that mayor's court shall represent the registrar.

(H) The court shall give information in writing of any action taken under this section to the registrar of motor vehicles.

(I) When it finally has been determined under the procedures of this section that a nonresident's privilege to operate a vehicle within this state has been suspended, the registrar of motor vehicles shall give information in writing of the action taken to the motor vehicle administrator of the state of the nonresident's residence and of any state in which the nonresident has a license.

HISTORY: 149 v S 123 (Eff 1-1-2004); 150 v H 87, Eff 1-1-2004; 150 v H 87, § 3, eff. 3-31-03; 150 v H 87, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.

The effective date is set by section 3 of H.B. 87.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[RECKLESS OPERATION]

§ 4511.20 Willful or wanton operation on street or highway.

(A) No person shall operate a vehicle, trackless trolley, or streetcar on any street or highway in willful or wanton disregard of the safety of persons or property.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-20; 119 v 766, § 20; Bureau of Code Revision, 10-1-53; 132 v S 179 (Eff 12-13-67); 139 v S 432, Eff 3-16-83; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.20.1] § 4511.201 Willful or wanton operation off street or highway; competitive operation exception.

(A) No person shall operate a vehicle, trackless trolley, or streetcar on any public or private property other than streets or highways, in willful or wanton disregard of the safety of persons or property.

This section does not apply to the competitive operation of vehicles on public or private property when the owner of such property knowingly permits such operation thereon.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender

previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 129 v 1637 (Eff 10-2-61); 132 v S 179 (Eff 12-13-67); 139 v S 432, Eff 3-16-83; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.20.2] § 4511.202 Operating vehicle or agricultural tractor without reasonable control.

(A) No person shall operate a motor vehicle, trackless trolley, streetcar, agricultural tractor, or agricultural tractor that is towing, pulling, or otherwise drawing a unit of farm machinery on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle, trolley, streetcar, agricultural tractor, or unit of farm machinery.

(B) Whoever violates this section is guilty of operating a motor vehicle or agricultural tractor without being in control of it, a minor misdemeanor.

HISTORY: 139 v S 432, Eff 3-16-83; 149 v S 123, § 1, eff. 1-1-04; 152 v H 9, § 1, eff. 10-18-07.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.20.3] § 4511.203 Restrictions against owner lending vehicle for use of another.

(A) No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply:

(1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges.

(2) The offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under Chapter 4510. or any other provision of the Revised Code.

(3) The offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in Chapter 4509. of the Revised Code.

(4) The offender knows or has reasonable cause to believe that the other person's act of driving would violate section 4511.19 of the Revised Code or any substantially equivalent municipal ordinance.

(B) Without limiting or precluding the consideration of any other evidence in determining whether a violation of division (A)(1), (2), (3), or (4) of this section has occurred, it shall be prima-facie evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in

division (A)(1), (2), (3), or (4) of this section if any of the following applies:

(1) Regarding an operator allegedly in the category described in division (A)(1) or (3) of this section, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity.

(2) Regarding an operator allegedly in the category described in division (A)(2) of this section, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege.

(3) Regarding an operator allegedly in the category described in division (A)(4) of this section, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

(C) Whoever violates this section is guilty of wrongful entrustment of a motor vehicle, a misdemeanor of the first degree. In addition to the penalties imposed under Chapter 2929. of the Revised Code, the court shall impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, and, if the vehicle involved in the offense is registered in the name of the offender, the court shall order one of the following:

(1) Except as otherwise provided in division (C)(2) or (3) of this section, the court shall order, for thirty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. The order shall be issued and enforced under section 4503.233 of the Revised Code.

(2) If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent municipal ordinance, the court shall order, for sixty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. The order shall be issued and enforced under section 4503.233 of the Revised Code.

(3) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent municipal ordinance, the court shall order the criminal forfeiture to the state of the vehicle involved in the offense. The order shall be issued and enforced under section 4503.234 of the Revised Code.

If title to a motor vehicle that is subject to an order for criminal forfeiture under this division is assigned or transferred and division (B)(2) or (3) of section 4503.234 of the Revised Code applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealer's association. The proceeds from any fine imposed under this division shall be distributed in accordance with division (C)(2) of section 4503.234 of the Revised Code.

(D) If a court orders the immobilization of a vehicle under division (C) of this section, the court shall not release the vehicle from the immobilization before the termination of the period of immobilization ordered unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(E) If a court orders the criminal forfeiture of a vehicle under division (C) of this section, upon receipt of the order from the court, neither the registrar of motor vehicles nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial shall be five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the registrar of the termination. If the court terminates the forfeiture and notifies the registrar, the registrar shall take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the registration of the vehicle.

(F) This section does not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in section 4549.65 of the Revised Code.

(G) Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for a violation of this section or a substantially similar municipal ordinance shall not be admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle.

(H) As used in this section, a vehicle is owned by a person if, at the time of a violation of this section, the vehicle is registered in the person's name.

HISTORY: GC § 6296-28; 116 v P.H.L. 33, § 28; Bureau of Code Revision, 10-1-53; 144 v S 275 (Eff 9-1-93); 145 v S 62, § 4. Eff 9-1-93; 149 v S 123, § 1, eff. 1-1-04.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[SPEED REGULATIONS]

§ 4511.21 Speed limits.

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

(B) It is prima-facie lawful, in the absence of a lower limit declared pursuant to this section by the director of transportation or local authorities, for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following:

(1)(a) Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except that, on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (B)(4) of this section and on free-ways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by divisions (B)(9) and (10) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control

devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

(b) As used in this section and in section 4511.212 [4511.21.2] of the Revised Code, "school" means any school chartered under section 3301.16 of the Revised Code and any nonchartered school that during the preceding year filed with the department of education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone. "School" also includes a special elementary school that in writing requests the county engineer of the county in which the special elementary school is located to create a school zone at the location of that school. Upon receipt of such a written request, the county engineer shall create a school zone at that location by erecting the appropriate signs.

(c) As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the director of transportation or a request from a county engineer in the case of a school zone for a special elementary school, the director may extend the traditional school zone boundaries. The distances in divisions (B)(1)(c)(i), (ii), and (iii) of this section shall not exceed three hundred feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the director approves as most appropriate:

(i) The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of three hundred feet on each approach direction;

(ii) The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of three hundred feet on each approach direction;

(iii) The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of three hundred feet on each approach direction of the highway.

Nothing in this section shall be construed to invalidate the director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (B)(1)(a) and (c) of this section.

(d) As used in this division, "crosswalk" has the meaning given that term in division (L.L)(2) of section 4511.01 of the Revised Code.

The director may, upon request by resolution of the legislative authority of a municipal corporation, the board of trustees of a township, or a county board of mental retardation and developmental disabilities created pursuant to Chapter 5126. of the Revised Code, and upon submission by the municipal corporation, township, or county board of such engineering, traffic, and other information as the director considers necessary, designate

a school zone on any portion of a state route lying within the municipal corporation, lying within the unincorporated territory of the township, or lying adjacent to the property of a school that is operated by such county board, that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than one thousand three hundred twenty feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred feet on each approach direction of the state route.

(e) As used in this section, "special elementary school" means a school that meets all of the following criteria:

(i) It is not chartered and does not receive tax revenue from any source.

(ii) It does not educate children beyond the eighth grade.

(iii) It is located outside the limits of a municipal corporation.

(iv) A majority of the total number of students enrolled at the school are not related by blood.

(v) The principal or other person in charge of the special elementary school annually sends a report to the superintendent of the school district in which the special elementary school is located indicating the total number of students enrolled at the school, but otherwise the principal or other person in charge does not report any other information or data to the superintendent.

(2) Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes outside business districts, through highways outside business districts, and alleys;

(3) Thirty-five miles per hour on all state routes or through highways within municipal corporations outside business districts, except as provided in divisions (B)(4) and (6) of this section;

(4) Fifty miles per hour on controlled-access highways and expressways within municipal corporations;

(5) Fifty-five miles per hour on highways outside municipal corporations, other than highways within island jurisdictions as provided in division (B)(8) of this section and freeways as provided in division (B)(13) of this section;

(6) Fifty miles per hour on state routes within municipal corporations outside urban districts unless a lower prima-facie speed is established as further provided in this section;

(7) Fifteen miles per hour on all alleys within the municipal corporation;

(8) Thirty-five miles per hour on highways outside municipal corporations that are within an island jurisdiction;

(9) Fifty-five miles per hour at all times on freeways with paved shoulders inside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(10) Fifty-five miles per hour at all times on freeways outside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(11) Fifty-five miles per hour at all times on all portions of freeways that are part of the interstate system and on all portions of freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system for operators of any motor vehicle

weighing in excess of eight thousand pounds empty weight and any noncommercial bus;

(12) Fifty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, unless a higher speed limit is established under division (L) of this section;

(13) Sixty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of the following:

(a) Freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995;

(b) Freeways that are part of the interstate system and freeways that are not part of the interstate system but are built to the standards and specifications that are applicable to freeways that are part of the interstate system, and that had such a speed limit established under division (L) of this section;

(c) Rural, divided, multi-lane highways that are designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, and that had such a speed limit established under division (M) of this section.

(C) It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section, or any declared pursuant to this section by the director or local authorities and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

(1) At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in division (B)(13) of this section;

(2) At a speed exceeding sixty-five miles per hour upon a freeway as provided in division (B)(13) of this section except as otherwise provided in division (D)(3) of this section;

(3) If a motor vehicle weighing in excess of eight thousand pounds empty weight or a noncommercial bus as prescribed in division (B)(11) of this section, at a speed exceeding fifty-five miles per hour upon a freeway as provided in that division;

(4) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit of not more than sixty-five miles per hour pursuant to division (L)(2) or (M) of this section;

(5) At a speed exceeding sixty-five miles per hour upon a freeway for which such a speed limit has been estab-

lished through the operation of division (L)(3) of this section:

(6) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit pursuant to division (I)(2) of this section.

(E) In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (C) of this section also the speed which division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(F) When a speed in excess of both a prima-facie limitation and a limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of this section, or of a limit declared pursuant to this section by the director or local authorities, and of the limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section. If the court finds a violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (D)(1), (2), (3), (4), (5), or (6) of this section. If it finds no violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section, it shall then consider whether the evidence supports a conviction under division (D)(1), (2), (3), (4), (5), or (6) of this section.

(G) Points shall be assessed for violation of a limitation under division (D) of this section in accordance with section 4510.036 [4510.03.6] of the Revised Code.

(H) Whenever the director determines upon the basis of a geometric and traffic characteristic study that any speed limit set forth in divisions (B)(1)(a) to (D) of this section is greater or less than is reasonable or safe under the conditions found to exist at any portion of a street or highway under the jurisdiction of the director, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice of it are erected at the location.

(I)(1) Except as provided in divisions (I)(2) and (K) of this section, whenever local authorities determine upon the basis of an engineering and traffic investigation that the speed permitted by divisions (B)(1)(a) to (D) of this section, on any part of a highway under their jurisdiction, is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director to determine and declare a reasonable and safe prima-facie speed limit. Upon receipt of such request the director may determine and declare a reasonable and safe prima-facie speed limit at such location, and if the director does so, then such declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The director may withdraw the declaration of a prima-facie speed limit whenever in the director's opinion the altered prima-facie

speed becomes unreasonable. Upon such withdrawal, the declared prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(2) A local authority may determine on the basis of a geometric and traffic characteristic study that the speed limit of sixty-five miles per hour on a portion of a freeway under its jurisdiction that was established through the operation of division (L)(3) of this section is greater than is reasonable or safe under the conditions found to exist at that portion of the freeway. If the local authority makes such a determination, the local authority by resolution may request the director to determine and declare a reasonable and safe speed limit of not less than fifty-five miles per hour for that portion of the freeway. If the director takes such action, the declared speed limit becomes effective only when appropriate signs giving notice of it are erected at such location by the local authority.

(J) Local authorities in their respective jurisdictions may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour.

Alteration of prima-facie limits on state routes by local authorities shall not be effective until the alteration has been approved by the director. The director may withdraw approval of any altered prima-facie speed limits whenever in the director's opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal, the altered prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(K)(1) As used in divisions (K)(1), (2), (3), and (4) of this section, "unimproved highway" means a highway consisting of any of the following:

- (a) Unimproved earth;
- (b) Unimproved graded and drained earth;
- (c) Gravel.

(2) Except as otherwise provided in divisions (K)(4) and (5) of this section, whenever a board of township trustees determines upon the basis of an engineering and traffic investigation that the speed permitted by division (B)(5) of this section on any part of an unimproved highway under its jurisdiction and in the unincorporated territory of the township is greater than is reasonable or safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of fifty-five but not less than twenty-five miles per hour. An altered speed limit adopted by a board of township trustees under this division becomes effective when appropriate traffic control devices, as prescribed in section 4511.11 of the Revised Code, giving notice thereof are erected at the location, which shall be no sooner than sixty days after adoption of the resolution.

(3)(a) Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by the board under this division becomes unreasonable, the board may adopt a resolution withdrawing the altered prima-facie speed limit. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes

ineffective and the traffic control devices relating thereto shall be immediately removed.

(b) Whenever a highway ceases to be an unimproved highway and the board has adopted an altered prima-facie speed limit pursuant to division (K)(2) of this section, the board shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(4)(a) If the boundary of two townships rests on the centerline of an unimproved highway in unincorporated territory and both townships have jurisdiction over the highway, neither of the boards of township trustees of such townships may declare an altered prima-facie speed limit pursuant to division (K)(2) of this section on the part of the highway under their joint jurisdiction unless the boards of township trustees of both of the townships determine, upon the basis of an engineering and traffic investigation, that the speed permitted by division (B)(5) of this section is greater than is reasonable or safe under the conditions found to exist at the location and both boards agree upon a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both boards so agree, each shall follow the procedure specified in division (K)(2) of this section for altering the prima-facie speed limit on the highway. Except as otherwise provided in division (K)(4)(b) of this section, no speed limit altered pursuant to division (K)(4)(a) of this section may be withdrawn unless the boards of township trustees of both townships determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each board adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in division (K)(3)(a) of this section.

(b) Whenever a highway described in division (K)(4)(a) of this section ceases to be an unimproved highway and two boards of township trustees have adopted an altered prima-facie speed limit pursuant to division (K)(4)(a) of this section, both boards shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of the resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(5) As used in division (K)(5) of this section:

(a) "Commercial subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway where, for a distance of three hundred feet or more, the frontage is improved with buildings in use for commercial purposes, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with buildings in use for commercial purposes.

(b) "Residential subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with residences or residences and buildings in use for business.

Whenever a board of township trustees finds upon the basis of an engineering and traffic investigation that the

prima-facie speed permitted by division (B)(5) of this section on any part of a highway under its jurisdiction that is located in a commercial or residential subdivision, except on highways or portions thereof at the entrances to which vehicular traffic from the majority of intersecting highways is required to yield the right-of-way to vehicles on such highways in obedience to stop or yield signs or traffic control signals, is greater than is reasonable and safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour at the location. An altered speed limit adopted by a board of township trustees under this division shall become effective when appropriate signs giving notice thereof are erected at the location by the township. Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by it under this division becomes unreasonable, it may adopt a resolution withdrawing the altered prima-facie speed, and upon such withdrawal, the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the township.

(L)(1) Within one hundred twenty days of February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of such freeway, may determine and declare that the speed limit of less than sixty-five miles per hour established on such freeway or portion of freeway either is reasonable and safe or is less than that which is reasonable and safe.

(2) If the established speed limit for such a freeway or portion of freeway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of freeway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that freeway or portion of freeway.

The director of transportation or local authority having jurisdiction over the freeway or portion of freeway shall erect appropriate signs giving notice of the speed limit at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location.

(3) If, within one hundred twenty days of February 29, 1996, the director of transportation does not make a determination and declaration of a reasonable and safe speed limit for a freeway or portion of freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system and that has a speed limit of less than sixty-five miles per hour, the speed limit on that freeway or portion of a freeway shall be sixty-five miles per hour. The director of transportation or local authority having jurisdiction over the freeway or portion of the freeway shall erect appropriate signs giving notice of the speed limit of sixty-five miles per hour at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location. A speed limit established through the

operation of division (L)(3) of this section is subject to reduction under division (I)(2) of this section.

(M) Within three hundred sixty days after February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a rural, divided, multi-lane highway that has been designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of the highway, may determine and declare that the speed limit of less than sixty-five miles per hour established on the highway or portion of highway either is reasonable and safe or is less than that which is reasonable and safe.

If the established speed limit for the highway or portion of highway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of highway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that highway or portion of highway. The director of transportation or local authority having jurisdiction over the highway or portion of highway shall erect appropriate signs giving notice of the speed limit at such location within three hundred ninety days after February 29, 1996. The speed limit becomes effective only when such signs are erected at the location.

(N)(1)(a) If the boundary of two local authorities rests on the centerline of a highway and both authorities have jurisdiction over the highway, the speed limit for the part of the highway within their joint jurisdiction shall be either one of the following as agreed to by both authorities:

(i) Either prima-facie speed limit permitted by division (B) of this section;

(ii) An altered speed limit determined and posted in accordance with this section.

(b) If the local authorities are unable to reach an agreement, the speed limit shall remain as established and posted under this section.

(2) Neither local authority may declare an altered prima-facie speed limit pursuant to this section on the part of the highway under their joint jurisdiction unless both of the local authorities determine, upon the basis of an engineering and traffic investigation, that the speed permitted by this section is greater than is reasonable or safe under the conditions found to exist at the location and both authorities agree upon a uniform reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both authorities so agree, each shall follow the procedure specified in this section for altering the prima-facie speed limit on the highway, and the speed limit for the part of the highway within their joint jurisdiction shall be uniformly altered. No altered speed limit may be withdrawn unless both local authorities determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in this section.

(O) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(P)(1) A violation of any provision of this section is one of the following:

(a) Except as otherwise provided in divisions (P)(1)(b), (1)(c), (2), and (3) of this section, a minor misdemeanor;

(b) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

(c) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of this section or of any provision of a municipal ordinance that is substantially similar to this section and operated a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, faster than fifty miles an hour in other portions of a municipal corporation, or faster than thirty-five miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding division (P)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine.

HISTORY: GC § 6307-21; 119 v 766, § 21; 124 v 514; Bureau of Code Revision, 10-1-53; 126 v 115 (Eff 10-1-56); 127 v 931 (Eff 9-14-57); 128 v 1270 (Eff 11-4-59); 130 v 1083 (Eff 9-30-63); 130 v PII, H 5 (Eff 12-16-64); 131 v 1101 (Eff 11-4-65); 132 v H 1 (Eff 2-21-67); 135 v H 200 (Eff 9-28-73); 136 v H 632 (Eff 6-27-75); 136 v H 1166 (Eff 8-9-76); 137 v H 587 (Eff 11-3-77); 138 v H 20 (Eff 8-29-79); 138 v H 32 (Eff 8-29-79); 138 v S 14 (Eff 10-25-79); 140 v S 37 (Eff 9-7-83); 141 v H 795 (Eff 8-29-86); 141 v S 356 (Eff 9-24-86); 141 v H 428 (Eff 12-23-86); 141 v H 666 (Eff 3-25-87); 142 v H 43 (Eff 7-31-87); 142 v H 493 (Eff 7-15-87); 143 v H 381 (Eff 7-1-89); 144 v H 96 (Eff 6-18-91); 144 v S 201 (Eff 8-19-92); 144 v S 301 (Eff 3-15-93); 146 v H 565, Eff 2-29-96; 149 v S 123, § 1, eff. 1-1-04; 151 v H 68, § 101.01, eff. 6-29-05; 151 v S 184, § 1, eff. 6-15-06; 152 v H 67, § 101.01, eff. 6-30-07.

The effective date is set by § 609.10 of 152 v H 67.

The effective date is set by § 612.03 of 151 v H 68.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

The provisions of § 3 of HB 565 (146 v —) read as follows:

SECTION 3. It is the intent of the General Assembly in amending section 4511.21 of the Revised Code to retain the speed limits established by that section at the limits and locations established prior to the repeal of the National Maximum Speed Limit Compliance Program in Pub. L. No. 104-59.

[§ 4511.21.1] § 4511.211 Speed limit on private residential road or driveway.

(A) The owner of a private road or driveway located in a private residential area containing twenty or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements:

(1) The speed limit is not less than twenty-five miles per hour and is indicated by a sign that is in a proper position, is sufficiently legible to be seen by an ordinarily observant person, and meets the specifications for the basic speed limit sign included in the manual adopted by the department of transportation pursuant to section 4511.09 of the Revised Code;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, a speed limit has been established for the road or driveway, and the speed limit is enforceable by law enforcement officers under state law.

(B) No person shall operate a vehicle upon a private road or driveway as provided in division (A) of this section at a speed exceeding any speed limit established and posted pursuant to that division.

(C) When a speed limit is established and posted in accordance with division (A) of this section, any law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in section 4511.091 of the Revised Code or by any other accepted method of determining the speed of a motor vehicle and may stop and charge the person with exceeding the speed limit.

(D) Points shall be assessed for violation of a speed limit established and posted in accordance with division (A) of this section in accordance with section 4510.036 of the Revised Code.

(E) As used in this section:

(1) "Owner" includes but is not limited to a person who holds title to the real property in fee simple, a condominium owners' association, a property owner's association, the board of directors or trustees of a private community, and a nonprofit corporation governing a private community.

(2) "Private residential area containing twenty or more dwelling units" does not include a Chautauqua assembly as defined in section 4511.90 of the Revised Code.

(F) A violation of division (B) of this section is one of the following:

(1) Except as otherwise provided in divisions (F)(2) and (3) of this section, a minor misdemeanor;

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of division (B) of this section or of any municipal ordinance that is substantially similar to division (B) of this section, a misdemeanor of the fourth degree;

(3) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of division (B) of this section or of any municipal ordinance that is substantially similar to division (B) of this section, a misdemeanor of the third degree.

HISTORY: 143 v H 171, Eff 5-31-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Not analogous to former RC § 4511.21.1 (135 v H 1052), repealed 136 v H 632, § 2, eff 6-27-75.

[§ 4511.21.2] § 4511.212 Complaint that local authority is not complying with school zone sign laws.

(A) As used in this section, "local authority" means the legislative authority of a municipal corporation, the board of trustees of a township, or the board of county commissioners of a county.

(B) The board of education or the chief administrative officer operating or in charge of any school may submit a written complaint to the director of transportation alleging that a local authority is not complying with section 4511.11 or divisions (B)(1)(a) to (d) of section 4511.21 of the Revised Code with regard to school zones. Upon receipt of such a complaint, the director shall review or investigate the facts of the complaint and discuss the complaint with the local authority and the board of education or chief administrative officer submitting the complaint. If the director finds that the local authority is not complying with section 4511.11 or divisions (B)(1)(a) to (d) of section 4511.21 of the Revised Code with regard to school zones, the director shall issue a written order requiring the local authority to comply by a specified date and the local authority shall comply with the order. If the local authority fails to comply with the order, the director shall implement the order and charge the local authority for the cost of the implementation. Any local authority being so charged shall pay to the state the amount charged. Any amounts received under this section shall be deposited into the state treasury to the credit of the highway operating fund created by section 5735.291 [5735.29.1] of the Revised Code.

HISTORY: 144 v S 201, Eff 8-19-92.

[§ 4511.21.3] § 4511.213 Duties upon approaching stationary public safety vehicle displaying emergency light.

(A) The driver of a motor vehicle, upon approaching a stationary public safety vehicle that is displaying a flashing red light, flashing combination red and white light, oscillating or rotating red light, oscillating or rotating combination red and white light, flashing blue light, flashing combination blue and white light, oscillating or rotating blue light, or oscillating or rotating combination blue and white light, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible and with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary public safety vehicle.

(2) If the driver is not traveling on a highway of a type described in division (A)(1) of this section, or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather, and traffic conditions.

(B) This section does not relieve the driver of a public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) No person shall fail to drive a motor vehicle in compliance with division (A)(1) or (2) of this section when so required by division (A) of this section.

(D)(1) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2) Notwithstanding section 2929.28 of the Revised Code, upon a finding that a person operated a motor vehicle in violation of division (C) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two times the usual amount imposed for the violation.

(E) As used in this section, "public safety vehicle" has the same meaning as in section 4511.01 of the Revised Code.

HISTORY: 148 v H 86, Eff 9-28-99; 149 v s 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.22 Stopping or operating vehicle at unreasonably slow speed; minimum speed limit.

(A) No person shall stop or operate a vehicle, trackless trolley, or street car at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law.

(B) Whenever the director of transportation or local authorities determine on the basis of an engineering and traffic investigation that slow speeds on any part of a controlled-access highway, expressway, or freeway consistently impede the normal and reasonable movement of traffic, the director or such local authority may declare a minimum speed limit below which no person shall operate a motor vehicle, trackless trolley, or street car except when necessary for safe operation or in compliance with law. No minimum speed limit established hereunder shall be less than thirty miles per hour, greater than fifty miles per hour, nor effective until the provisions of section 4511.21 of the Revised Code, relating to appropriate signs, have been fulfilled and local authorities have obtained the approval of the director.

(C) In a case involving a violation of this section, the trier of fact, in determining whether the vehicle was being operated at an unreasonably slow speed, shall consider the capabilities of the vehicle and its operator.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-22; 119 v 766, § 22; Bureau of Code Revision, 10-1-53; 127 v 51 (Eff 8-23-57); 135 v H 200 (Eff 9-28-73); 136 v H 632 (Eff 6-27-75); 144 v H 96, Eff 6-18-91; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.23 Speed regulations on bridges.

(A) No person shall operate a vehicle, trackless trolley, or streetcar over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed that can be maintained with safety to such bridge or structure, when such structure is posted with signs as provided in this section.

The department of transportation upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that such structure cannot with safety withstand traffic traveling at the speed otherwise permissible under sections 4511.01 to 4511.85 and 4511.98 of the Revised Code, the department shall determine and declare the maximum speed of traffic which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of at least one hundred feet before each end of such structure.

Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by the department and the existence of said signs shall constitute prima-facie evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-23; 119 v 766, § 23; Bureau of Code Revision, 10-1-53; 135 v H 200, Eff 9-28-73; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.24 Emergency vehicles excepted from speed limitations.

The prima-facie speed limitations set forth in section 4511.21 of the Revised Code do not apply to emergency vehicles or public safety vehicles when they are responding to emergency calls and are equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and when the drivers thereof sound audible signals by bell, siren, or exhaust whistle. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.

HISTORY: GC § 6307-24; 119 v 766, § 24; Bureau of Code Revision, 10-1-53; 132 v H 378 (Eff 12-14-67); 135 v H 995, Eff 1-1-75.

The effective date is set by section 3 of HB 995.

[TRAFFIC RULES]

§ 4511.25 Lanes of travel upon roadways.

(A) Upon all roadways of sufficient width, a vehicle or trackless trolley shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;

(4) When driving upon a roadway designated and posted with signs for one-way traffic;

(5) When otherwise directed by a police officer or traffic control device.

(B)(1) Upon all roadways any vehicle or trackless trolley proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable, except under any of the following circumstances:

(a) When overtaking and passing another vehicle or trackless trolley proceeding in the same direction;

(b) When preparing for a left turn;

(c) When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver's intended route.

(2) Nothing in division (B)(1) of this section requires a driver of a slower vehicle to compromise the driver's safety to allow overtaking by a faster vehicle.

(C) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle or trackless trolley shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under division (A)(2) of this section.

This division shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-25; 119 v 766, § 25; Bureau of Code Revision, 10-1-53; 129 v 1032 (Eff 9-9-61); 130 v 1086 (Eff 6-10-63); 135 v H 995, Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.25.1] § 4511.251 Street racing.

(A) As used in this section and section 4510.036 [4510.03.6] of the Revised Code, "street racing" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as the participants. The operation of two or more vehicles side by side either at speeds in excess of prima-facie lawful speeds established by divisions (B)(1)(a) to (B)(8) of section 4511.21 of the Revised Code or rapidly accelerating from a common starting point to a speed in excess of such prima-facie lawful speeds shall be prima-facie evidence of street racing.

(B) No person shall participate in street racing upon any public road, street, or highway in this state.

(C) Whoever violates this section is guilty of street racing, a misdemeanor of the first degree. In addition to any other sanctions, the court shall suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for not less than thirty days or more than three years. No judge shall suspend the first thirty days of any suspension of an offender's license, permit, or privilege imposed under this division.

HISTORY: 128 v 469 (Eff 11-10-59); 138 v S 14 (Eff 10-25-79); 146 v H 107, Eff 6-30-95; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v S 184, § 1, eff. 6-15-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.25.2] § 4511.252 Closing of public roads for competitive racing.

In townships in this state composed entirely of islands, the legislative authority of a municipal corporation, the county commissioners of the county wherein such township is located, and the trustees of such township may, by joint consent, cause any road, street, or highway in said township, whether within or without the limits of a municipal corporation, excepting state highways, to be closed to public travel, except in cases of emergency, for periods of not to exceed twenty-four hours, and during such period such roads, streets, or highways so closed may be used for supervised sports car racing:

(A) Any competitive racing event to be held upon a public road, street, or highway shall be sponsored by a recognized responsible organization.

(B) Any race held pursuant to division (A) of this section shall be conducted under the rules and regulations of the Sports Car Clubs of America.

(C) Adequate barricades shall be maintained at all hazardous sections of the racing course, hazardous corners shall be provided with barricades in the form of bales of hay or similar material sufficient to check accidental deviations from the course, and spectators shall be prohibited from entering a designated zone within two hundred feet from such corner extending two hundred feet along the exit outside section of such corner.

(D) The sponsoring organization under division (A) of this section shall furnish public liability insurance in the amount of two hundred fifty thousand dollars because of bodily injury to or death of one person resulting from any one accident, in the amount of one million dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of fifty thousand dollars because of injury to property of others in any one accident.

HISTORY: 130 v 1086, Eff 5-1-63.

§ 4511.26 Vehicles traveling in opposite directions.

(A) Operators of vehicles and trackless trolleys proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each operator shall give to the other one-half of the main traveled portion of the roadway or as nearly one-half as is reasonable possible.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-26; 119 v 766(778), § 26; Bureau of Code Revision, Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.27 Rules governing overtaking and passing of vehicles.

(A) The following rules govern the overtaking and passing of vehicles or trackless trolleys proceeding in the same direction:

(1) The operator of a vehicle or trackless trolley overtaking another vehicle or trackless trolley proceeding in the same direction shall, except as provided in division (A)(3) of this section, signal to the vehicle or trackless trolley to be overtaken, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle or trackless trolley.

(2) Except when overtaking and passing on the right is permitted, the operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle at the latter's audible signal, and the operator shall not increase the speed of the operator's vehicle until completely passed by the overtaking vehicle.

(3) The operator of a vehicle or trackless trolley overtaking and passing another vehicle or trackless trolley proceeding in the same direction on a divided highway as defined in section 4511.35 of the Revised Code, a limited access highway as defined in section 5511.02 of the Revised Code, or a highway with four or more traffic lanes, is not required to signal audibly to the vehicle or trackless trolley being overtaken and passed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-27; 119 v 766(778), § 27; Bureau of Code Revision, 10-1-53; 133 v S 289, Eff 11-6-69; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.28 Permission to overtake and pass on the right.

(A) The driver of a vehicle or trackless trolley may overtake and pass upon the right of another vehicle or trackless trolley only under the following conditions:

(1) When the vehicle or trackless trolley overtaken is making or about to make a left turn;

(2) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(B) The driver of a vehicle or trackless trolley may overtake and pass another vehicle or trackless trolley only under conditions permitting such movement in safety. The movement shall not be made by driving off the roadway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-28; 119 v 766(778), § 28; Bureau of Code Revision, 10-1-53; 135 v H 995, Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.29 Driving to left of center line.

(A) No vehicle or trackless trolley shall be driven to the left of the center of the roadway in overtaking and passing traffic proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such

overtaking and passing to be completely made, without interfering with the safe operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle or trackless trolley must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for traffic approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-29; 119 v 766(778), § 29; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.30 Prohibition against driving upon left side of roadway.

(A) No vehicle or trackless trolley shall be driven upon the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway, where the operator's view is obstructed within such a distance as to create a hazard in the event traffic might approach from the opposite direction;

(2) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel;

(3) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing.

(B) This section does not apply to vehicles or trackless trolleys upon a one-way roadway, upon a roadway where traffic is lawfully directed to be driven to the left side, or under the conditions described in division (A)(2) of section 4511.25 of the Revised Code.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-30; 119 v 766(779), § 30; 120 v 221; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.31 Hazardous zones.

(A) The department of transportation may determine those portions of any state highway where overtaking and passing other traffic or driving to the left of the center or

center line of the roadway would be especially hazardous and may, by appropriate signs or markings on the highway, indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible, every operator of a vehicle or trackless trolley shall obey the directions of the signs or markings, notwithstanding the distances set out in section 4511.30 of the Revised Code.

(B) Division (A) of this section does not apply when all of the following apply:

(1) The slower vehicle is proceeding at less than half the speed of the speed limit applicable to that location.

(2) The faster vehicle is capable of overtaking and passing the slower vehicle without exceeding the speed limit.

(3) There is sufficient clear sight distance to the left of the center or center line of the roadway to meet the overtaking and passing provisions of section 4511.29 of the Revised Code, considering the speed of the slower vehicle.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-31; 119 v 766(779), § 31; 124 v 514; Bureau of Code Revision, 10-1-53; 135 v H 200. Eff 9-28-73; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.32 One-way highways and rotary traffic islands.

(A) The department of transportation may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

Upon a roadway designated and posted with signs for one-way traffic a vehicle shall be driven only in the direction designated.

A vehicle passing around a rotary traffic island shall be driven only to the right of the rotary traffic island.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-32; 119 v 766(779), § 32; Bureau of Code Revision, 10-1-53; 135 v H 200. Eff 9-28-73; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.33 Rules for driving in marked lanes.

(A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle or trackless trolley shall not be driven in the center lane except when overtaking and passing another vehicle or trackless trolley where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle or trackless trolley is proceeding and is posted with signs to give notice of such allocation.

(3) Official signs may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, or restricting the use of a particular lane to only buses during certain hours or during all hours, and drivers of vehicles and trackless trolleys shall obey the directions of such signs.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-33; 119 v 766(779), § 33; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04; 150 v H 95, § 1, eff. 9-26-03; 150 v H 95, § 3.13, eff. 1-1-04.

The effective dates are set by sections 3.15 and 179 of H.B. 95 (150 v —).

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.34 Space between moving vehicles.

(A) The operator of a motor vehicle, streetcar, or trackless trolley shall not follow another vehicle, streetcar, or trackless trolley more closely than is reasonable and prudent, having due regard for the speed of such vehicle, streetcar, or trackless trolley, and the traffic upon and the condition of the highway.

The driver of any truck, or motor vehicle drawing another vehicle, when traveling upon a roadway outside a business or residence district shall maintain a sufficient space, whenever conditions permit, between such vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy such space without danger. This

paragraph does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

Outside a municipal corporation, the driver of any truck, or motor vehicle when drawing another vehicle, while ascending to the crest of a grade beyond which the driver's view of a roadway is obstructed, shall not follow within three hundred feet of another truck, or motor vehicle drawing another vehicle. This paragraph shall not apply to any lane specially designated for use by trucks.

Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, shall maintain a sufficient space between such vehicles so an overtaking vehicle may enter and occupy such space without danger. This paragraph shall not apply to funeral processions.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-34; 119 v 766(789), § 34; Bureau of Code Revision, 10-1-53; 126 v 113. Eff 9-30-55; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.35 Divided roadways.

(A) Whenever any highway has been divided into two roadways by an intervening space, or by a physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening, crossover, or intersection established by public authority. This section does not prohibit the occupancy of such dividing space, barrier, or section for the purpose of an emergency stop or in compliance with an order of a police officer.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-34a; 124 v 514; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.36 Rules for turns at intersections.

(A) The driver of a vehicle intending to turn at an intersection shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane of the roadway being entered lawfully available to traffic moving in that lane.

(B) The operator of a trackless trolley shall comply with divisions (A)(1), (2), and (3) of this section wherever practicable.

(C) The department of transportation and local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles, streetcars, or trackless trolleys, turning at an intersection, and when markers, buttons, or signs are so placed, no operator of a vehicle, streetcar, or trackless trolley shall turn such vehicle, streetcar, or trackless trolley at an intersection other than as directed and required by such markers, buttons, or signs.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-35; 119 v 766(780), § 35; 124 v 514; Bureau of Code Revision, 10-1-53; 135 v H 200. Eff 9-28-73; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123. See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.37 Turning in roadway prohibited; exception for emergency or public safety vehicle.

(A) Except as provided in division (B) of this section, no vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, if the vehicle cannot be seen within five hundred feet by the driver of any other vehicle approaching from either direction.

(B) The driver of an emergency vehicle or public safety vehicle, when responding to an emergency call,

may turn the vehicle so as to proceed in the opposite direction. This division applies only when the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, and when the driver of the vehicle is giving an audible signal by siren, exhaust whistle, or bell. This division does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-36; 119 v 766(781), § 36; Bureau of Code Revision, 10-1-53; 145 v H 149. Eff 5-20-93; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.38 Rules for starting and backing vehicles.

(A) No person shall start a vehicle, streetcar, or trackless trolley which is stopped, standing, or parked until such movement can be made with reasonable safety.

Before backing, operators of vehicle, streetcars, or trackless trolleys shall give ample warning, and while backing they shall exercise vigilance not to injure person or property on the street or highway.

No person shall back a motor vehicle on a freeway, except: in a rest area; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-37; 119 v 766(781), § 37; Bureau of Code Revision, 10-1-53; 131 v 1103. Eff 11-4-65; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.39 Turn and stop signals.

(A) No person shall turn a vehicle or trackless trolley or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety nor

without giving an appropriate signal in the manner hereinafter provided.

When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle or trackless trolley before turning, except that in the case of a person operating a bicycle, the signal shall be made not less than one time but is not required to be continuous. A bicycle operator is not required to make a signal if the bicycle is in a designated turn lane, and a signal shall not be given when the operator's hands are needed for the safe operation of the bicycle.

No person shall stop or suddenly decrease the speed of a vehicle or trackless trolley without first giving an appropriate signal in the manner provided herein to the driver of any vehicle or trackless trolley immediately to the rear when there is opportunity to give a signal.

Any stop or turn signal required by this section shall be given either by means of the hand and arm, or by signal lights that clearly indicate to both approaching and following traffic intention to turn or move right or left, except that any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet, whether a single vehicle or a combination of vehicles.

The signal lights required by this section shall not be flashed on one side only on a disabled vehicle or trackless trolley, flashed as a courtesy or "do pass" signal to operators of other vehicles or trackless trolleys approaching from the rear, nor be flashed on one side only of a parked vehicle or trackless trolley except as may be necessary for compliance with this section.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-38; 119 v 766(781), § 38; 124 v 514(533); Bureau of Code Revision, 10-1-53; 125 v 460 (Eff 10-19-53); 135 v H 995, Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.
See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.40 Hand and arm signals.

(A) Except as provided in division (B) of this section, all signals required by sections 4511.01 to 4511.78 of the Revised Code, when given by hand and arm, shall be given from the left side of the vehicle in the following manner, and such signals shall indicate as follows:

- (1) Left turn, hand and arm extended horizontally;
- (2) Right turn, hand and arm extended upward;
- (3) Stop or decrease speed, hand and arm extended downward.

(B) As an alternative to division (A)(2) of this section, a person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-39; 119 v 766(782), § 39; Bureau of Code Revision, 10-1-53; 146 v H 461, Eff 9-10-96; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.
See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[RIGHT OF WAY]

§ 4511.41 Right-of-way at intersections.

(A) When two vehicles, including any trackless trolley or streetcar, approach or enter an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(B) The right-of-way rule declared in division (A) of this section is modified at through highways and otherwise as stated in Chapter 4511. of the Revised Code.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 136 v H 1, Eff 6-13-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.
See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Analogous to former RC § 4511.41 (GC § 6307-40; 119 v 766(782), § 40; Bureau of Code Revision, 10-1-53; 128 v 1270), repealed 135 v H 995, eff 1-1-75.

§ 4511.42 Right of way when turning left.

(A) The operator of a vehicle, streetcar, or trackless trolley intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle, streetcar, or trackless trolley approaching from the opposite direction, whenever the approaching vehicle, streetcar, or trackless trolley is within the intersection or so close to the intersection, alley, private road, or driveway as to constitute an immediate hazard.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misde-

meanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-41; 119 v 766(782), § 41; Bureau of Code Revision, 10-1-53; 130 v 1087 (Eff 6-27-63); 135 v H 995 (Eff 1-1-75); 137 v S 62. Eff 7-8-77; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.43 Right-of-way at through highways; stop signs; yield signs.

(A) Except when directed to proceed by a law enforcement officer, every driver of a vehicle or trackless trolley approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

(B) The driver of a vehicle or trackless trolley approaching a yield sign shall slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle or trackless trolley in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. Whenever a driver is involved in a collision with a vehicle or trackless trolley in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision shall be prima-facie evidence of the driver's failure to yield the right-of-way.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Analogue to former RC § 4511.43 (GC § 6307-42; 119 v

766(782), § 42; Bureau of Code Revision, 10-1-53; 126 v 1119; 128 v 1270), repealed 135 v H 995, § 2, eff 1-1-75.

[§ 4511.43.1] § 4511.431 Stop at sidewalk area.

(A) The driver of a vehicle or trackless trolley emerging from an alley, building, private road, or driveway within a business or residence district shall stop the vehicle or trackless trolley immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.43.2] § 4511.432 Stop signs on private residential road or driveway.

(A) The owner of a private road or driveway located in a private residential area containing twenty or more dwelling units may erect stop signs at places where the road or driveway intersects with another private road or driveway in the residential area, in compliance with all of the following requirements:

(1) The stop sign is sufficiently legible to be seen by an ordinarily observant person and meets the specifications of and is placed in accordance with the manual adopted by the department of transportation pursuant to section 4511.09 of the Revised Code.

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, stop signs have been posted and must be obeyed, and the signs are enforceable by law enforcement officers under state law. The sign required by division (A)(2) of this section, where appropriate, may be incorporated with the sign required by division (A)(2) of section 4511.211 of the Revised Code.

(B) Division (A) of section 4511.43 and section 4511.46 of the Revised Code shall be deemed to apply to the driver of a vehicle on a private road or driveway where a stop sign is placed in accordance with division (A) of this section and to a pedestrian crossing such a road or driveway at an intersection where a stop sign is in place.

(C) When a stop sign is placed in accordance with division (A) of this section, any law enforcement officer may apprehend a person found violating the stop sign and may stop and charge the person with violating the stop sign.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misde-

meanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(E) As used in this section, and for the purpose of applying division (A) of section 4511.43 and section 4511.46 of the Revised Code to conduct under this section:

(1) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two private roads or driveways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different private roads or driveways joining at any other angle may come in conflict.

(b) Where a private road or driveway includes two roadways thirty feet or more apart, then every crossing of two roadways of such private roads or driveways shall be regarded as a separate intersection.

(2) "Roadway" means that portion of a private road or driveway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a private road or driveway includes two or more separate roadways, the term "roadway" means any such roadway separately but not all such roadways collectively.

(3) "Owner" and "private residential area containing twenty or more dwelling units" have the same meanings as in section 4511.211 of the Revised Code.

HISTORY: 143 v H 171. Eff 5-31-90; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.44 Right of way on public highway.

(A) The operator of a vehicle, streetcar, or trackless trolley about to enter or cross a highway from any place other than another roadway shall yield the right of way to all traffic approaching on the roadway to be entered or crossed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-43; 119 v 766(782), § 43; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.44.1] § 4511.441 Pedestrian on sidewalk has right-of-way.

(A) The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.45 Right-of-way of public safety or coroner's vehicle.

(A)(1) Upon the approach of a public safety vehicle or coroner's vehicle, equipped with at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and the driver is giving an audible signal by siren, exhaust whistle, or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive if practical to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(2) Upon the approach of a public safety vehicle or coroner's vehicle, as stated in division (A)(1) of this section, no operator of any streetcar or trackless trolley shall fail to immediately stop the streetcar or trackless trolley clear of any intersection and keep it in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(B) This section does not relieve the driver of a public safety vehicle or coroner's vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) This section applies to a coroner's vehicle only when the vehicle is operated in accordance with section 4513.171 of the Revised Code. As used in this section, "coroner's vehicle" means a vehicle used by a coroner, deputy coroner, or coroner's investigator that is equipped with a flashing, oscillating, or rotating red or blue light and a siren, exhaust whistle, or bell capable of giving an audible signal.

(D) Except as otherwise provided in this division, whoever violates division (A)(1) or (2) of this section is guilty of a misdemeanor of the fourth degree on a first offense. On a second offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree, and, on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree.

HISTORY: GC § 6307-44; 119 v 766(782), § 44; 124 v 514; Bureau of Code Revision, 10-1-53; 132 v H 878 (Eff 12-14-67); 132 v S 451 (Eff 2-29-68); 145 v H 149 (Eff 5-20-93); 147 v H 282. Eff 11-12-97; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.45.1] § 4511.451 Funeral procession has right of way.

(A) As used in this section, “funeral procession” means two or more vehicles accompanying the cremated remains or the body of a deceased person in the daytime when each of the vehicles has its headlights lighted and is displaying a purple and white or an orange and white pennant attached to each vehicle in such a manner as to be clearly visible to traffic approaching from any direction.

(B) Excepting public safety vehicles proceeding in accordance with section 4511.45 of the Revised Code or when directed otherwise by a police officer, pedestrians and the operators of all vehicles, street cars, and trackless trolleys shall yield the right of way to each vehicle that is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in the procession may continue to follow the lead vehicle through the intersection notwithstanding any traffic control devices or right of way provisions of the Revised Code, provided that the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian.

(C) No person shall operate any vehicle as a part of a funeral procession without having the headlights of the vehicle lighted and without displaying a purple and white or an orange and white pennant in such a manner as to be clearly visible to traffic approaching from any direction.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 126 v 632 (Eff 1-1-56); 132 v H 878 (Eff 12-14-67); 149 v H 322, Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 151 v H 426, § 1, eff. 10-12-06.

The provisions of § 3 of 151 v H 426 read as follows:

SECTION 3. Section 4511.451 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 322 and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.45.2] § 4511.452 Pedestrian to yield right-of-way to public safety vehicle.

(A) Upon the immediate approach of a public safety vehicle, as stated in section 4511.45 of the Revised Code, every pedestrian shall yield the right-of-way to the public safety vehicle.

(B) This section shall not relieve the driver of a public safety vehicle from the duty to exercise due care to avoid colliding with any pedestrian.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misde-

meanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995, Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.45.3] § 4511.453 Immunity in connection with movement of funeral procession.

(A) Neither the owner, the operator, or an employee of a funeral home nor the owner or operator of a funeral escort vehicle is liable in damages in a civil action for injury, death, or loss to person or property that allegedly arises from the movement of a funeral procession if either of the following applies:

(1) The movement of the funeral procession is in accordance with section 4511.451 [4511.45.1] of the Revised Code.

(2) The movement of the funeral procession generally is in accordance with section 4511.451 [4511.45.1] of the Revised Code, but the operator of one or more motor vehicles that are in the procession, that are not owned or operated by the owner, the operator, or an employee of the funeral home, and that are not funeral escort vehicles fails to do either of the following and the injury, death, or loss to person or property allegedly arose from that failure:

(a) Exercise due care as required by division (B) of section 4511.451 [4511.45.1] of the Revised Code;

(b) Comply with division (C) of section 4511.451 [4511.45.1] of the Revised Code, provided that the owner, the operator, or an employee of the funeral home informed the motor vehicle operator of the requirements and made the appropriate pennant available to the motor vehicle operator.

(B)(1) This section does not apply if the injury, death, or loss allegedly arose from any of the following:

(a) The willful, wanton, or intentional acts or omissions of the owner, the operator, or an employee of a funeral home or the owner or the operator of a funeral escort vehicle;

(b) The negligent or reckless acts or omissions in the operation of a motor vehicle by the owner, the operator, or an employee of a funeral home or the owner or the operator of a funeral escort vehicle.

(2) This section does not create a new cause of action or substantive legal right against an owner, operator, or employee of a funeral home or an owner or operator of a funeral escort vehicle.

(3) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or any immunities from civil liability or defenses available at common law to which an owner, operator, or employee of a funeral home or an owner or operator of a funeral escort vehicle may be entitled.

(C) As used in this section:

(1) “Funeral home” has the same meaning as in section 4717.01 of the Revised Code.

(2) "Funeral procession" has the same meaning as in section 4511.451 [4511.45.1] of the Revised Code.

HISTORY: 149 v H 322, Eff 4-7-2003.

§ 4511.46 Pedestrian on crosswalk has right-of-way.

(A) When traffic control signals are not in place, not in operation, or are not clearly assigning the right-of-way, the driver of a vehicle, trackless trolley, or streetcar shall yield the right of way, slowing down or stopping if need be to so yield or if required by section 4511.132 of the Revised Code, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(B) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle, trackless trolley, or streetcar which is so close as to constitute an immediate hazard.

(C) Division (A) of this section does not apply under the conditions stated in division (B) of section 4511.48 of the Revised Code.

(D) Whenever any vehicle, trackless trolley, or streetcar is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle, trackless trolley, or streetcar approaching from the rear shall not overtake and pass the stopped vehicle.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 143 v S 44, Eff 7-25-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Analogous to former RC § 4511.46 (GC § 6307-45; 119 v 766; Bureau of Code Revision, 10-1-53), repealed 135 v H 995, § 2, eff 1-1-75.

§ 4511.47 Right of way yielded to blind person.

(A) As used in this section "blind person" or "blind pedestrian" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

The driver of every vehicle shall yield the right of way to every blind pedestrian guided by a guide dog, or carrying a cane which is predominantly white or metallic in color, with or without a red tip.

(B) No person, other than a blind person, while on any public highway, street, alley, or other public thoroughfare

shall carry a white or metallic cane with or without a red tip.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC §§ 6307-45a, 6307-45b, 6307-45c; 124 v 59; Bureau of Code Revision, 10-1-53; 133 v S 514, Eff 7-16-70; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.48 Right of way yielded by pedestrian.

(A) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles, trackless trolleys, or streetcars upon the roadway.

(B) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all traffic upon the roadway.

(C) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(D) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(E) This section does not relieve the operator of a vehicle, streetcar, or trackless trolley from exercising due care to avoid colliding with any pedestrian upon any roadway.

(F) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-46; 119 v 766(783), § 46; Bureau of Code Revision, 10-1-53; 135 v H 995, Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[PEDESTRIANS]

[§ 4511.48.1] § 4511.481 Intoxicated or drugged pedestrian hazard on highway.

(A) A pedestrian who is under the influence of alcohol, any drug of abuse, or any combination of them to a

degree that renders the pedestrian a hazard shall not walk or be upon a highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.49 Pedestrians.

(A) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-47; 119 v 766(783), § 47; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.49.1] § 4511.491 Motorized wheelchair operators.

Every person operating a motorized wheelchair shall have all of the rights and duties applicable to a pedestrian that are contained in this chapter, except those provisions which by their nature can have no application.

HISTORY: 143 v S 272. Eff 11-28-90.

§ 4511.50 Pedestrian walking along highway.

(A) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(B) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(C) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.

(D) Except as otherwise provided in sections 4511.13 and 4511.46 of the Revised Code, any pedestrian upon a

roadway shall yield the right-of-way to all vehicles, trackless trolleys, or streetcars upon the roadway.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Analogous to former RC § 4511.50 (GC § 6307-48; 119 v 776; Bureau of Code Revision, 10-1-53), repealed 135 v H 995, § 2, eff 1-1-75.

The effective date is set by section 3 of HB 995.

§ 4511.51 Prohibited solicitations by pedestrians; riding on outside of vehicle or in open cargo storage area or on tailgate.

(A) No person while on a roadway outside a safety zone shall solicit a ride from the driver of any vehicle.

(B)(1) Except as provided in division (B)(2) of this section, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

(2) The legislative authority of a municipal corporation, by ordinance, may authorize the issuance of a permit to a charitable organization to allow a person acting on behalf of the organization to solicit charitable contributions from the occupant of a vehicle by standing on a highway, other than a freeway as provided in division (A)(1) of section 4511.051 of the Revised Code, that is under the jurisdiction of the municipal corporation. The permit shall be valid for only one period of time, which shall be specified in the permit, in any calendar year. The legislative authority also may specify the locations where contributions may be solicited and may impose any other restrictions on or requirements regarding the manner in which the solicitations are to be conducted that the legislative authority considers advisable.

(3) As used in division (B)(2) of this section, "charitable organization" means an organization that has received from the internal revenue service a currently valid ruling or determination letter recognizing the tax-exempt status of the organization pursuant to section 501(c)(3) of the "Internal Revenue Code."

(C) No person shall hang onto or ride on the outside of any motor vehicle, streetcar, or trackless trolley while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(D) No operator shall knowingly permit any person to hang onto, or ride on the outside of, any motor vehicle, streetcar, or trackless trolley while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(E) No driver of a truck, trailer, or semitrailer shall knowingly permit any person who has not attained the

age of sixteen years to ride in the unenclosed or unroofed cargo storage area of the driver's vehicle if the vehicle is traveling faster than twenty-five miles per hour, unless either of the following applies:

(1) The cargo storage area of the vehicle is equipped with a properly secured seat to which is attached a seat safety belt that is in compliance with federal standards for an occupant restraining device as defined in division (A)(2) of section 4513.263 of the Revised Code, the seat and seat safety belt were installed at the time the vehicle was originally assembled, and the person riding in the cargo storage area is in the seat and is wearing the seat safety belt;

(2) An emergency exists that threatens the life of the driver or the person being transported in the cargo storage area of the truck, trailer, or semitrailer.

(F) No driver of a truck, trailer, or semitrailer shall permit any person, except for those workers performing specialized highway or street maintenance or construction under authority of a public agency, to ride in the cargo storage area or on a tailgate of the driver's vehicle while the tailgate is unlatched.

(G)(1) Except as otherwise provided in this division, whoever violates any provision of divisions (A) to (D) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of divisions (A) to (D) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of divisions (A) to (D) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates division (E) or (F) of this section is guilty of a minor misdemeanor.

HISTORY: GC § 6307-49; 119 v 776, § 49; 121 v 684; Bureau of Code Revision, 10-1-53; 135 v H 995 (Eff 1-1-75); 143 v H 8 (Eff 9-13-89); 145 v H 331. Eff 7-2-93; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.51.1 § 4511.511 Pedestrian on bridge or railroad crossing.

(A) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(B) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.51.2 § 4511.512 Electric personal assistive mobility devices.

(A)(1) Electric personal assistive mobility devices may be operated on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles in accordance with this section.

(2) Except as otherwise provided in this section, those sections of this chapter that by their nature are applicable to an electric personal assistive mobility device apply to the device and the person operating it whenever it is operated upon any public street, highway, sidewalk, or path or upon any portion of a roadway set aside for the exclusive use of bicycles.

(3) A local authority may regulate or prohibit the operation of electric personal assistive mobility devices on public streets, highways, sidewalks, and paths, and portions of roadways set aside for the exclusive use of bicycles, under its jurisdiction.

(B) No operator of an electric personal assistive mobility device shall do any of the following:

(1) Fail to yield the right-of-way to all pedestrians and human-powered vehicles at all times;

(2) Fail to give an audible signal before overtaking and passing a pedestrian;

(3) Operate the device at night unless the device or its operator is equipped with or wearing both of the following:

(a) A lamp pointing to the front that emits a white light visible from a distance of not less than five hundred feet;

(b) A red reflector facing the rear that is visible from all distances from one hundred feet to six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle.

(4) Operate the device on any portion of a street or highway that has an established speed limit of fifty-five miles per hour or more;

(5) Operate the device upon any path set aside for the exclusive use of pedestrians or other specialized use when an appropriate sign giving notice of the specialized use is posted on the path;

(6) If under eighteen years of age, operate the device unless wearing a protective helmet on the person's head with the chin strap properly fastened;

(7) If under sixteen years of age, operate the device unless, during the operation, the person is under the direct visual and audible supervision of another person who is eighteen years of age or older and is responsible for the immediate care of the person under sixteen years of age.

(C) No person who is under fourteen years of age shall operate an electric personal assistive mobility device.

(D) No person shall distribute or sell an electric personal assistive mobility device unless the device is accompanied by a written statement that is substantially equivalent to the following: "WARNING: TO REDUCE THE RISK OF SERIOUS INJURY, USE ONLY WHILE WEARING FULL PROTECTIVE EQUIPMENT — HELMET, WRIST GUARDS, ELBOW PADS, AND KNEE PADS."

(E) Nothing in this section affects or shall be construed to affect any rule of the director of natural resources or a board of park district commissioners

governing the operation of vehicles on lands under the control of the director or board, as applicable.

(F)(1) Whoever violates division (B) or (C) of this section is guilty of a minor misdemeanor and shall be punished as follows:

(a) The offender shall be fined ten dollars.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (B) or (C) of this section or a substantially similar municipal ordinance, the court, in addition to imposing the fine required under division (F)(1) of this section, shall do one of the following:

(i) Order the impoundment for not less than one day but not more than thirty days of the electric personal assistive mobility device that was involved in the current violation of that division. The court shall order the device to be impounded at a safe indoor location designated by the court and may assess storage fees of not more than five dollars per day, provided the total storage, processing, and release fees assessed against the offender or the device in connection with the device's impoundment or subsequent release shall not exceed fifty dollars.

(ii) If the court does not issue an impoundment order pursuant to division (F)(1)(b)(i) of this section, issue an order prohibiting the offender from operating any electric personal assistive mobility device on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles for not less than one day but not more than thirty days.

(2) Whoever violates division (D) of this section is guilty of a minor misdemeanor.

HISTORY: 149 v S 231. Eff 10-24-2002; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

[BICYCLES, MOTORCYCLES AND SNOWMOBILES]

§ 4511.52 Bicycles.

(A) Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code that are applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles.

(B) Except as provided in division (D) of this section, a bicycle operator who violates any section of the Revised Code described in division (A) of this section that is applicable to bicycles may be issued a ticket, citation, or summons by a law enforcement officer for the violation in the same manner as the operator of a motor vehicle would be cited for the same violation. A person who commits any such violation while operating a bicycle shall not have any points assessed against the person's driver's license, commercial driver's license, temporary instruction permit, or probationary license under section 4510.036 [4510.03.6] of the Revised Code.

(C) Except as provided in division (D) of this section, in the case of a violation of any section of the Revised Code described in division (A) of this section by a bicycle operator or by a motor vehicle operator when the trier of fact finds that the violation by the motor vehicle operator endangered the lives of bicycle riders at the time of the violation, the court, notwithstanding any provision of the Revised Code to the contrary, may require the bicycle

operator or motor vehicle operator to take and successfully complete a bicycling skills course approved by the court in addition to or in lieu of any penalty otherwise prescribed by the Revised Code for that violation.

(D) Divisions (B) and (C) of this section do not apply to violations of section 4511.19 of the Revised Code.

HISTORY: GC § 6307-50; 119 v 766(784), § 50; Bureau of Code Revision. Eff 10-1-53; 151 v H 389, § 1, eff. 9-21-06.

[§ 4511.52.1] § 4511.521 Rules governing operation of motorized bicycles.

(A) No person shall operate a motorized bicycle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking, unless all of the following conditions are met:

(1) The person is fourteen or fifteen years of age and holds a valid probationary motorized bicycle license issued after the person has passed the test provided for in this section, or the person is sixteen years of age or older and holds either a valid commercial driver's license issued under Chapter 4506, or a driver's license issued under Chapter 4507, of the Revised Code or a valid motorized bicycle license issued after the person has passed the test provided for in this section, except that if a person is sixteen years of age, has a valid probationary motorized bicycle license and desires a motorized bicycle license, the person is not required to comply with the testing requirements provided for in this section;

(2) The motorized bicycle is equipped in accordance with the rules adopted under division (B) of this section and is in proper working order;

(3) The person, if under eighteen years of age, is wearing a protective helmet on the person's head with the chin strap properly fastened and the motorized bicycle is equipped with a rear-view mirror.

(4) The person operates the motorized bicycle when practicable within three feet of the right edge of the roadway obeying all traffic rules applicable to vehicles.

(B) The director of public safety, subject to sections 119.01 to 119.13 of the Revised Code, shall adopt and promulgate rules concerning protective helmets, the equipment of motorized bicycles, and the testing and qualifications of persons who do not hold a valid driver's or commercial driver's license. The test shall be as near as practicable to the examination required for a motorcycle operator's endorsement under section 4507.11 of the Revised Code. The test shall also require the operator to give an actual demonstration of the operator's ability to operate and control a motorized bicycle by driving one under the supervision of an examining officer.

(C) Every motorized bicycle license expires on the birthday of the applicant in the fourth year after the date it is issued, but in no event shall any motorized bicycle license be issued for a period longer than four years.

(D) No person operating a motorized bicycle shall carry another person upon the motorized bicycle.

(E) The protective helmet and rear-view mirror required by division (A) (3) of this section shall, on and after January 1, 1985, conform with rules adopted by the director under division (B) of this section.

(F) Each probationary motorized bicycle license or motorized bicycle license shall be laminated with a transparent plastic material.

(G) Whoever violates division (A), (D), or (E) of this section is guilty of a minor misdemeanor.

HISTORY: 137 v S 100 (Eff 4-1-78); 137 v S 393 (Eff 5-12-78); 140 v S 169 (Eff 6-18-84); 140 v S 169, § 6 (Eff 1-1-85); 143 v H 381 (Eff 7-1-89); 143 v S 131 (Eff 7-25-90); 144 v S 98. Eff 11-12-92; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.53 Rules for bicycles, motorcycles and snowmobiles.

(A) For purposes of this section, "snowmobile" has the same meaning as given that term in section 4519.01 of the Revised Code.

(B) A person operating a bicycle shall not ride other than upon or astride the permanent and regular seat attached thereto, and a person operating a motorcycle shall not ride other than upon the permanent and regular seat attached thereto, nor carry any other person upon such bicycle or motorcycle other than upon a firmly attached and regular seat thereon, nor shall any person ride upon a bicycle or motorcycle other than upon such a firmly attached and regular seat.

A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

No person operating a bicycle shall carry any package, bundle, or article that prevents the driver from keeping at least one hand upon the handle bars.

No bicycle or motorcycle shall be used to carry more persons at one time than the number for which it is designed and equipped, nor shall any motorcycle be operated on a highway when the handle bars or grips are more than fifteen inches higher than the seat or saddle for the operator.

No person shall operate or be a passenger on a snowmobile or motorcycle without using safety glasses or other protective eye device. No person who is under the age of eighteen years, or who holds a motorcycle operator's endorsement or license bearing a "novice" designation that is currently in effect as provided in section 4507.13 of the Revised Code, shall operate a motorcycle on a highway, or be a passenger on a motorcycle, unless wearing a protective helmet on the person's head, and no other person shall be a passenger on a motorcycle operated by such a person unless similarly wearing a protective helmet. The helmet, safety glasses, or other protective eye device shall conform with regulations prescribed and promulgated by the director of public safety. The provisions of this paragraph or a violation thereof shall not be used in the trial of any civil action.

(C) Nothing in this section shall be construed as prohibiting the carrying of a child in a seat or trailer that is designed for carrying children and is firmly attached to the bicycle.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-51; 119 v 766(784); Bureau of Code Revision, 10-1-53; 132 v H 380 (Eff 1-1-68); 134 v H 214 (Eff 3-7-72); 135

v H 995 (Eff 1-1-75); 137 v H 115 (Eff 7-10-78); 144 v S 98. Eff 11-12-92; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.54 Prohibition against attaching bicycles and sleds to vehicles.

(A) No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or self to any streetcar, trackless trolley, or vehicle upon a roadway.

No operator shall knowingly permit any person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle to attach the same or self to any streetcar, trackless trolley, or vehicle while it is moving upon a roadway.

This section does not apply to the towing of a disabled vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-52; 119 v 776, § 52; 121 v 684; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.55 Bicycle to be ridden near right side of roadway; riding bicycles or motorcycles abreast.

(A) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable obeying all traffic rules applicable to vehicles and exercising due care when passing a standing vehicle or one proceeding in the same direction.

(B) Persons riding bicycles or motorcycles upon a roadway shall ride not more than two abreast in a single lane, except on paths or parts of roadways set aside for the exclusive use of bicycles or motorcycles.

(C) This section does not require a person operating a bicycle to ride at the edge of the roadway when it is unreasonable or unsafe to do so. Conditions that may require riding away from the edge of the roadway include when necessary to avoid fixed or moving objects, parked or moving vehicles, surface hazards, or if it otherwise is unsafe or impracticable to do so, including if the lane is too narrow for the bicycle and an overtaking vehicle to travel safely side by side within the lane.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate

motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-53; 119 v 766(784), § 53; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.56 Signal devices on bicycle; brake.

(A) Every bicycle when in use at the times specified in section 4513.03 of the Revised Code, shall be equipped with the following:

(1) A lamp mounted on the front of either the bicycle or the operator that shall emit a white light visible from a distance of at least five hundred feet to the front and three hundred feet to the sides. A generator-powered lamp that emits light only when the bicycle is moving may be used to meet this requirement.

(2) A red reflector on the rear that shall be visible from all distances from one hundred feet to six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle;

(3) A lamp emitting either flashing or steady red light visible from a distance of five hundred feet to the rear shall be used in addition to the red reflector. If the red lamp performs as a reflector in that it is visible as specified in division (A)(2) of this section, the red lamp may serve as the reflector and a separate reflector is not required.

(B) Additional lamps and reflectors may be used in addition to those required under division (A) of this section, except that red lamps and red reflectors shall not be used on the front of the bicycle and white lamps and white reflectors shall not be used on the rear of the bicycle.

(C) A bicycle may be equipped with a device capable of giving an audible signal, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(D) Every bicycle shall be equipped with an adequate brake when used on a street or highway.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 142 v H 412 (Eff 3-10-88); 144 v S 98. Eff 11-12-92; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Analogue to former RC § 4511.56 (GC § 6307-54; 119 v 766; Bureau of Code Revision, 10-1-53), repealed 135 v H 995, § 2, eff 1-1-75.

[STREETCARS]

§ 4511.57 Passing on left side of streetcar.

(A) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any streetcar

proceeding in the same direction, whether such streetcar is in motion or at rest, except:

(1) When so directed by a police officer or traffic control device;

(2) When upon a one-way street;

(3) When upon a street where the tracks are so located as to prevent compliance with this section;

(4) When authorized by local authorities.

(B) The driver of any vehicle when permitted to overtake and pass upon the left of a streetcar which has stopped for the purpose of receiving or discharging any passenger shall accord pedestrians the right of way.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-55; 119 v 766(785), § 55; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.58 Vehicle shall not pass streetcar discharging passengers; exception.

(A) The driver of a vehicle overtaking upon the right any streetcar stopped for the purpose of receiving or discharging any passenger shall stop such vehicle at least five feet to the rear of the nearest running board or door of such streetcar and remain standing until all passengers have boarded such streetcar, or upon alighting therefrom have reached a place of safety, except that where a safety zone has been established, a vehicle need not be brought to a stop before passing any such streetcar or any trackless trolley, but may proceed past such streetcar or trackless trolley at a speed not greater than is reasonable and proper considering the safety of pedestrians.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-56; 119 v 766(785), § 56; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.59 Driving and turning in front of streetcars.

(A) The driver of any vehicle proceeding upon any streetcar track in front of a streetcar shall remove such vehicle from the track as soon as practicable after signal from the operator of said streetcar.

The driver of a vehicle upon overtaking and passing a streetcar shall not turn in front of such streetcar unless such movement can be made in safety.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-57; 119 v 766(785), § 57; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.60 Driving through safety zone.

(A) No vehicle shall at any time be driven through or within a safety zone.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-58; 119 v 766(785), § 58; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[GRADE CROSSINGS]

§ 4511.61 Stop signs at grade crossings.

(A) The department of transportation and local authorities in their respective jurisdictions, with the approval of the department, may designate dangerous highway crossings over railroad tracks whether on state, county, or township highways or on streets or ways within municipal corporations, and erect stop signs thereat. When such stop signs are erected, the operator of any vehicle, streetcar, or trackless trolley shall stop within fifty, but not less than fifteen, feet from the nearest rail of the railroad tracks and shall exercise due care before proceeding across such grade crossing.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-59; 119 v 766(786), § 59; Bureau of Code Revision, 10-1-53; 127 v 887 (Eff 9-16-57); 135 v H 200 (Eff 9-28-73); 135 v S 171. Eff 10-31-73; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.62 Driver's duties relating to railroad grade crossings.

(A)(1) Whenever any person driving a vehicle or trackless trolley approaches a railroad grade crossing, the person shall stop within fifty feet, but not less than fifteen feet from the nearest rail of the railroad if any of the following circumstances exist at the crossing:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train.

(b) A crossing gate is lowered.

(c) A flagperson gives or continues to give a signal of the approach or passage of a train.

(d) There is insufficient space on the other side of the railroad grade crossing to accommodate the vehicle or trackless trolley the person is operating without obstructing the passage of other vehicles, trackless trolleys, pedestrians, or railroad trains, notwithstanding any traffic control signal indication to proceed.

(e) An approaching train is emitting an audible signal or is plainly visible and is in hazardous proximity to the crossing.

(f) There is insufficient undercarriage clearance to safely negotiate the crossing.

(2) A person who is driving a vehicle or trackless trolley and who approaches a railroad grade crossing shall not proceed as long as any of the circumstances described in divisions (A)(1)(a) to (f) of this section exist at the crossing.

(B) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed unless the person is signaled by a law enforcement officer or flagperson that it is permissible to do so.

(C) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

HISTORY: GC § 6307-60; 119 v 766(786), § 60; Bureau of Code Revision, 10-1-53; 135 v H 995 (Eff 1-1-75); 147 v S 60. Eff 10-21-97; 149 v S 123, § 1, eff. 1-1-04; 150 v H 95, § 1, eff. 9-26-03; 150 v H 95, § 3.13, eff. 1-1-04.

The effective dates are set by sections 3.15 and 179 of H.B. 95 (150 v —).

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.63 Vehicles required to stop at grade crossings; exempt crossings.

(A) Except as provided in division (B) of this section, the operator of any bus, any school vehicle, or any vehicle transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185, before crossing at grade any track of a railroad, shall stop the vehicle and, while so stopped, shall listen through an open door or open window and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, and shall proceed only upon exercising due care after stopping, looking, and listening as required by this section. Upon proceeding, the operator

of such a vehicle shall cross only in a gear that will ensure there will be no necessity for changing gears while traversing the crossing and shall not shift gears while crossing the tracks.

(B) This section does not apply at grade crossings when the public utilities commission has authorized and approved an exempt crossing as provided in this division.

(1) Any local authority may file an application with the commission requesting the approval of an exempt crossing. Upon receipt of such a request, the commission shall authorize a limited period for the filing of comments by any party regarding the application and then shall conduct a public hearing in the community seeking the exempt crossing designation. The commission shall provide appropriate prior public notice of the comment period and the public hearing. By registered mail, the commission shall notify each railroad operating over the crossing of the comment period.

(2) After considering any comments or other information received, the commission may approve or reject the application. By order, the commission may establish conditions for the exempt crossing designation, including compliance with division (b) of 49 C.F.R. Part 392.10, when applicable. An exempt crossing designation becomes effective only when appropriate signs giving notice of the exempt designation are erected at the crossing as ordered by the commission and any other conditions ordered by the commission are satisfied.

(3) By order, the commission may rescind any exempt crossing designation made under this section if the commission finds that a condition at the exempt crossing has changed to such an extent that the continuation of the exempt crossing designation compromises public safety. The commission may conduct a public hearing to investigate and determine whether to rescind the exempt crossing designation. If the commission rescinds the designation, it shall order the removal of any exempt crossing signs and may make any other necessary order.

(C) As used in this section:

(1) "School vehicle" means any vehicle used for the transportation of pupils to and from a school or school-related function if the vehicle is owned or operated by, or operated under contract with, a public or nonpublic school.

(2) "Bus" means any vehicle originally designed by its manufacturer to transport sixteen or more passengers, including the driver, or carries sixteen or more passengers, including the driver.

(3) "Exempt crossing" means a highway rail grade crossing authorized and approved by the public utilities commission under division (B) of this section at which vehicles may cross without making the stop otherwise required by this section.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or section 4511.76, 4511.761 [4511.76.1], 4511.762 [4511.76.2], 4511.764 [4511.76.4], 4511.77, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

HISTORY: GC § 6307-61; 119 v 766(786), § 61; 124 v 514; Bureau of Code Revision, 10-1-53; 125 v 903(1025) (Eff 10-1-53); 145 v H 154, Eff 6-30-93; 149 v S 123, § 1, eff. 1-1-04; 150 v H 95, § 1, eff. 9-26-03; 150 v H 95, § 3.13, eff. 1-1-04; 150 v S 156, § 1, eff. 5-18-05.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.64 Slow-moving vehicles or equipment crossing railroad tracks.

(A) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with divisions (A)(1) and (2) of this section.

(1) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same, and while stopped the person shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall proceed only upon exercising due care.

(2) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagperson or otherwise of the immediate approach of a railroad train or car.

(B) If the normal sustained speed of such vehicle, equipment, or structure is not more than three miles per hour, the person owning, operating, or moving the same shall also give notice of such intended crossing to a station agent or superintendent of the railroad, and a reasonable time shall be given to such railroad to provide proper protection for such crossing. Where such vehicles or equipment are being used in constructing or repairing a section of highway lying on both sides of a railroad grade crossing, and in such construction or repair it is necessary to repeatedly move such vehicles or equipment over such crossing, one daily notice specifying when such work will start and stating the hours during which it will be prosecuted is sufficient.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-62; 119 v 766(786), § 62; Bureau of Code Revision, Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[THROUGH HIGHWAYS]

§ 4511.65 Through highways.

(A) All state routes are hereby designated as through highways, provided that stop signs, yield signs, or traffic control signals shall be erected at all intersections with such through highways by the department of transportation as to highways under its jurisdiction and by local authorities as to highways under their jurisdiction, except

as otherwise provided in this section. Where two or more state routes that are through highways intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the department, except as otherwise provided in this section.

Whenever the director of transportation determines on the basis of an engineering and traffic investigation that stop signs are necessary to stop traffic on a through highway for safe and efficient operation, nothing in this section shall be construed to prevent such installations. When circumstances warrant, the director also may omit stop signs on roadways intersecting through highways under his jurisdiction. Before the director either installs or removes a stop sign under this division, he shall give notice, in writing, of that proposed action to the affected local authority at least thirty days before installing or removing the stop sign.

(B) Other streets or highways, or portions thereof, are hereby designated through highways if they are within a municipal corporation, if they have a continuous length of more than one mile between the limits of said street or highway or portion thereof, and if they have "stop" or "yield" signs or traffic control signals at the entrances of the majority of intersecting streets or highways. For purposes of this section, the limits of said street or highway or portion thereof shall be a municipal corporation line, the physical terminus of the street or highway, or any point on said street or highway at which vehicular traffic thereon is required by regulatory signs to stop or yield to traffic on the intersecting street, provided that in residence districts a municipal corporation may by ordinance designate said street or highway, or portion thereof, not to be a through highway and thereafter the affected residence district shall be indicated by official traffic control devices. Where two or more through highways designated under this division intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the department or by local authorities having jurisdiction, except as otherwise provided in this section.

(C) The department or local authorities having jurisdiction need not erect stop signs at intersections they find to be so constructed as to permit traffic to safely enter a through highway without coming to a stop. Signs shall be erected at such intersections indicating that the operator of a vehicle shall yield the right-of-way to or merge with all traffic proceeding on the through highway.

(D) Local authorities with reference to highways under their jurisdiction may designate additional through highways and shall erect stop signs, yield signs, or traffic control signals at all streets and highways intersecting such through highways, or may designate any intersection as a stop or yield intersection and shall erect like signs at one or more entrances to such intersection.

HISTORY: GC § 6307-63; 119 v 766(787), § 63; Bureau of Code Revision, 10-1-53; 128 v 1270 (Eff 11-4-59); 131 v 1103 (Eff 10-15-65); 135 v H 200 (Eff 9-28-73); 136 v H 21 (Eff 12-30-75); 138 v H 290 (Eff 1-10-80); 143 v H 258, Eff 11-2-89.

[PARKING]

§ 4511.66 Prohibition against parking on highways.

(A) Upon any highway outside a business or residence district, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved

or main traveled part of the highway if it is practicable to stop, park, or so leave such vehicle off the paved or main traveled part of said highway. In every event a clear and unobstructed portion of the highway opposite such standing vehicle shall be left for the free passage of other vehicles, and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway.

This section does not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-64; 119 v 766(788), § 64; Bureau of Code Revision, Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.66.1] § 4511.661 Condition when motor vehicle left unattended.

(A) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the parking brake, and, when the motor vehicle is standing upon any grade, turning the front wheels to the curb or side of the highway.

The requirements of this section relating to the stopping of the engine, locking of the ignition, and removing the key from the ignition of a motor vehicle shall not apply to an emergency vehicle or a public safety vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 136 v H 763, Eff 8-6-76; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.67 Police may remove illegally parked vehicle.

Whenever any police officer finds a vehicle standing upon a highway in violation of section 4511.66 of the Revised Code, such officer may move such vehicle, or

require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway.

Whenever any police officer finds a vehicle unattended upon any highway, bridge, or causeway, or in any tunnel, where such vehicle constitutes an obstruction to traffic, such officer may provide for the removal of such vehicle to the nearest garage or other place of safety.

HISTORY: CC § 6307-65; 119 v 766(788), § 65; 121 v 684; Bureau of Code Revision. Eff 10-1-53.

§ 4511.68 Parking prohibitions.

(A) No person shall stand or park a trackless trolley or vehicle, except when necessary to avoid conflict with other traffic or to comply with sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code, or while obeying the directions of a police officer or a traffic control device, in any of the following places:

- (1) On a sidewalk, except a bicycle;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within ten feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty feet of a crosswalk at an intersection;
- (7) Within thirty feet of, and upon the approach to, any flashing beacon, stop sign, or traffic control device;
- (8) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by a traffic control device;
- (9) Within fifty feet of the nearest rail of a railroad crossing;
- (10) Within twenty feet of a driveway entrance to any fire station and, on the side of the street opposite the entrance to any fire station, within seventy-five feet of the entrance when it is properly posted with signs;
- (11) Alongside or opposite any street excavation or obstruction when such standing or parking would obstruct traffic;

(12) Alongside any vehicle stopped or parked at the edge or curb of a street;

(13) Upon any bridge or elevated structure upon a highway, or within a highway tunnel;

(14) At any place where signs prohibit stopping;

(15) Within one foot of another parked vehicle;

(16) On the roadway portion of a freeway, expressway, or thruway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: CC § 6307-66; 119 v 766(788), § 66; 124 v 514; Bureau of Code Revision, 10-1-53; 130 v 1087. Eff 8-5-63; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.68.1] § 4511.681 Parking prohibitions on private property.

(A) If an owner of private property posts on the property, in a conspicuous manner, a prohibition against parking on the property or conditions and regulations under which parking is permitted, no person shall do either of the following:

(1) Park a vehicle on the property without the owner's consent;

(2) Park a vehicle on the property in violation of any condition or regulation posted by the owner.

(B) Whoever violates this section is guilty of a minor misdemeanor.

HISTORY: 139 v H 707 (Eff 1-1-83); 140 v H 112. Eff 10-4-84; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.69 Parking near curb, facing direction of travel; locations and privileges for walking-impaired persons.

(A) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the right-hand wheels of the vehicle parallel with and not more than twelve inches from the right-hand curb, unless it is impossible to approach so close to the curb; in such case the stop shall be made as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise. Local authorities by ordinance may permit angle parking on any roadway under their jurisdiction, except that angle parking shall not be permitted on a state route within a municipal corporation unless an unoccupied roadway width of not less than twenty-five feet is available for free-moving traffic.

(B) Local authorities by ordinance may permit parking of vehicles with the left-hand wheels adjacent to and within twelve inches of the left-hand curb of a one-way roadway.

(C) No vehicle or trackless trolley shall be stopped or parked on a road or highway with the vehicle or trackless trolley facing in a direction other than the direction of travel on that side of the road or highway.

(D) Notwithstanding any statute or any rule, resolution, or ordinance adopted by any local authority, air compressors, tractors, trucks, and other equipment, while being used in the construction, reconstruction, installation, repair, or removal of facilities near, on, over, or under a street or highway, may stop, stand, or park where necessary in order to perform such work, provided a flagperson is on duty or warning signs or lights are displayed as may be prescribed by the director of transportation.

(E) Special parking locations and privileges for persons with disabilities that limit or impair the ability to walk, also known as handicapped parking spaces or disability parking spaces, shall be provided and designated by all political subdivisions and by the state and all agencies and instrumentalities thereof at all offices and facilities, where parking is provided, whether owned, rented, or leased, and at all publicly owned parking garages. The locations shall be designated through the posting of an elevated sign, whether permanently affixed

or movable, imprinted with the international symbol of access and shall be reasonably close to exits, entrances, elevators, and ramps. All elevated signs posted in accordance with this division and division (C) of section 3781.111 [3781.11.1] of the Revised Code shall be mounted on a fixed or movable post, and the distance from the ground to the top edge of the sign shall measure five feet. If a new sign or a replacement sign designating a special parking location is posted on or after October 14, 1999, there also shall be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location.

(F)(1) No person shall stop, stand, or park any motor vehicle at special parking locations provided under division (E) of this section or at special clearly marked parking locations provided in or on privately owned parking lots, parking garages, or other parking areas and designated in accordance with that division, unless one of the following applies:

(a) The motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a valid removable windshield placard or special license plates;

(b) The motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates.

(2) Any motor vehicle that is parked in a special marked parking location in violation of division (F)(1)(a) or (b) of this section may be towed or otherwise removed from the parking location by the law enforcement agency of the political subdivision in which the parking location is located. A motor vehicle that is so towed or removed shall not be released to its owner until the owner presents proof of ownership of the motor vehicle and pays all towing and storage fees normally imposed by that political subdivision for towing and storing motor vehicles. If the motor vehicle is a leased vehicle, it shall not be released to the lessee until the lessee presents proof that that person is the lessee of the motor vehicle and pays all towing and storage fees normally imposed by that political subdivision for towing and storing motor vehicles.

(3) If a person is charged with a violation of division (F)(1)(a) or (b) of this section, it is an affirmative defense to the charge that the person suffered an injury not more than seventy-two hours prior to the time the person was issued the ticket or citation and that, because of the injury, the person meets at least one of the criteria contained in division (A)(1) of section 4503.44 of the Revised Code.

(G) When a motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a removable windshield placard or a temporary removable windshield placard or special license plates, or when a motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates, the motor vehicle is permitted to park for a period of two hours in excess of the legal parking period permitted by local authorities, except where local ordinances or police rules provide otherwise or where the vehicle is parked in such a manner as to be clearly a traffic hazard.

(H) No owner of an office, facility, or parking garage where special parking locations are required to be desig-

nated in accordance with division (E) of this section shall fail to properly mark the special parking locations in accordance with that division or fail to maintain the markings of the special locations, including the erection and maintenance of the fixed or movable signs.

(I) Nothing in this section shall be construed to require a person or organization to apply for a removable windshield placard or special license plates if the parking card or special license plates issued to the person or organization under prior law have not expired or been surrendered or revoked.

(J)(1) Whoever violates division (A) or (C) of this section is guilty of a minor misdemeanor.

(2)(a) Whoever violates division (F)(1)(a) or (b) of this section is guilty of a misdemeanor and shall be punished as provided in division (J)(2)(a) and (b) of this section. Except as otherwise provided in division (J)(2)(a) of this section, an offender who violates division (F)(1)(a) or (b) of this section shall be fined not less than two hundred fifty nor more than five hundred dollars. An offender who violates division (F)(1)(a) or (b) of this section shall be fined not more than one hundred dollars if the offender, prior to sentencing, proves either of the following to the satisfaction of the court:

(i) At the time of the violation of division (F)(1)(a) of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a removable windshield placard that then was valid or special license plates that then were valid but the offender or the person neglected to display the placard or license plates as described in division (F)(1)(a) of this section.

(ii) At the time of the violation of division (F)(1)(b) of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a parking card that then was valid or special handicapped license plates that then were valid but the offender or the person neglected to display the card or license plates as described in division (F)(1)(b) of this section.

(b) In no case shall an offender who violates division (F)(1)(a) or (b) of this section be sentenced to any term of imprisonment.

An arrest or conviction for a violation of division (F)(1)(a) or (b) of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

The clerk of the court shall pay every fine collected under division (J)(2) of this section to the political subdivision in which the violation occurred. Except as provided in division (J)(2) of this section, the political subdivision shall use the fine moneys it receives under division (J)(2) of this section to pay the expenses it incurs in complying with the signage and notice requirements contained in division (E) of this section. The political subdivision may use up to fifty per cent of each fine it receives under division (J)(2) of this section to pay the costs of educational, advocacy, support, and assistive technology programs for persons with disabilities, and for public improvements within the political subdivision that benefit or assist persons with disabilities, if governmental agencies or nonprofit organizations offer the programs.

(3) Whoever violates division (H) of this section shall be punished as follows:

(a) Except as otherwise provided in division (J)(3) of this section, the offender shall be issued a warning.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (H) of this section or of a municipal ordinance that is substantially similar to that division, the offender shall not be issued a warning but shall be fined not more than twenty-five dollars for each parking location that is not properly marked or whose markings are not properly maintained.

(K) As used in this section:

(1) "Handicapped person" means any person who has lost the use of one or both legs or one or both arms, who is blind, deaf, or so severely handicapped as to be unable to move without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary, or other handicapping condition.

(2) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in section 4503.44 of the Revised Code.

(3) "Special license plates" and "removable windshield placard" mean any license plates or removable windshield placard or temporary removable windshield placard issued under section 4503.41 or 4503.44 of the Revised Code, and also mean any substantially similar license plates or removable windshield placard or temporary removable windshield placard issued by a state, district, country, or sovereignty.

HISTORY: GC § 6307-67; 119 v 766(789), § 67; 121 v 684; 124 v 514; Bureau of Code Revision, 10-1-53; 135 v H 200 (Eff 9-28-73); 136 v S 162 (Eff 7-23-76); 137 v H 652 (Eff 3-13-78); 139 v H 1 (Eff 8-5-81); 139 v H 48 (Eff 1-1-83); 139 v H 116 (Eff 7-5-82); 140 v H 174 (Eff 9-30-83); 142 v H 111 (Eff 4-27-88); 144 v H 73 (Eff 9-25-91); 144 v S 98 (Eff 11-12-92); 145 v H 687 (Eff 1-1-95); 148 v H 148. Eff 10-14-99; 149 v S 123, § 1, eff. 1-1-04; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of H.B. 490.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[PROHIBITIONS]

§ 4511.70 Obstruction and interference affecting view and control of driver.

(A) No person shall drive a vehicle or trackless trolley when it is so loaded, or when there are in the front seat such number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of the vehicle.

(B) No passenger in a vehicle or trackless trolley shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

(C) No person shall open the door of a vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth

degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-68; 119 v 766(789), § 68; Bureau of Code Revision, 10-1-53; 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.70.1] § 4511.701 Occu- pancy while in motion prohibited.

(A) No person shall occupy any travel trailer or manufactured or mobile home while it is being used as a conveyance upon a street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v S 205 (Eff 11-21-73); 140 v S 231 (Eff 9-20-84); 147 v S 142. Eff 3-30-99; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.71 Prohibition against driving upon closed highway.

(A) No person shall drive upon, along, or across a street or highway, or any part of a street or highway that has been closed in the process of its construction, reconstruction, or repair, and posted with appropriate signs by the authority having jurisdiction to close such highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-69; 119 v 766(789), § 69; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.71.1] § 4511.711 Driving on sidewalk or sidewalk area.

(A) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

Nothing in this section shall be construed as prohibiting local authorities from regulating the operation of bicycles within their respective jurisdictions, except that no local authority may require that bicycles be operated on sidewalks.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 136 v S 56. Eff 5-25-76; 149 v S 123, § 1, eff. 1-1-04; 151 v H 389, § 1, eff. 9-21-06.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.71.2] § 4511.712 Obstructing passage of other vehicles.

(A) No driver shall enter an intersection or marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or grade crossing to accommodate the vehicle, streetcar, or trackless trolley the driver is operating without obstructing the passage of other vehicles, streetcars, trackless trolleys, pedestrians, or railroad trains, notwithstanding any traffic control signal indication to proceed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995. Eff 1-1-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.71.3] § 4511.713 Paths exclusively for bicycles.

(A) No person shall operate a motor vehicle, snowmobile, or all-purpose vehicle upon any path set aside for the exclusive use of bicycles, when an appropriate sign giving notice of such use is posted on the path.

Nothing in this section shall be construed to affect any rule of the director of natural resources governing the operation of motor vehicles, snowmobiles, all-purpose vehicles, and bicycles on lands under the director's jurisdiction.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever vio-

lates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 141 v H 311. Eff 3-11-87; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.72 Following an emergency or public safety vehicle prohibited.

(A) The driver of any vehicle, other than an emergency vehicle or public safety vehicle on official business, shall not follow any emergency vehicle or public safety vehicle traveling in response to an alarm closer than five hundred feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm, unless directed to do so by a police officer or a firefighter.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-70; 119 v 766(790), § 70; 124 v 514 (525); Bureau of Code Revision, 10-1-53; 132 v H 878. Eff 12-14-67; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.73 Driving over unprotected fire hose.

(A) No streetcar, trackless trolley, or vehicle shall, without the consent of the fire department official in command, be driven over any unprotected hose of a fire department that is laid down on any street, private driveway, or streetcar track to be used at any fire or alarm of fire.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: GC § 6307-71; 119 v 766(790), § 71; Bureau of Code Revision. Eff 10-1-53; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.74 Prohibition against placing injurious material on highway.

(A) No person shall place or knowingly drop upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same.

Any person authorized to remove a wrecked or damaged vehicle, streetcar, or trackless trolley from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle, streetcar, or trackless trolley.

No person shall place any obstruction in or upon a highway without proper authority.

(B) No person, with intent to cause physical harm to a person or a vehicle, shall place or knowingly drop upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(C)(1) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.

HISTORY: GC § 6307-72; 119 v 766(790), § 72; Bureau of Code Revision, 10-1-53; 140 v H 133. Eff 9-27-83; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[SCHOOL BUSES]

§ 4511.75 Stopping for school bus; signals.

(A) The driver of a vehicle, streetcar, or trackless trolley upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child, person attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, or child attending a program offered by a head start agency, shall stop at least ten feet from the front or rear of the school bus and shall not proceed until such school bus resumes motion, or until signaled by the school bus driver to proceed.

It is no defense to a charge under this division that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by division (B) of this section.

(B) Every school bus shall be equipped with amber and red visual signals meeting the requirements of section 4511.771 [4511.77.1] of the Revised Code, and an automatically extended stop warning sign of a type approved by the state board of education, which shall be actuated by the driver of the bus whenever but only whenever the bus is stopped or stopping on the roadway for the purpose of receiving or discharging school children, persons attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, or children attending programs offered by head start agencies. A school bus driver shall not actuate the visual signals or the stop warning sign in designated school bus loading areas where the bus is entirely off the roadway or at school buildings when children or persons attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities are loading or unloading at curbside or at buildings when children attending programs offered by head start agencies are loading or unloading at curbside. The visual signals and stop warning sign shall be synchronized or otherwise operated as required by rule of the board.

(C) Where a highway has been divided into four or more traffic lanes, a driver of a vehicle, streetcar, or trackless trolley need not stop for a school bus approaching from the opposite direction which has stopped for the purpose of receiving or discharging any school child, persons attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, or children attending programs offered by head start agencies. The driver of any vehicle, streetcar, or trackless trolley overtaking the school bus shall comply with division (A) of this section.

(D) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children, persons attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, and children attending programs offered by head start agencies on their residence side of the highway.

(E) No school bus driver shall start the driver's bus until after any child, person attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, or child attending a program offered by a head start agency who may have alighted therefrom has reached a place of safety on the child's or person's residence side of the road.

(F)(1) Whoever violates division (A) of this section may be fined an amount not to exceed five hundred dollars. A person who is issued a citation for a violation of division (A) of this section is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in a trial but instead must appear in person in the proper court to answer the charge.

(2) In addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender who violates this section a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the

range specified in division (A)(7) of section 4510.02 of the Revised Code. When a license is suspended under this section, the court or mayor shall cause the offender to deliver the license to the court, and the court or clerk of the court immediately shall forward the license to the registrar of motor vehicles, together with notice of the court's action.

(G) As used in this section:

(1) "Head start agency" has the same meaning as in section 3301.32 of the Revised Code.

(2) "School bus," as used in relation to children who attend a program offered by a head start agency, means a bus that is owned and operated by a head start agency, is equipped with an automatically extended stop warning sign of a type approved by the state board of education, is painted the color and displays the markings described in section 4511.77 of the Revised Code, and is equipped with amber and red visual signals meeting the requirements of section 4511.771 [4511.77.1] of the Revised Code, irrespective of whether or not the bus has fifteen or more children aboard at any time. "School bus" does not include a van owned and operated by a head start agency, irrespective of its color, lights, or markings.

HISTORY: GC § 6307-73; 119 v 766(790), § 73; 123 v 614; Bureau of Code Revision, 10-1-53; 125 v 167 (Eff 10-2-53); 135 v H 995 (Eff 1-1-75); 136 v H 369 (Eff 8-29-75); 137 v S 389 (Eff 3-15-79); 138 v S 160 (Eff 10-31-80); 140 v H 478 (Eff 3-28-85); 147 v H 618. Eff 3-22-99; 149 v S 123, § 1, eff. 1-1-04; 150 v H 95, § 3.13, eff. 7-1-04; 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

The effective date is set by section 3.15 of H.B. 95 (150 v —).

The provisions of § 193 of H.B. 95 (150 v —) read as follows: SECTION 193. The amendment by this act of the version of section 4511.75 of the Revised Code that is scheduled to take effect January 1, 2004, and the items of law of which that amendment is composed, are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and go into effect on July 1, 2004.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.75.1] § 4511.751 Operator or person with first-hand knowledge to report violation; information furnished upon issuance of plates.

As used in this section, "license plate" includes, but is not limited to, any temporary license placard issued under section 4503.182 of the Revised Code or similar law of another jurisdiction.

When the operator of a school bus believes that a motorist has violated division (A) of section 4511.75 of the Revised Code, the operator shall report the license plate number and a general description of the vehicle and of the operator of the vehicle to the law enforcement agency exercising jurisdiction over the area where the alleged violation occurred. The information contained in the report relating to the license plate number and to the general description of the vehicle and the operator of the vehicle at the time of the alleged violation may be supplied by any person with first-hand knowledge of the information. Information of which the operator of the school bus has first-hand knowledge also may be corroborated by any other person.

Upon receipt of the report of the alleged violation of division (A) of section 4511.75 of the Revised Code, the law enforcement agency shall conduct an investigation to

attempt to determine or confirm the identity of the operator of the vehicle at the time of the alleged violation. If the identity of the operator at the time of the alleged violation is established, the reporting of the license plate number of the vehicle shall establish probable cause for the law enforcement agency to issue a citation for the violation of division (A) of section 4511.75 of the Revised Code. However, if the identity of the operator of the vehicle at the time of the alleged violation cannot be established, the law enforcement agency shall issue a warning to the owner of the vehicle at the time of the alleged violation, except in the case of a leased or rented vehicle when the warning shall be issued to the lessee at the time of the alleged violation.

The registrar of motor vehicles and deputy registrars shall, at the time of issuing license plates to any person, include with the license plate a summary of the requirements of division (A) of section 4511.75 of the Revised Code and the procedures of, and penalty in, division (F) of section 4511.75 of the Revised Code.

HISTORY: 137 v S 389 (Eff 3-15-79); 144 v H 130. Eff 10-10-91; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.76 School bus construction, design, equipment, operation and licensing rules.

(A) The department of public safety, by and with the advice of the superintendent of public instruction, shall adopt and enforce rules relating to the construction, design, and equipment, including lighting equipment required by section 4511.771 of the Revised Code, of all school buses both publicly and privately owned and operated in this state.

(B) The department of education, by and with the advice of the director of public safety, shall adopt and enforce rules relating to the operation of all vehicles used for pupil transportation.

(C) No person shall operate a vehicle used for pupil transportation within this state in violation of the rules of the department of education or the department of public safety. No person, being the owner thereof or having the supervisory responsibility therefor, shall permit the operation of a vehicle used for pupil transportation within this state in violation of the rules of the department of education or the department of public safety.

(D) The department of public safety shall adopt and enforce rules relating to the issuance of a license under section 4511.763 of the Revised Code. The rules may relate to the moral character of the applicant; the condition of the equipment to be operated; the liability and property damage insurance carried by the applicant; the posting of satisfactory and sufficient bond; and such other rules as the director of public safety determines reasonably necessary for the safety of the pupils to be transported.

(E) As used in this section, "vehicle used for pupil transportation" means any vehicle that is identified as such by the department of education by rule and that is subject to Chapter 3301-83 of the Administrative Code.

(F) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section

or section 4511.63, 4511.761, 4511.762, 4511.764, 4511.77, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

HISTORY: GC § 6307-74; 119 v 766(790), § 74; 122 v 284; Bureau of Code Revision, 10-1-53; 126 v 392(412) (Eff 3-17-55); 129 v 1273 (Eff 10-26-61); 131 v 1105 (Eff 9-1-65); 132 v H 1 (Eff 2-21-67); 135 v H 995 (Eff 1-1-75); 144 v S 98 (Eff 11-12-92); 147 v S 60 (Eff 10-21-97); 149 v H 73, Eff 6-29-2001; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.76.1] § 4511.761 School bus inspection.

(A) The state highway patrol shall inspect every school bus to ascertain whether its construction, design, and equipment comply with the regulations adopted pursuant to section 4511.76 of the Revised Code and all other provisions of law.

The superintendent of the state highway patrol shall adopt a distinctive inspection decal not less than twelve inches in size, and bearing the date of the inspection, which shall be affixed to the outside surface of each side of each school bus which upon such inspection is found to comply with the regulations adopted pursuant to section 4511.76 of the Revised Code. The appearance of said decal shall be changed from year to year as to shape and color in order to provide easy visual inspection.

No person shall operate, nor shall any person being the owner thereof or having supervisory responsibility therefor permit the operation of, a school bus within this state unless there are displayed thereon the decals issued by the state highway patrol bearing the proper date of inspection for the calendar year for which the inspection decals were issued.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or section 4511.63, 4511.76, 4511.762, 4511.764, 4511.77, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(C) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation, issued under section 4511.763 of the Revised Code.

HISTORY: 129 v 1273 (Eff 10-26-61); 131 v 1106 (Eff 9-1-65); 144 v S 98 (Eff 11-12-92); 145 v H 687, Eff 10-12-94; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.76.2] § 4511.762 School bus no longer used for school purposes.

(A) Except as provided in division (B) of this section, no person who is the owner of a bus that previously was registered as a school bus that is used or is to be used

exclusively for purposes other than the transportation of children, shall operate the bus or permit it to be operated within this state unless the bus has been painted a color different from that prescribed for school buses by section 4511.77 of the Revised Code and painted in such a way that the words "stop" and "school bus" are obliterated.

(B) Any church bus that previously was registered as a school bus and is registered under section 4503.07 of the Revised Code may retain the paint color prescribed for school buses by section 4511.77 of the Revised Code if the bus complies with all of the following:

(1) The words "school bus" required by section 4511.77 of the Revised Code are covered or obliterated and the bus is marked on the front and rear with the words "church bus" painted in black lettering not less than ten inches in height;

(2) The automatically extended stop warning sign required by section 4511.75 of the Revised Code is removed and the word "stop" required by section 4511.77 of the Revised Code is covered or obliterated;

(3) The flashing red and amber lights required by section 4511.771 of the Revised Code are covered or removed;

(4) The inspection decal required by section 4511.761 of the Revised Code is covered or removed;

(5) The identification number assigned under section 4511.764 of the Revised Code and marked in black lettering on the front and rear of the bus is covered or obliterated.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or section 4511.63, 4511.76, 4511.761, 4511.764, 4511.77, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(D) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation, issued under section 4511.763 of the Revised Code.

HISTORY: 129 v 1273 (Eff 10-26-61); 147 v S 85, Eff 5-15-97; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.76.3] § 4511.763 Licensing by department of public safety.

(A) No person, partnership, association, or corporation shall transport pupils to or from school on a school bus or enter into a contract with a board of education of any school district for the transportation of pupils on a school bus, without being licensed by the department of public safety.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth

degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 131 v 1106 (Eff 9-1-65); 144 v S 98 (Eff 11-12-92); 145 v H 687, Eff 10-12-94; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.76.4] § 4511.764 Registration and identification of school buses.

(A) The superintendent of the state highway patrol shall require school buses to be registered, in the name of the owner, with the state highway patrol on forms and in accordance with regulations as the superintendent may adopt.

When the superintendent is satisfied that the registration has been completed, the superintendent shall assign an identifying number to each school bus registered in accordance with this section. The number so assigned shall be marked on the front and rear of the vehicle in black lettering not less than six inches in height and will remain unchanged as long as the ownership of that vehicle remains the same.

No person shall operate, nor shall any person, being the owner thereof or having supervisory responsibility therefor, permit the operation of a school bus within this state unless there is displayed thereon an identifying number in accordance with this section.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of section 4511.63, 4511.76, 4511.761, 4511.762, 4511.77, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

HISTORY: 131 v 1106 (Eff 9-22-65); 136 v H 1, Eff 6-13-75; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.77 School bus marking.

(A) No person shall operate, nor shall any person being the owner thereof or having supervisory responsibility therefor permit the operation of, a school bus within this state unless it is painted national school bus yellow and is marked on both front and rear with the words "school bus" in black lettering not less than eight inches in height and on the rear of the bus with the word "stop" in black lettering not less than ten inches in height.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or section 4511.63, 4511.76, 4511.761, 4511.762, 4511.764, or 4511.79 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(C) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation, issued under section 4511.763 of the Revised Code.

HISTORY: 129 v 1273 (Eff 10-26-61); 148 v H 600, Eff 9-1-2000; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Not analogous to former RC § 4511.77 (Bureau of Code Revision, 10-1-53; 125 v 903 [1025]), repealed 128 v 469, § 2, eff 11-10-59.

[§ 4511.77.1] § 4511.771 Flashing red and amber lights.

(A) Every school bus shall, in addition to any other equipment and distinctive markings required pursuant to sections 4511.76, 4511.761, 4511.764, and 4511.77 of the Revised Code, be equipped with signal lamps mounted as high as practicable, which shall display to the front two alternately flashing red lights and two alternately flashing amber lights located at the same level and to the rear two alternately flashing red lights and two alternately flashing amber lights located at the same level, and these lights shall be visible at five hundred feet in normal sunlight. The alternately flashing red lights shall be spaced as widely as practicable, and the alternately flashing amber lights shall be located next to them.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 135 v H 995 (Eff 1-1-75); 137 v S 389, Eff 3-15-79; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.77.2] § 4511.772 Operator's seat belt.

(A) On and after May 6, 1986, no person, school board, or governmental entity shall purchase, lease, or rent a new school bus unless the school bus has an occupant restraining device, as defined in section 4513.263 of the Revised Code, installed for use in its operator's seat.

(B) Whoever violates this section is guilty of a minor misdemeanor.

HISTORY: 141 v S 54, Eff 5-6-86; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.78 Transporting school children.

(A) As used in this section:

(1) "Mass transit system" means any county transit system, regional transit authority, regional transit commission, municipally owned transportation system, mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, and any common passenger carrier certified by the public utilities commission, that provides transportation for children to or from a school session or a school function.

(2) "Bus" means every motor vehicle designed for carrying more than nine passengers and used for the transportation of persons, but does not mean any school bus as defined in section 4511.01 of the Revised Code.

(B) Whenever a mass transit system transports children to or from a school session or school function, the mass transit system shall provide for:

(1) Periodic safety inspections of all buses used to provide transportation service. The inspections shall be based on rules adopted by the public utilities commission under Chapters 4921. and 4923. of the Revised Code to ensure the safety of operation of motor transportation companies and private motor carriers.

(2) The safety training of all drivers operating buses used to provide transportation service;

(3) The equipping of every bus with outside rear-view mirrors meeting the motor carrier regulations for bus equipment adopted by the federal highway administration. No exclusions from this requirement granted under the federal regulations shall be considered exclusions for the purposes of this division.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 136 v H 234. Eff 8-25-76; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

Not analogous to former RC § 4511.78 (Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74. For sections analogous to former RC § 4511.78, see RC §§ 2921.31 and 2921.33.

[COMMERCIAL DRIVER PROHIBITIONS]

§ 4511.79 Driving commercial vehicle with impaired alertness or ability; use of drugs.

(A) No person shall drive a "commercial motor vehicle" as defined in section 4506.01 of the Revised Code, or a "commercial car" or "commercial tractor," as defined in section 4501.01 of the Revised Code, while the person's ability or alertness is so impaired by fatigue, illness, or other causes that it is unsafe for the person to drive such vehicle. No driver shall use any drug which would adversely affect the driver's ability or alertness.

(B) No owner, as defined in section 4501.01 of the Revised Code, of a "commercial motor vehicle," "com-

mercial car," or "commercial tractor," or a person employing or otherwise directing the driver of such vehicle, shall require or knowingly permit a driver in any such condition described in division (A) of this section to drive such vehicle upon any street or highway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or section 4511.63, 4511.76, 4511.761, 4511.762, 4511.764, or 4511.77 of the Revised Code or a municipal ordinance that is substantially similar to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

HISTORY: 130 v H 391 (Eff 10-10-63); 143 v H 381. Eff 7-1-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.81 Motor vehicle child restraint law; child highway safety fund.

(A) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in section 4511.01 of the Revised Code, that is required by the United States department of transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

- (1) A child who is less than four years of age;
- (2) A child who weighs less than forty pounds.

(B) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab, that is owned, leased, or otherwise under the control of a nursery school, kindergarten, or day-care center, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

- (1) A child who is less than four years of age;
- (2) A child who weighs less than forty pounds.

(C) When any child who is at least four years of age but not older than fifteen years of age is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in section 4511.01 of the Revised Code, that is required by the United States department of transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly restrained either in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards or in an occupant restraining device as defined in section 4513.263 [4513.26.3] of the Revised Code.

(D) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of division (C) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or

commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(E) The director of public safety shall adopt such rules as are necessary to carry out this section.

(F) The failure of an operator of a motor vehicle to secure a child in a child restraint system or in an occupant restraining device as required by this section is not negligence imputable to the child, is not admissible as evidence in any civil action involving the rights of the child against any other person allegedly liable for injuries to the child, is not to be used as a basis for a criminal prosecution of the operator of the motor vehicle other than a prosecution for a violation of this section, and is not admissible as evidence in any criminal action involving the operator of the motor vehicle other than a prosecution for a violation of this section.

(G) This section does not apply when an emergency exists that threatens the life of any person operating a motor vehicle and to whom this section otherwise would apply or the life of any child who otherwise would be required to be restrained under this section.

(H) There is hereby created in the state treasury the "child highway safety fund," consisting of fines imposed pursuant to division (J)(1) of this section for violations of divisions (A), (B), and (C) of this section. The money in the fund shall be used by the department of health only to defray the cost of designating hospitals as pediatric trauma centers under section 3727.081 [3727.08.1] of the Revised Code and to establish and administer a child highway safety program. The purpose of the program shall be to educate the public about child restraint systems generally and the importance of their proper use. The program also shall include a process for providing child restraint systems to persons who meet the eligibility criteria established by the department, and a toll-free telephone number the public may utilize to obtain information about child restraint systems and their proper use.

(I) The director of health, in accordance with Chapter 119. of the Revised Code, shall adopt any rules necessary to carry out this section, including rules establishing the criteria a person must meet in order to receive a child restraint system under the department's child restraint system program; provided that rules relating to the verification of pediatric trauma centers shall not be adopted under this section.

(J)(1) Whoever violates division (A), (B), or (C) of this section shall be punished as follows:

(a) Except as otherwise provided in division (J)(1)(b) of this section, the offender is guilty of a minor misdemeanor and shall be fined not less than twenty-five dollars.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (A), (B), or (C) of this section or of a municipal ordinance that is substantially similar to any of those divisions, the offender is guilty of a misdemeanor of the fourth degree.

(2) All fines imposed pursuant to division (J)(1) of this section shall be forwarded to the treasurer of state for deposit in the "child highway safety fund" created by division (H) of this section.

HISTORY: 139 v H 605 (Eff 3-7-83); 141 v S 54 (Eff 5-6-86); 141 v H 428 (Eff 12-23-86); 142 v S 53 (Eff 10-20-87); 144 v S 98 (Eff 11-12-92); 145 v H 381 (Eff 6-23-94); 148 v H 138 (Eff 11-3-2000); 149

v H 94. Eff 6-6-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v H 343, § 1, eff. 4-6-07.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.82 Littering offenses.

(A) No operator or occupant of a motor vehicle shall, regardless of intent, throw, drop, discard, or deposit litter from any motor vehicle in operation upon any street, road, or highway, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(B) No operator of a motor vehicle in operation upon any street, road, or highway shall allow litter to be thrown, dropped, discarded, or deposited from the motor vehicle, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(C) Whoever violates division (A) or (B) of this section is guilty of a minor misdemeanor.

(D) As used in this section, "litter" means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature.

HISTORY: 142 v H 333. Eff 10-20-87; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.83 Repealed, 149 v S 123, § 2 [142 v H 429; 143 v S 131; 143 v H 837; 144 v S 98; 145 v S 82; 146 v S 2; 148 v H 283; 148 v H 349]. Eff. 1-1-04.

This section concerned ignition interlock devices.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.84 Earphones or earplugs on operator prohibited.

(A) No person shall operate a motor vehicle while wearing earphones over, or earplugs in, both ears. As used in this section, "earphones" means any headset, radio, tape player, or other similar device that provides the listener with radio programs, music, or other recorded information through a device attached to the head and that covers all or a portion of both ears. "Earphones" does not include speakers or other listening devices that are built into protective headgear.

(B) This section does not apply to:

- (1) Any person wearing a hearing aid;
- (2) Law enforcement personnel while on duty;
- (3) Fire department personnel and emergency medical service personnel while on duty;
- (4) Any person engaged in the operation of equipment for use in the maintenance or repair of any highway;
- (5) Any person engaged in the operation of refuse collection equipment.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever vio-

lates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

HISTORY: 143 v S 6. Eff 10-30-89; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.85 Chauffeured limousines.

(A) The operator of a chauffeured limousine shall accept passengers only on the basis of prearranged contracts, as defined in division (LL) of section 4501.01 of the Revised Code, and shall not cruise in search of patronage unless the limousine is in compliance with any statute or ordinance governing the operation of taxicabs or other similar vehicles for hire.

(B) No person shall advertise or hold self out as doing business as a limousine service or livery service or other similar designation unless each vehicle used by the person to provide the service is registered in accordance with section 4503.24 of the Revised Code and is in compliance with section 4509.80 of the Revised Code.

(C) Whoever violates this section is guilty of a misdemeanor of the first degree.

HISTORY: 143 v H 422 (Eff 7-1-91); 147 v H 611. Eff 7-1-99; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[CHAUTAUQUA ASSEMBLY]

§ 4511.90 Application to streets within Chautauqua Assembly.

As used in this section, "Chautauqua assembly" means a corporation that is organized in this state for the purpose of holding Chautauqua assemblies or encouraging religion, art, science, literature, or the general dissemination of knowledge, or two or more of such purposes, and that occupies grounds and holds meetings or entertainments on the grounds for the purposes for which it is organized.

Chapters 4511. and 4513. of the Revised Code are applicable to streets within a Chautauqua assembly. A Chautauqua assembly is a local authority for the purposes of section 4511.07 of the Revised Code.

HISTORY: 138 v H 316 (Eff 10-26-79); 138 v H 948. Eff 5-22-80.

[NONRESIDENT VIOLATOR COMPACT OF 1977]

§ 4511.95 Renumbered RC § 4510.71 in 149 v S 123. Eff 1-1-04

[§ 4511.95.1] § 4511.951 Amended and renumbered RC § 4510.72 in 149 v S 123. Eff 1-1-04

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

§ 4511.98 Warning signs as to increased penalties in construction zones.

The director of transportation, board of county commissioners, or board of township trustees shall cause signs to be erected advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a construction zone. The increased penalties shall be effective only when signs are erected in accordance with the guidelines and design specifications established by the director under section 5501.27 of the Revised Code, and when a violation occurs during hours of actual work within the construction zone.

HISTORY: 145 v H 247. Eff 5-1-95; 150 v H 52, § 1, eff. 6-1-04.

The effective date is set by section 4 of HB 247.

§ 4511.99 Penalties.

Whoever violates any provision of sections 4511.01 to 4511.76 of the Revised Code for which no penalty otherwise is provided in the section violated is guilty of one of the following:

(A) Except as otherwise provided in division (B) or (C) of this section, a minor misdemeanor;

(B) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree;

(C) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle or traffic offenses, a misdemeanor of the third degree.

HISTORY: Bureau of Code Revision, 10-1-53; 125 v 461; 128 v 469 (Eff 11-10-59); 129 v 1273 (Eff 10-26-61); 130 v 1089 (Eff 10-10-63); 131 v 1109 (Eff 9-1-65); 131 v 1107 (Eff 9-22-65); 132 v H 1 (Eff 2-21-67); 132 v S 37 (Eff 11-14-67); 132 v H 380 (Eff 1-1-68); 134 v H 511 (Eff 1-1-74); 137 v H 652 (Eff 3-13-78); 137 v S 381 (Eff 10-19-78); 137 v S 389 (Eff 3-15-79); 139 v H 707 (Eff 1-1-83); 139 v H 605 (Eff 3-7-83); 139 v S 432 (Eff 3-16-83); 140 v H 133 (Eff 9-27-83); 140 v S 169, § 1 (Eff 6-18-84); 140 v S 169, § 3 (Eff 1-1-85); 140 v H 112 (Eff 10-4-84); 140 v H 460 (Eff 4-4-85); 141 v S 54 (Eff 5-6-86); 141 v S 262 (Eff 3-20-87); 142 v H 333 (Eff 10-20-87); 142 v S 53 (Eff 10-20-87); 142 v H 429 (Eff 6-20-88); 142 v H 708 (Eff 4-19-88); 143 v H 8 (Eff 9-13-89); 143 v H 381 (Eff 7-1-89); 143 v S 86 (Eff 10-30-89); 143 v S 49 (Eff 11-3-89); 143 v H 317 (Eff 10-10-89); 143 v H 162 (Eff 6-28-90); 143 v H 422 (Eff 7-1-91); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 143 v S 382 (Eff 12-31-90); 144 v H 73 (Eff 9-25-91); 144 v H 130 (Eff 10-10-91); 144 v H 725 (Eff 4-16-93); 144 v S 275 (Eff 9-1-93); 145 v H 149 (Eff 5-20-93); 145 v S 62, § 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 145 v H 381 (Eff 6-23-94); 145 v H 247 (Eff 5-1-95); 146 v S 2 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 146 v H 676 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 72 (Eff 3-18-97); 147 v S 60 (Eff 10-21-97); 148 v H 86 (Eff 9-28-99); 148 v H 148 (Eff 10-14-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 80 (Eff 6-8-2000); 148 v H 135 (Eff 11-3-2000); 149 v S 231. Eff 10-24-2002; 149 v S 123, § 1, Eff 1-1-04; 149 v H 490, § 4, Eff 1-1-04.

The effective date is set by section 4 of H.B. 490.

The provisions of § 5 of H.B. 490 (149 v —) read as follows:

SECTION 5. Section 4511.99 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 123 and Am. Sub. S.B. 231 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the specified composite is the resulting version of the specified sections in effect prior to the effective date of the section as presented in this act.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

[§ 4511.99.1] § 4511.991 Repealed,
149 v S 123, § 2 [139 v S 432]. Eff. 1-1-04.

This section defined "three consecutive days".

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

CHAPTER 4519: SPECIAL VEHICLES

§ 4519.44 Operator's license required; operation by persons under sixteen.

(A) No person who does not hold a valid, current motor vehicle driver's or commercial driver's license, motorcycle operator's endorsement, or probationary license, issued under Chapter 4506. or 4507. of the Revised Code, shall operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on any street or highway in this state, on any portion of the right-of-way thereof, or on any public land or waters.

(B) No person who is less than sixteen years of age shall operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on any land or waters other than private property or waters owned by or leased to the person's parent or guardian, unless accompanied by another person who is eighteen years of age, or older, and who holds a license as provided in division (A) of this section, except that the department of natural resources may permit such operation on state controlled land under its jurisdiction when such person is less than sixteen years of age, but is twelve years of age or older and is accompanied by a parent or guardian who is a licensed driver eighteen years of age or older.

(C) Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars, imprisoned not less than three nor more than thirty days, or both.

HISTORY: 134 v H 214 (Eff 3-7-72); 138 v H 450 (Eff 5-29-80); 143 v H 381 (Eff 7-1-89); 147 v H 611. Eff 7-1-99; 149 v S 123, § 1, eff. 1-1-04.

The effective date is set by section 4 of S.B. 123.

See provisions, § 5 of S.B. 123 (149 v —), following RC § 4501.01.

CHAPTER 4521: LOCAL, NONCRIMINAL PARKING INFRACTIONS

§ 4521.01 Definitions.

As used in this chapter:

(A) "Parking infraction" means a violation of any ordinance, resolution, or regulation enacted by a local authority that regulates the standing or parking of vehicles and that is authorized pursuant to section 505.17 or 4511.07 of the Revised Code, or a violation of any ordinance, resolution, or regulation enacted by a local authority as authorized by this chapter, if the local authority in either of these cases also has enacted an ordinance, resolution, or regulation of the type described in division (A) of section 4521.02 of the Revised Code in relation to the particular regulatory ordinance, resolution, or regulation.

(B) "Vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(C) "Court" means a municipal court, county court, juvenile court, or mayor's court, unless specifically identified as one of these courts, in which case it means the specifically identified court.

(D) "Local authority" means every county, municipal corporation, township, or other local board or body having authority to adopt police regulations pursuant to the constitution and laws of this state.

(E) "Disability parking space" means a motor vehicle parking location that is reserved for the exclusive standing or parking of a vehicle that is operated by or on behalf of a person with a disability that limits or impairs the ability to walk and displays a placard or license plates issued under section 4503.44 of the Revised Code.

(F) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in section 4503.44 of the Revised Code.

HISTORY: 139 v H 707. Eff 1-1-83; 150 v H 30, § 1, eff. 3-23-05.

The effective date is set by section 3 of HB 707.

§ 4521.05 Jurisdiction of bureau and courts; operating costs, violations clerk, hearing examiners; contracts for collection.

(A) If a parking violations bureau or a joint parking violations bureau is established pursuant to section 4521.04 of the Revised Code, notwithstanding any other provision of law to the contrary, the bureau or joint bureau has jurisdiction over each parking infraction that is a violation of an ordinance, resolution, or regulation of any local authority and that occurs within the territory of the municipal corporation or the unincorporated area of the township that established the bureau or the territory of any of the municipal corporations or the unincorporated area of any of the townships that joined together to jointly establish the joint bureau, regardless of whether the local authority was the municipal corporation or township that established the bureau or was one of the municipal corporations or townships that joined together to jointly establish the joint bureau. Notwithstanding any other provision of law to the contrary, each parking infraction that is a violation of an ordinance, resolution, or regulation of any local authority and that occurs within the jurisdiction of the bureau or the joint bureau and the enforcement of each such parking infraction shall be handled pursuant to and be governed by the provisions of this chapter. No traffic violations bureau established pursuant to Traffic Rule 13 that otherwise would have jurisdiction over such a parking infraction shall have jurisdiction over it.

The operating costs of a parking violations bureau shall be paid by the municipal corporation or township that establishes it, and the operating costs of a joint parking violations bureau shall be paid by all of the municipal corporations or townships that jointly establish it, in the proportions agreed upon by the legislative authorities of the municipal corporations or townships. The legislative authority of the municipal corporation or township that establishes a parking violations bureau and the legislative authorities of all of the municipal corporations or townships that join together to establish a joint parking violations bureau, by agreement, shall appoint a violations clerk for the bureau or joint bureau, and, subject to the exception provided in this division, shall appoint hearing

examiners and necessary clerical employees for the bureau or joint bureau. The legislative authority of the municipal corporation or township that establishes a bureau and the legislative authorities of all of the municipal corporations or townships that join together to establish a joint bureau, by agreement, may delegate its or their duty to appoint either hearing examiners or necessary clerical personnel, or both, to the violations clerk appointed for the bureau or joint bureau, in which case the violations clerk, upon his appointment, shall make those appointments in accordance with the delegation. No person shall be employed as a hearing examiner unless the person is an attorney admitted to the practice of law in this state or formerly was employed as a law enforcement officer.

The fine and penalties established for a parking infraction by any local authority shall be collected, retained, and disbursed by the violations clerk if the parking infraction out of which the fine or penalties arose occurred within the jurisdiction of the bureau or joint bureau. The fine and penalties collected by a violations clerk for a parking infraction shall be disbursed by the clerk to the local authority whose ordinance, resolution, or regulation was violated.

(B) A juvenile court and a traffic violations bureau established by a court pursuant to Traffic Rule 13 shall retain jurisdiction over each parking infraction that occurs within the territorial jurisdiction of the court or the court that established the bureau, and that is not within the jurisdiction of a parking violations bureau or a joint parking violations bureau, as determined under division (A) of this section. However, notwithstanding any other provision of law to the contrary, each such parking infraction and the enforcement of each such parking infraction shall be handled by the juvenile court or the traffic violations bureau pursuant to and be governed by the provisions of this chapter. The fine and penalties established for a parking infraction by any local authority shall be collected, retained, and disbursed by the clerk of the juvenile court or the violations clerk of the traffic violations bureau if the parking infraction occurred within the territorial jurisdiction of the court or the court that established the bureau and if it did not occur within the jurisdiction of a parking violations bureau or joint parking violations bureau. The fine and penalties collected by a clerk for a parking infraction shall be disbursed by the clerk to the local authority whose ordinance, resolution, or regulation was violated.

(C) If a local authority does not enact an ordinance, resolution, or regulation of the type described in division (A) of section 4521.02 of the Revised Code in relation to an ordinance, resolution, or regulation enacted by the local authority that regulates the standing or parking of vehicles and that is authorized by section 505.17 or 4511.07 of the Revised Code, a violation of the particular regulatory ordinance, resolution, or regulation is not a parking infraction for purposes of this chapter.

(D) A municipal corporation or township that establishes a parking violations bureau, the municipal corporations or townships that jointly establish a joint parking violations bureau, by agreement, or a court that establishes a traffic violations bureau may contract with any governmental or nongovernmental entity to provide services in processing, collecting, and enforcing parking tickets issued by law enforcement officers and civil judgments and default civil judgments entered pursuant to this chapter.

HISTORY: 139 v H 707 (Eff 1-1-83); 140 v H 112 (Eff 10-4-84); 144 v S 256. Eff 8-3-92.

§ 4521.06 Answer to charge; hearing upon denial; explanation in mitigation.

(A) A person who is personally or constructively served with a parking ticket charging the commission of a parking infraction may answer the charge by personal appearance before the parking violations bureau, joint parking violations bureau, traffic violations bureau, or juvenile court, whichever is applicable, or by mail. A local authority may, by ordinance, resolution, or regulation, also authorize the answer to a charge of a parking infraction that is a violation of any of its ordinances, resolutions, or regulations to be made by telephone, in which case the parking ticket adopted by the local authority shall indicate such fact. An answer shall be made within the time specified by the local authority and indicated on the ticket, and shall be in one of the following forms:

(1) An admission that the person committed the parking infraction, by payment of any fine arising out of the parking infraction;

(2) An admission that the person committed the parking infraction, with an explanation of the circumstances surrounding the parking infraction;

(3) A denial that the person committed the parking infraction and a request for a hearing relative to the infraction. If the person desires the presence, at the hearing, of the law enforcement officer who issued the parking ticket, the person must request his presence in his answer.

(B)(1) A person who admits that he committed a parking infraction shall, and a person who admits that he committed a parking infraction with explanation may, when he makes his answer, pay the fine arising out of the infraction admitted to the violations clerk of the bureau, or to the clerk of the juvenile court, to which the answer is made.

(2) A person who admits that he committed a parking infraction with explanation shall submit evidence to the bureau or juvenile court to which the answer is made that explains the circumstances surrounding the parking infraction. The evidence may be submitted in person or, to avoid the necessity of personal appearance, may be sent as affidavits and other documentary evidence, by mail. A bureau or juvenile court that receives an answer admitting that a person committed a parking infraction with explanation shall promptly determine whether the explanation mitigates the fact that the person committed the parking infraction and notify the person, in writing, of its determination.

If the bureau or juvenile court determines that the explanation mitigates the fact that the person committed the parking infraction, the bureau or juvenile court shall eliminate or reduce the amount of the fine arising out of the parking infraction. If the fine is eliminated or reduced and the person has previously paid the fine, the amount paid in excess of the revised fine shall be returned to the person; if the fine is eliminated or reduced and the person has not previously paid the fine, the person shall pay only the amount of the revised fine. If the bureau or juvenile court determines that the explanation does not mitigate the fact that the person committed the parking infraction, the person owes the entire amount of the fine arising out of the parking infraction, and if the person has

not previously paid the fine, the person shall pay the entire amount of the fine. If a person admits that he committed a parking infraction with explanation and the person fails to pay the amount of the fine due within ten days after receiving notice of the bureau's or juvenile court's determination, unless the amount due has previously been paid, the bureau's or juvenile court's determination and the amount of the fine due shall be considered a judgment and shall be treated as if it were a judgment rendered subsequent to a hearing held pursuant to division (B) of section 4521.08 of the Revised Code.

(3) A person who denies that he committed a parking infraction shall be granted a hearing concerning the infraction. The bureau or juvenile court shall set a date for the hearing and notify the person, in writing, of the date, time, and place of the hearing. The hearing shall be conducted by a hearing examiner of the parking violations bureau or joint parking violations bureau, or a hearing examiner or referee of the traffic violations bureau, or a referee of the juvenile court, whichever is applicable, in accordance with section 4521.08 of the Revised Code.

(C) If a person who is personally or constructively served with a parking ticket charging the commission of a parking infraction fails to timely answer the charge, as provided in division (A) of this section, the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, whichever is applicable, shall issue the proper notifications of infraction pursuant to section 4521.07 of the Revised Code, and proceed according to that section. Failure to timely answer a charge may result in the imposition of the additional penalties prescribed by ordinance, resolution, or regulation of the local authority enacted pursuant to section 4521.02 of the Revised Code or by the court.

(D) The issuance of a parking ticket, the filing of or failure to file an answer by a person personally or constructively served with the ticket, the substance of an answer, the payment of any fine, and any other relevant information shall be entered in the records of the particular bureau or juvenile court.

HISTORY: 139 v H 707, Eff 1-1-83.

The effective date is set by section 3 of HB 707.

§ 4521.07 Notification of infraction upon failure to answer.

(A) When a person is personally or constructively served with a parking ticket charging the commission of a parking infraction in accordance with section 4521.03 of the Revised Code and the person fails to answer the charge within the time specified by the local authority pursuant to section 4521.02 of the Revised Code, the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, that has jurisdiction over the parking infraction shall send notifications of infraction as follows:

(1) If the person who fails to answer was the operator of the vehicle involved in the parking infraction at the time of the commission of the parking infraction and was personally served with the parking ticket, a notification of infraction shall be sent to that person, and additionally if such person is not the owner of the vehicle, as determined from the records of the bureau of motor vehicles, a notification of infraction also shall be sent to the owner at his most recent address appearing in such records;

(2) If the person who fails to answer was the owner of the vehicle and was constructively served with the parking ticket, a notification of infraction shall be sent to the owner at his most recent address appearing in the records of the bureau of motor vehicles.

(B) A notification of infraction shall be sent within twelve months after the expiration of the time specified by the local authority pursuant to section 4521.02 of the Revised Code for the making of an answer, shall be sent by first class mail, and shall contain all of the following:

(1) An identification of the parking infraction with which the person was charged and the time and date of the parking ticket charging the parking infraction that was personally or constructively served upon the person;

(2) An identification of the amount of the fine, penalties, and costs arising out of the parking infraction that are due;

(3) A warning that the person must answer the parking infraction charged in the ticket within thirty days or a default civil judgment in the amount of the fine, penalties, and costs due may be entered against the person;

(4) A description of the allowable answers that may be made and notification that the person will be afforded a hearing before the bureau or juvenile court if he denies in his answer that he committed the parking infraction;

(5) An identification of the manners in which and the entity to which an answer may be made;

(6) A warning that if the person fails to appear at a requested hearing, a default civil judgment in the amount of the fine, penalties, and costs due may be entered against the person;

(7) A warning that the registration of the vehicle involved in the parking infraction, if the vehicle is registered in this state, may not be renewed or transferred if a civil judgment or a default civil judgment is entered against the person until the judgment is paid or until it is otherwise finally disposed of in a manner specified in this chapter.

(C) A person who receives a notification of infraction pursuant to this section may answer the parking infraction with which he is charged that is identified in the notification of infraction in any of the manners provided in division (A) of section 4521.06 of the Revised Code for answers to parking infractions charged in a parking ticket. An answer under this section shall be made within thirty days after the date on which the notification of infraction was mailed, and shall be in one of the forms specified in divisions (A)(1), (2), and (3) of section 4521.06 of the Revised Code for answers to parking infractions charged in a parking ticket, except that if the answer includes payment of the fine arising out of the parking infraction any penalty arising out of such infraction also shall be paid. The answer shall be governed by the provisions of division (B) of section 4521.06 of the Revised Code for answers relative to parking infractions charged in a parking ticket, except that any determination of the amount to be paid under an answer admitting the commission of the parking infraction with explanation also shall consider any penalty arising out of such infraction.

(D) If a person who is issued a notification of infraction fails to timely answer, as provided in division (C) of this section, the failure to answer shall be considered an admission that the person committed the parking infraction, and a default civil judgment, in the amount of the fine, penalties, and costs due may be entered against the

person. Failure to timely answer the parking infraction identified in the notification of infraction may result in the imposition of the additional penalties prescribed by ordinance, resolution, or regulation of the local authority enacted pursuant to section 4521.02 of the Revised Code or by the court.

(E) The sending of a notification of infraction, the filing of or failure to file an answer by the person to whom it is sent, the substance of an answer, the payment of any fine, and any other relevant information shall be entered in the records of the particular bureau or juvenile court.

HISTORY: 139 v H 707. Eff 1-1-83.

The effective date is set by section 3 of HB 707.

§ 4521.08 Hearing upon denial; determination; judgment or default judgment; appeal.

(A) If a person who is personally or constructively served with a parking ticket charging the commission of a parking infraction or who receives a notification of infraction, in his answer to the charge denies that he committed the infraction, the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, that has jurisdiction shall conduct a hearing to determine if the person committed the parking infraction. Each hearing shall be conducted by a hearing examiner of the parking violations bureau or joint parking violations bureau, a hearing examiner or referee of the traffic violations bureau, or a referee of the juvenile court. Each hearing shall be conducted in such manner as the hearing examiner or referee considers appropriate. Rules regarding the admissibility of evidence shall not be strictly applied in the hearing, but all testimony shall be under oath.

At the hearing, the local authority whose ordinance, resolution, or regulation allegedly was violated and resulted in the charge has the burden of proving, by a preponderance of the evidence, that the person for whom the hearing is being conducted committed the parking infraction. If the person, in his answer, denied that he committed the parking infraction and requested the presence at the hearing of the law enforcement officer who issued the parking ticket, the officer shall be required to attend the hearing unless the hearing examiner or referee determines that the officer's presence is not required. If the officer's presence at the hearing has been requested and the officer is unable to attend the hearing on the day and at the time scheduled, the hearing examiner or referee may grant a reasonable continuance. The person for whom the hearing is being conducted may present any relevant evidence and testimony at the hearing. The person does not have to attend the hearing if he submits documentary evidence to the hearing examiner or referee prior to the day of the hearing.

The local authority shall submit the original parking ticket that was personally or constructively served on the person or a true copy of that ticket, and information from the bureau of motor vehicles that identifies the owner of the vehicle. The ticket and the information in proper form is prima-facie evidence that the registered owner of the vehicle was the person who committed the parking infraction. The local authority may present additional evidence and testimony at the hearing. The local authority does not have to be represented at the hearing by an attorney.

(B)(1) If a person for whom a hearing is to be conducted under division (A) of this section appears at the scheduled hearing or submits evidence in accordance with that division, the hearing examiner or referee shall consider all evidence and testimony presented and shall determine whether the local authority has established, by a preponderance of the evidence, that the person committed the parking infraction. If the hearing examiner or referee determines that the person committed the infraction, an order indicating the determination as a judgment against the person and requiring the person to pay the appropriate fine and any additional penalties shall be entered in the records of the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, whichever is applicable.

(2) If a person for whom a hearing is to be conducted under division (A) of this section fails to appear at the scheduled hearing and fails to submit evidence in accordance with that division, the hearing examiner or referee shall, if he determines from any evidence and testimony presented at the hearing, by a preponderance of the evidence, that the person committed the parking infraction, enter a default judgment against the person and require the person to pay the appropriate fine and any additional penalties. A default judgment entered under this division shall be entered in the records of the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, whichever is applicable.

(3) If a person who is sent a notification of infraction pursuant to section 4521.07 of the Revised Code does not timely answer, as provided in division (C) of that section, the hearing examiner of the parking violations bureau or joint parking violations bureau, the hearing examiner or referee of the traffic violations bureau, or the referee of the juvenile court, whichever is applicable, shall, if he determines from any evidence and testimony presented to him by the local authority, by a preponderance of the evidence, that the person committed the parking infraction, enter a default judgment against the person and require the person to pay the appropriate fine and any additional penalties. A default judgment entered under this division shall be entered in the records of the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, whichever is applicable.

(4) If the hearing examiner or referee does not determine, by a preponderance of the evidence, that a person in any of the classes described in division (B)(1), (2), or (3) of this section committed the parking infraction, the hearing examiner or referee shall enter judgment against the local authority whose ordinance, resolution, or regulation allegedly was violated, shall dismiss the charge of the parking infraction against the person, and shall enter the judgment and dismissal in the records of the traffic violations bureau, joint parking violations bureau, or parking violations bureau, or the juvenile court, whichever is applicable.

(5) A default judgment entered under this section may be vacated by the hearing examiner or referee who entered it if all of the following apply:

(a) The person against whom the default judgment was entered files a motion with the proper parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the proper juvenile court within one year of the date of entry of the judgment;

(b) The motion sets forth a sufficient defense to the parking infraction out of which the judgment arose;

(c) The motion sets forth excusable neglect as to the person's failure to attend the hearing or answer the notification of infraction.

(C) Payment of any judgment or default judgment entered against a person pursuant to this section shall be made to the violations clerk of the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or to the clerk of the juvenile court, in which the judgment was entered within ten days of the date of entry. All money paid in satisfaction of a judgment or default judgment shall be disbursed by the clerk to the local authority whose ordinance, resolution, or regulation was violated, and the clerk shall enter the fact of payment of the money and its disbursement in the records of the bureau or juvenile court. If payment is not made within this time period, the judgment or default judgment may be filed with the clerk of the municipal court or county court within whose territorial jurisdiction the ordinance, resolution, or regulation was violated, and when so filed, shall have the same force and effect as a money judgment in a civil action rendered in that court.

Judgments and default judgments filed with a court pursuant to this division shall be maintained in a separate index and judgment roll from other judgments rendered in the court. Computer printouts, microfilm, microdot, microfiche, or other similar data recording techniques may be utilized to record such judgments. When a judgment or default judgment is filed with a court, execution may be levied, and such other measures may be taken for its collection as are authorized for the collection of an unpaid money judgment in a civil action rendered in that court. The municipal or county court may assess costs against the judgment debtor, in an amount not exceeding ten dollars for each parking infraction, to be paid upon satisfaction of the judgment.

(D) Any person against whom a judgment or default judgment is entered pursuant to this section and any local authority against whom a judgment is entered pursuant to this section may appeal the judgment or default judgment to the municipal court or county court within whose territorial jurisdiction the ordinance, resolution, or regulation was violated if the judgment or default judgment was entered by a bureau, or to a judge of the juvenile court within whose territorial jurisdiction the ordinance, resolution, or regulation was violated if the judgment or default judgment was entered by a referee of a juvenile court, by filing notices of appeal with the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the referee of the juvenile court, in which the judgment was entered, and the municipal or county court or the clerk of the juvenile court within fifteen days of the date of entry of the judgment and by the payment of such reasonable costs as the court or juvenile judge requires. Upon the filing of an appeal, the court or juvenile judge shall schedule a hearing date and notify the parties of the date, time, and place of the hearing. The hearing shall be held by the court or juvenile judge in accordance with the rules of the court. Service of a notice of appeal under this division by a person does not stay enforcement and collection of the judgment or default judgment from which appeal is taken by the person unless the person who files the appeal posts bond with the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile

court, in the amount of the judgment, plus court costs, at or before service of the notice of appeal.

Notwithstanding any other provision of law, the judgment on appeal of the municipal or county court or of the juvenile judge is final, and no other appeal of the judgment of the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or of the referee of the juvenile court, whichever is applicable, and no appeal of the judgment of the municipal or county court or of the juvenile judge may be taken.

(E) A judgment or default judgment entered pursuant to this section may be filed with a municipal court or county court under division (C) of this section at any time within three years after the date of issuance of the parking ticket charging the parking infraction out of which the judgment arose. This division applies to any ticket issued for an offense that would be a parking infraction on or after the effective date of this section, if the ticket was issued within three years prior to the effective date of this section and a warrant has not been issued and served on the operator or owner of the vehicle involved in the offense.

HISTORY: 139 v H 707 (Eff 1-1-83); 142 v H 373. Eff 10-9-89.

§ 4521.09 Exceptions to owner's liability.

(A) An owner of a vehicle is not jointly liable with an operator of the vehicle whose act or omission resulted in a parking infraction for the parking infraction or any fine, penalty, or processing fee arising out of the parking infraction under this chapter if either of the following apply:

(1) The owner answers the charge of the parking infraction under section 4521.06 or 4521.07 of the Revised Code, the answer denies that he committed the infraction and requests a hearing concerning the infraction, the owner additionally asserts and provides reasonable evidence at that time to prove that the vehicle, at the time of the commission of the parking infraction, was being used by the operator without the owner's express or implied consent, and the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, that has jurisdiction over the parking infraction determines that the vehicle was being used without the owner's express or implied consent at that time. If the bureau or juvenile court does not so determine, it shall conduct the hearing concerning the infraction according to section 4521.08 of the Revised Code.

(2) The owner answers the charge of the parking infraction under section 4521.06 or 4521.07 of the Revised Code, the answer denies that he committed the parking infraction, the owner additionally submits evidence at that time that proves that, at the time of the alleged commission of the infraction, the owner was engaged in the business of renting or leasing vehicles under written rental or lease agreements, and the owner additionally submits evidence that proves that, at the time of the alleged commission of the parking infraction, the vehicle in question was in the care, custody, or control of a person other than the owner pursuant to a written rental or lease agreement.

If the owner does not so prove, the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, shall conduct a hearing relative to the infraction according to section 4521.08 of the Revised Code.

(3) The owner, at a hearing concerning the parking infraction conducted in accordance with section 4521.08 of the Revised Code, proves that the vehicle, at the time of the parking infraction, was being used by the operator without the owner's express or implied consent or proves the facts described in division (A)(2) of this section.

(B) An owner of a vehicle who is engaged in the business of renting or leasing vehicles under written rental or lease agreements, but who does not satisfy the additional requirements of division (A)(2) of this section is not liable for any penalties or processing fees arising out of a parking infraction involving the vehicle if at the time of the commission of the parking infraction, the vehicle was in the care, custody, or control of a person other than the owner pursuant to a written rental or lease agreement, and if the owner answers the charge of the parking infraction by denying that he committed the parking infraction or by paying the fine arising out of the parking infraction within thirty days after actual receipt of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty days after receipt of the notification of infraction.

Proof that the vehicle was in the care, custody, or control of a person other than the owner pursuant to a written rental or lease agreement at the time of the alleged parking infraction shall be established by sending

a true copy of the rental or lease agreement or an affidavit to that effect to the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court that has jurisdiction over the alleged parking infraction within thirty days after the date of receipt by the owner of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty days after receipt of the notification of infraction. The submission of a true copy of a written rental or lease agreement or affidavit shall be prima-facie evidence that a vehicle was in the care, custody, or control of a person other than the owner. The affidavit authorized by this section shall be accompanied by a postage-paid, self-addressed envelope, shall be in a form the registrar of motor vehicles shall prescribe, and shall include space for the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court that has jurisdiction over the alleged parking infraction to indicate receipt of the affidavit. Within thirty days of receipt of the affidavit, the bureau or court shall return a receipted copy of the affidavit to the rental or lease company. In addition, any information required by division (A)(2) of this section may be provided on magnetic tape or another computer readable media in a format acceptable to the particular local authority.

HISTORY: 139 v H 707 (EFF 1-1-83); 142 v H 373. EFF 10-9-89.

TITLE 51: PUBLIC WELFARE

CHAPTER 5103: PLACEMENT OF CHILDREN

§ 5103.03 Powers and duties of department in certification of institutions or associations for children.

(A) The director of job and family services shall adopt rules as necessary for the adequate and competent management of institutions or associations.

(B)(1) Except for facilities under the control of the department of youth services, places of detention for children established and maintained pursuant to sections 2151.34 to 2151.3415 [2151.34.15]† of the Revised Code, and child day-care centers subject to Chapter 5104. of the Revised Code, the department of job and family services every two years shall pass upon the fitness of every institution and association that receives, or desires to receive and care for children, or places children in private homes.

(2) When the department of job and family services is satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with, it shall issue to the institution or association a certificate to that effect. A certificate is valid for two years, unless sooner revoked by the department. When determining whether an institution or association meets a particular requirement for certification, the department may consider the institution or association to have met the requirement if the institution or association shows to the department's satisfaction that it has met a comparable requirement to be accredited by a nationally recognized accreditation organization.

(3) The department may issue a temporary certificate valid for less than one year authorizing an institution or association to operate until minimum requirements have been met.

(4) An institution or association that knowingly makes a false statement that is included as a part of certification under this section is guilty of the offense of falsification under section 2921.13 of the Revised Code and the department shall not certify that institution or association.

(C) The department may revoke a certificate if it finds that the institution or association is in violation of law or rule. No juvenile court shall commit a child to an association or institution that is required to be certified under this section if its certificate has been revoked or, if after revocation, the date of reissue is less than fifteen months prior to the proposed commitment.

(D) Every two years, on a date specified by the department, each institution or association desiring certification or recertification shall submit to the department a report showing its condition, management, competency to care adequately for the children who have been or may be committed to it or to whom it provides care or services, the system of visitation it employs for children placed in private homes, and other information the department requires.

(E) The department shall, not less than once each year, send a list of certified institutions and associations to each juvenile court and certified association or institution.

(F) No person shall receive children or receive or solicit money on behalf of such an institution or association not so certified or whose certificate has been revoked.

(G) The director may delegate by rule any duties imposed on it by this section to inspect and approve family foster homes and specialized foster homes to public children services agencies, private child placing agencies, or private noncustodial agencies.

(H) If the director of job and family services determines that an institution or association that cares for children is operating without a certificate, the director may petition the court of common pleas in the county in which the institution or association is located for an order enjoining its operation. The court shall grant injunctive relief upon a showing that the institution or association is operating without a certificate.

(I) If both of the following are the case, the director of job and family services may petition the court of common pleas of any county in which an institution or association that holds a certificate under this section operates for an order, and the court may issue an order, preventing the institution or association from receiving additional children into its care or an order removing children from its care:

(1) The department has evidence that the life, health, or safety of one or more children in the care of the institution or association is at imminent risk.

(2) The department has issued a proposed adjudication order pursuant to Chapter 119. of the Revised Code to deny renewal of or revoke the certificate of the institution or association.

HISTORY: GC § 1352-1; 103 v 864; Bureau of Code Revision, 10-1-53; 128 v 1126 (Eff 11-2-59); 130 v 1167 (Eff 10-7-63); 133 v S 105 (Eff 11-25-69); 139 v H 440 (Eff 11-23-81); 141 v H 428 (Eff 12-23-86); 145 v H 152 (Eff 7-1-93); 146 v H 419 (Eff 9-18-96); 148 v H 471 (Eff 7-1-2000); 148 v H 332 (Eff 1-1-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 424. Eff 3-14-2003; 150 v H 117, § 1, eff. 9-3-04; 151 v S 238, § 1, eff. 9-21-06.

† These sections were renumbered to RC § 2152.41 et seq. or repealed, eff. 1-1-02.

The provisions of § 7 of 151 v S 238 read as follows:

SECTION 7. Section 5103.03 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 117 of the 125th General Assembly and Sub. S.B. 179 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting version of the sections in effect prior to the effective dates of the sections as presented in this act.

Comment, Legislative Service Commission

Section 5103.03 of the Revised Code is amended by Sub. S.B. 179 of the 123rd General Assembly and Am. Sub. H.B. 117 of the 125th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 5103.13 Certification of children's crisis care facilities.

(A) As used in this section and section 5103.131 [5103.13.1] of the Revised Code:

(1)(a) "Children's crisis care facility" means a facility that has as its primary purpose the provision of residential and other care to either or both of the following:

(i) One or more preteens voluntarily placed in the facility by the preteen's parent or other caretaker who is facing a crisis that causes the parent or other caretaker to seek temporary care for the preteen and referral for support services;

(ii) One or more preteens placed in the facility by a public children services agency or private child placing agency that has legal custody or permanent custody of the preteen and determines that an emergency situation

exists necessitating the preteen's placement in the facility rather than an institution certified under section 5103.03 of the Revised Code or elsewhere.

(b) "Children's crisis care facility" does not include either of the following:

(i) Any organization, society, association, school, agency, child guidance center, detention or rehabilitation facility, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health, or the department of mental retardation and developmental disabilities;

(ii) Any individual who provides care for only a single-family group, placed there by their parents or other relative having custody.

(2) "Legal custody" and "permanent custody" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

(3) "Preteen" means an individual under thirteen years of age.

(B) No person shall operate a children's crisis care facility or hold a children's crisis care facility out as a certified children's crisis care facility unless there is a valid children's crisis care facility certificate issued under this section for the facility.

(C) A person seeking to operate a children's crisis care facility shall apply to the director of job and family services to obtain a certificate for the facility. The director shall certify the person's children's crisis care facility if the facility meets all of the certification standards established in rules adopted under division (F) of this section and the person complies with all of the rules governing the certification of children's crisis care facilities adopted under that division. The issuance of a children's crisis care facility certificate does not exempt the facility from a requirement to obtain another certificate or license mandated by law.

(D)(1) No certified children's crisis care facility shall do any of the following:

(a) Provide residential care to a preteen for more than one hundred twenty days in a calendar year;

(b) Subject to division (D)(1)(c) of this section and except as provided in division (D)(2) of this section, provide residential care to a preteen for more than sixty consecutive days;

(c) Except as provided in division (D)(3) of this section, provide residential care to a preteen for more than seventy-two consecutive hours if a public children services agency or private child placing agency placed the preteen in the facility;

(d) Fail to comply with section 2151.86 of the Revised Code.

(2) A certified children's crisis care facility may provide residential care to a preteen for up to ninety consecutive days, other than a preteen placed in the facility by a public children services agency or private child placing agency, if any of the following are the case:

(a) The preteen's parent or other caretaker is enrolled in an alcohol and drug addiction program certified under section 3793.06 of the Revised Code or a community mental health service certified under section 5119.611 [5119.61.1] of the Revised Code;

(b) The preteen's parent or other caretaker is an inpatient in a hospital;

(c) The preteen's parent or other caretaker is incarcerated;

(d) A physician has diagnosed the preteen's parent or other caretaker as medically incapacitated.

(3) A certified children's crisis care facility may provide residential care to a preteen placed in the facility by a public children services agency or private child placing agency for more than seventy-two consecutive hours if the director of job and family services or the director's designee issues the agency a waiver of the seventy-two consecutive hour limitation. The waiver may authorize the certified children's crisis care facility to provide residential care to the preteen for up to fourteen consecutive days.

(E) The director of job and family services may suspend or revoke a children's crisis care facility's certificate pursuant to Chapter 119. of the Revised Code if the facility violates division (D) of this section or ceases to meet any of the certification standards established in rules adopted under division (F) of this section or the facility's operator ceases to comply with any of the rules governing the certification of children's crisis care facilities adopted under that division.

(F) Not later than ninety days after the effective date of this amendment, the director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code for the certification of children's crisis care facilities. The rules shall specify that a certificate shall not be issued to an applicant if the conditions at the children's crisis care facility would jeopardize the health or safety of the preteens placed in the facility.

HISTORY: RC § 5103.03.1, 143 v S 258 (Eff 8-22-90); 145 v S 192 (Eff 10-20-94); 148 v H 471 (Eff 7-1-2000); RC § 5103.13, 148 v H 332, Eff 1-1-2001; 151 v S 238, § 1, eff. 9-21-06.

Not analogous to former RC § 5103.13 (GC § 1352-9; 108 v Ptl, 134; 109 v 361; 121 v 419; Bureau of Code Revision, 10-1-53; 126 v 741), repealed 135 v H 1138, § 2, eff 10-2-74.

The effective date is set by section 5 of HB 332.

§ 5103.15 Agreement for temporary custody or surrender of permanent custody.

(A)(1) The parents, guardian, or other persons having the custody of a child may enter into an agreement with any public children services agency or private child placing agency, whereby the child is placed without the approval of the juvenile court in the temporary custody of the agency for a period of time of up to thirty days, except that an agreement for temporary custody can be for a period of time of up to sixty days without court approval if the agreement is executed solely for the purpose of obtaining the adoption of a child who is less than six months of age on the date of the execution of the agreement.

(2) Except as provided in division (A)(3) of this section for agreements entered into to obtain the adoption of a child under the age of six months, any public children services agency or private child placing agency that obtains, without court approval, temporary custody of a child pursuant to an agreement executed in accordance with this division may request the juvenile court of the county in which the child has a residence or legal settlement for an original thirty-day extension of the temporary custody agreement. Upon the filing of a request for the extension of the temporary custody agreement, the juvenile court shall determine whether the extension is in the best interest of the child and may extend the temporary custody agreement for a period of

thirty days beyond the initial thirty-day period for which court approval is not required by this division. The agency requesting the original extension shall file a case plan, prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code, with the court at the same time that it files its request for an extension.

At the expiration of the original thirty-day extension period, the agency may request the juvenile court to grant an additional thirty-day extension of the temporary custody agreement. Upon the filing of the request for the additional extension, the juvenile court may extend the temporary custody agreement for a period of thirty days beyond the original thirty-day extension period if it determines that the additional extension is in the best interest of the child. The agency shall file an updated version of the child's case plan at the same time that it files its request for an additional extension.

At the expiration of an additional thirty-day extension period and at the expiration of the original thirty-day extension period if the agency does not request an additional thirty-day extension, the agency shall either return the child to the child's parents, guardian, or other person having custody of the child or file a complaint with the court pursuant to section 2151.27 of the Revised Code requesting temporary or permanent custody of the child. The complaint shall be accompanied by a case plan prepared in accordance with section 2151.412 [2151.41.2] of the Revised Code.

(3) Any public children services agency or private child placing agency that obtains, without court approval and solely for the purpose of obtaining the adoption of the child, temporary custody of a child who is under the age of six months pursuant to an agreement executed in accordance with this division may request the juvenile court in the county in which the child has a residence or legal settlement to grant a thirty day extension of the temporary custody agreement. Upon the filing of the request, the court shall determine whether the extension is in the best interest of the child and may extend the temporary custody agreement for a period of thirty days beyond the sixty day period for which the court approval is not required by this division. The agency requesting the extension shall file a case plan, prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code, with the court at the same time that it files its request for an extension.

At the expiration of the thirty day extension, the agency shall either return the child to the parents, guardian, or other person having custody of the child or file a complaint with the court pursuant to section 2151.27 of the Revised Code requesting temporary or permanent custody of the child. The complaint shall be accompanied by a case plan prepared in accordance with section 2151.412 [2151.41.2] of the Revised Code.

(B)(1) Subject to, except as provided in division (B)(2) of this section, juvenile court approval, the parents, guardian, or other persons having custody of a child may enter into an agreement with a public children services agency or private child placing agency surrendering the child into the permanent custody of the agency. An agency that enters into such an agreement may take and care for the child or place the child in a family home.

A private child placing agency or public children services agency that seeks permanent custody of a child pursuant to division (B)(1) of this section shall file a request with the juvenile court of the county in which the child has a residence or legal settlement for approval of

the agency's permanent surrender agreement with the parents, guardian, or other persons having custody of the child. Not later than fourteen business days after the request is filed, the juvenile court shall determine whether the permanent surrender agreement is in the best interest of the child. The court may approve the permanent surrender agreement if it determines that the agreement is in the best interest of the child and, in the case of an agreement between a parent and an agency, the requirements of section 5103.151 [5103.15.1] of the Revised Code are met. The agency requesting the approval of the permanent surrender agreement shall file a case plan, prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code, with the court at the same time that it files its request for the approval of the permanent surrender agreement.

(2) The parents of a child less than six months of age may enter into an agreement with a private child placing agency surrendering the child into the permanent custody of the agency without juvenile court approval if the agreement is executed solely for the purpose of obtaining the adoption of the child. The agency shall, not later than two business days after entering into the agreement, notify the juvenile court. The agency also shall notify the court not later than two business days after the agency places the child for adoption. The court shall journalize the notices it receives under division (B)(2) of this section.

(C) The agreements provided for in this section shall be in writing, on forms prescribed and furnished by the department, and may contain any proper and legal stipulations for proper care of the child, and may authorize the public children services agency or private child placing agency when such agreements are for permanent care and custody to appear in any proceeding for the legal adoption of the child, and consent to the child's adoption, as provided in section 3107.06 of the Revised Code. If an agreement for permanent care and custody of a child is executed, social and medical histories shall be completed in relation to the child in accordance with section 3107.09 of the Revised Code. The adoption order of the probate court judge made upon the consent shall be binding upon the child and the child's parents, guardian, or other person, as if those persons were personally in court and consented to the order, whether made party to the proceeding or not.

(D) An agreement entered into under this section by a parent under age eighteen is as valid as an agreement entered into by a parent age eighteen or older.

HISTORY: GC § 1352-12; 110 v 265; Bureau of Code Revision, 10-1-53; 136 v H 156 (Eff 1-1-77); 140 v H 84 (Eff 3-19-85); 142 v S 89 (Eff 1-1-89); 146 v H 419. Eff 9-18-96.

The effective date is set by section 3 of HB 419.

[§ 5103.15.1] § 5103.151 Duties of parent of adoptee; court approval of surrender agreement; questioning of parent.

(A) As used in this section and in section 5103.152 [5103.15.2] of the Revised Code, "identifying information" has the same meaning as in section 3107.01 of the Revised Code.

(B) Except as provided in division (C) of this section, a parent of a minor who will be, if adopted, an adopted person as defined in section 3107.45 of the Revised Code shall do all of the following as a condition of a juvenile

court approving the parent's agreement with a public children services agency or private child placing agency under division (B)(1) of section 5103.15 of the Revised Code:

(1) Appear personally before the court;

(2) Sign the component of the form prescribed under division (A)(1)(a) of section 3107.083 [3107.08.3] of the Revised Code;

(3) Check either the "yes" or "no" space provided on the component of the form prescribed under division (A)(1)(b) of section 3107.083 [3107.08.3] of the Revised Code and sign that component;

(4) If the parent is the mother, complete and sign the component of the form prescribed under division (A)(1)(c) of section 3107.083 [3107.08.3] of the Revised Code.

At the time the parent signs the components of the form prescribed under divisions (A)(1)(a), (b), and (c) of section 3107.083 [3107.08.3] of the Revised Code, the parent may sign, if the parent chooses to do so, the components of the form prescribed under divisions (A)(1)(d), (e), and (f) of that section. After the parent signs the components required to be signed and any discretionary components the parent chooses to sign, the parent or agency shall file the form and agreement with the court. The court or agency shall give the parent a copy of the form and agreement. The court and agency shall keep a copy of the form and agreement in the court and agency's records. The agency shall file a copy of the form and agreement with the probate court with which a petition to adopt the child who is the subject of the agreement is filed.

The juvenile court shall question the parent to determine that the parent understands the adoption process, the ramifications of entering into a voluntary permanent custody surrender agreement, each component of the form prescribed under division (A)(1) of section 3107.083 [3107.08.3] of the Revised Code, and that the child and adoptive parent may receive identifying information about the parent in accordance with section 3107.47 of the Revised Code unless the parent checks the "no" space provided on the component of the form prescribed under division (A)(1)(b) of section 3107.083 [3107.08.3] of the Revised Code or has a denial of release form filed with the department of health under section 3107.46 of the Revised Code. The court also shall question the parent to determine that the parent enters into the permanent custody surrender agreement voluntarily and any decisions the parent makes in filling out the form prescribed under division (A)(1) of section 3107.083 [3107.08.3] of the Revised Code are made voluntarily.

(C) A juvenile court may approve an agreement entered into under division (B)(1) of section 5103.15 of the Revised Code between a public children services agency or private child placing agency and the parents of a child who is less than six months of age and will be, if adopted, an adopted person as defined in section 3107.45 of the Revised Code without the parents personally appearing before the court if both parents do all of the following:

(1) Enter into the agreement with the agency;

(2) Sign the component of the form prescribed under division (A)(1)(a) of section 3107.083 [3107.08.3] of the Revised Code;

(3) Check either the "yes" or "no" space provided on the component of the form prescribed under division (A)(1)(b) of section 3107.083 [3107.08.3] of the Revised Code and sign that component.

At the time the parents sign the components of the form prescribed under divisions (A)(1)(a) and (b) of section 3107.083 [3107.08.3] of the Revised Code, the mother shall complete and sign the component of the form prescribed under division (A)(1)(c) of that section and the agency shall provide the parents the opportunity to sign, if they choose to do so, the components of the form prescribed under divisions (A)(1)(d), (e), and (f) of that section. Not later than two business days after the parents enter into the agreements and sign the components of the form required to be signed and any discretionary components the parents choose to sign, the agency shall file the agreements and forms with the court. The agency shall give the parents a copy of the agreements and forms. At the time the agency files the agreements and forms with the court, the agency also shall file with the court all other documents the director of job and family services requires by rules adopted under division (D) of section 3107.083 [3107.08.3] of the Revised Code to be filed with the court. The court and agency shall keep a copy of the agreements, forms, and documents in the court and attorney's records. The agency shall file a copy of the agreements, forms, and documents with the probate court with which a petition to adopt the child who is the subject of the agreement is filed.

(D) Except as provided in division (E) of this section, a parent of a minor, who will be, if adopted, an adopted person as defined in section 3107.39 of the Revised Code, shall do all of the following as a condition of a juvenile court approving the parent's agreement with a public children services agency or private child placing agency under division (B)(1) of section 5103.15 of the Revised Code:

(1) Appear personally before the court;
 (2) Sign the component of the form prescribed under division (B)(1)(a)† of section 3107.081 [3107.08.1] of the Revised Code;

(3) If the parent is the mother, complete and sign the component of the form prescribed under division (B)(1)(b) of section 3107.083 [3107.08.3] of the Revised Code.

At the time the parent signs the components prescribed under division (B)(1)(a) and (b) of section 3107.081 [3107.08.1] of the Revised Code, the parent may sign, if the parent chooses to do so, the components of the form prescribed under divisions (B)(1)(c), (d), and (e) of that section. After the parent signs the components required to be signed and any discretionary components the parent chooses to sign, the parent or agency shall file the form and agreement with the court. The court or agency shall give the parent a copy of the form and agreement. The court and agency shall keep a copy of the form and agreement in the court and agency's records. The agency shall file a copy of the form and agreement with the probate court with which a petition to adopt the child who is the subject of the agreement is filed.

The juvenile court shall question the parent to determine that the parent understands the adoption process, the ramifications of entering into a voluntary permanent custody surrender agreement, and each component of the form prescribed under division (B)(1) of section 3107.083 [3107.08.3] of the Revised Code. The court also shall question the parent to determine that the parent enters into the permanent custody surrender agreement voluntarily and any decisions the parent makes in filling out the form are made voluntarily.

(E) A juvenile court may approve an agreement entered into under division (B)(1) of section 5103.15 of the Revised Code between a public children services agency or private child placing agency and the parent of a child who is less than six months of age and will be, if adopted, an adopted person as defined in section 3107.39 of the Revised Code without the parent personally appearing before the court if the parent does both of the following:

(1) Signs the component of the form prescribed under division (B)(1)(a) of section 3107.083 [3107.08.3] of the Revised Code;

(2) If the parent is the mother, completes and signs the component of the form prescribed under division (B)(1)(b) of section 3107.083 [3107.08.3] of the Revised Code.

At the time the parent signs that component, the agency shall provide the parent the opportunity to sign, if the parent chooses to do so, the components of the form prescribed under divisions (B)(1)(c), (d), and (e) of section 3107.083 [3107.08.3] of the Revised Code. Not later than two business days after the parent enters into the agreement and signs the components of the form required to be signed and any discretionary components the parent chooses to sign, the agency shall file the agreement and form with the court. The agency shall give the parent a copy of the agreement and form. At the time the agency files the agreement and form with the court, the agency also shall file with the court all other documents the director of job and family services requires by rules adopted under division (D) of section 3107.083 [3107.08.3] of the Revised Code to be filed with the court. The court and agency shall keep a copy of the agreement, form, and documents in the court and agency's records. The agency shall file a copy of the agreement, form, and documents with the probate court with which a petition to adopt the child who is the subject of the agreement is filed.

HISTORY: 146 v H 419 (Eff 9-18-96); 148 v H 471. Eff 7-1-2000.

Not analogous to former RC § 5103.15.1, amended and renumbered RC § 2151.41.6 in 142 v S 89, eff 1-1-89.

The effective date is set by section 12(A) of HB 471.

† Does not exist. Were RC § 3107.083 (A)(1)(a) and (b) intended?

[§ 5103.15.3] § 5103.153 Periodic review hearings of agreement.

(A)(1) A juvenile court shall conduct a review hearing of an agreement the court approves under division (B)(1) of section 5103.15 of the Revised Code once every seven months after the agreement is entered into if a final decree or interlocutory order of adoption for the child who is the subject of the agreement has not been issued or become final and the agreement is still in effect.

(2) A juvenile court shall conduct a review hearing of an agreement entered into under division (B)(2) of section 5103.15 of the Revised Code once every six months after the court is notified of the agreement if the agreement is still in effect and the court has not been notified that the child who is the subject of the agreement has been placed for adoption. The private child placing agency that entered into the agreement shall file a case plan, prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code, with the court at the review hearing.

(B) A juvenile court shall give notice of a review hearing under division (A) of this section to each inter-

ested party. At the hearing, the court shall review the child's placement and custody arrangement. Based on the evidence presented at the hearing, the court may order that reasonable action be taken that the court determines is necessary and in the child's best interest or that an action that the court determines is not in the child's best interest be discontinued.

HISTORY: 146 v. H 419. Eff 9-18-96.

The effective date is set by section 3 of HB 419.

§ 5103.16 Associations and institutions that may accept temporary or permanent custody of child; records; requirements for adoption placement.

(A) Pursuant to section 5103.18 of the Revised Code and except as otherwise provided in this section, no child shall be placed or accepted for placement under any written or oral agreement or understanding that transfers or surrenders the legal rights, powers, or duties of the legal parent, parents, or guardian of the child into the temporary or permanent custody of any association or institution that is not certified by the department of job and family services under section 5103.03 of the Revised Code, without the written consent of the office in the department that oversees the interstate compact on placement of children established under section 5103.20 of the Revised Code, or by a commitment of a juvenile court, or by a commitment of a probate court as provided in this section. A child may be placed temporarily without written consent or court commitment with persons related by blood or marriage or in a legally licensed boarding home.

(B)(1) Associations and institutions certified under section 5103.03 of the Revised Code for the purpose of placing children in free foster homes or for legal adoption shall keep a record of the temporary and permanent surrenders of children. This record shall be available for separate statistics, which shall include a copy of an official birth record and all information concerning the social, mental, and medical history of the children that will aid in an intelligent disposition of the children in case that becomes necessary because the parents or guardians fail or are unable to reassume custody.

(2) No child placed on a temporary surrender with an association or institution shall be placed permanently in a foster home or for legal adoption. All surrendered children who are placed permanently in foster homes or for adoption shall have been permanently surrendered, and a copy of the permanent surrender shall be a part of the separate record kept by the association or institution.

(C) Any agreement or understanding to transfer or surrender the legal rights, powers, or duties of the legal parent or parents and place a child with a person seeking to adopt the child under this section shall be construed to contain a promise by the person seeking to adopt the child to pay the expenses listed in divisions (C)(1), (2), and (4) of section 3107.055 [3107.05.5] of the Revised Code and, if the person seeking to adopt the child refuses to accept placement of the child, to pay the temporary costs of routine maintenance and medical care for the child in a hospital, foster home, or other appropriate place for up to thirty days or until other custody is established for the child, as provided by law, whichever is less.

(D) No child shall be placed or received for adoption or with intent to adopt unless placement is made by a public children services agency, an institution or association that is certified by the department of job and family services under section 5103.03 of the Revised Code to place children for adoption, or custodians in another state or foreign country, or unless all of the following criteria are met:

(1) Prior to the placement and receiving of the child, the parent or parents of the child personally have applied to, and appeared before, the probate court of the county in which the parent or parents reside, or in which the person seeking to adopt the child resides, for approval of the proposed placement specified in the application and have signed and filed with the court a written statement showing that the parent or parents are aware of their right to contest the decree of adoption subject to the limitations of section 3107.16 of the Revised Code;

(2) The court ordered an independent home study of the proposed placement to be conducted as provided in section 3107.031 [3107.03.1] of the Revised Code, and after completion of the home study, the court determined that the proposed placement is in the best interest of the child;

(3) The court has approved of record the proposed placement.

In determining whether a custodian has authority to place children for adoption under the laws of a foreign country, the probate court shall determine whether the child has been released for adoption pursuant to the laws of the country in which the child resides, and if the release is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to this country pursuant to section 101(b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101 (b)(1)(F), as amended or reenacted.

If the parent or parents of the child are deceased or have abandoned the child, as determined under division (A) of section 3107.07 of the Revised Code, the application for approval of the proposed adoptive placement may be brought by the relative seeking to adopt the child, or by the department, board, or organization not otherwise having legal authority to place the orphaned or abandoned child for adoption, but having legal custody of the orphaned or abandoned child, in the probate court of the county in which the child is a resident, or in which the department, board, or organization is located, or where the person or persons with whom the child is to be placed reside. Unless the parent, parents, or guardian of the person of the child personally have appeared before the court and applied for approval of the placement, notice of the hearing on the application shall be served on the parent, parents, or guardian.

The consent to placement, surrender, or adoption executed by a minor parent before a judge of the probate court or an authorized deputy or referee of the court, whether executed within or outside the confines of the court, is as valid as though executed by an adult. A consent given as above before an employee of a children services agency that is licensed as provided by law, is equally effective, if the consent also is accompanied by an affidavit executed by the witnessing employee or employees to the effect that the legal rights of the parents have been fully explained to the parents, prior to the execution of any consent, and that the action was done after the birth of the child.

If the court approves a placement, the prospective adoptive parent with whom the child is placed has care, custody, and control of the child pending further order of the court.

(E) This section does not apply to an adoption by a stepparent, a grandparent, or a guardian.

HISTORY: GC § 1352-13; 110 v 265; Bureau of Code Revision, 10-1-53; 129 v 1776 (Eff 10-27-61); 131 v 1211 (Eff 11-3-65); 132 v H 1 (Eff 2-21-67); 133 v S 49 (Eff 8-13-69); 136 v S 145 (Eff 1-1-76); 136 v H 156 (Eff 1-1-77); 137 v H 832 (Eff 3-13-79); 141 v S 248, § 1 (Eff 12-17-86); 141 v H 428 (Eff 12-23-86); 141 v S 248, § 3 (Eff 1-1-88); 142 v H 708 (Eff 4-19-88); 142 v H 790 (Eff 3-16-89); 146 v H 419 (Eff 9-18-96); 146 v H 274 (Eff 9-18-96); 148 v H 59 (Eff 10-29-99); 148 v H 471, Eff 7-1-2000; 151 v S 238, § 1, eff. 9-21-06.

The effective date is set by section 12(A) of HB 471.

§ 5103.17 Advertising as to adoption or foster home placement; participation in separation of child from parent or guardian.

Subject to section 5103.16 of the Revised Code, no person or government entity, other than a private child placing agency or private noncustodial agency certified by the department of job and family services under section 5103.03 of the Revised Code or a public children services agency, shall advertise that the person or government entity will adopt children or place them in foster homes, hold out inducements to parents to part with their offspring, or in any manner knowingly become a party to the separation of a child from the child's parents or guardians, except through a juvenile court or probate court commitment.

If the department of job and family services has reasonable cause to believe a violation of this section has been committed, the department shall notify the attorney general or the county prosecutor, city attorney, village solicitor, or other chief legal officer of the political subdivision in which the violation has allegedly occurred. On receipt of the notification, the attorney general, county prosecutor, city attorney, village solicitor, or other chief legal officer shall take action to enforce this section through injunctive relief or criminal charge.

HISTORY: GC §§ 1352-14, 12789-1; 110 v 265; Bureau of Code Revision, 10-1-53; 129 v 1776 (Eff 10-27-61); 141 v S 248 (Eff 12-17-86); 146 v H 419 (Eff 9-18-96); 148 v H 471, Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 5103.21 Rules for implementation.

The department of job and family services may adopt rules necessary for the implementation of section 5103.20 of the Revised Code.

HISTORY: 151 v S 238, § 1, eff. 9-21-06.

Analogue to former RC § 5103.21 (136 v H 247, Eff 1-1-76), repealed 151 v S 238, § 2, eff 9-21-06.

The effective date is set by section 3 of HB 247.

CHAPTER 5107: OHIO WORKS FIRST PROGRAM

[§ 5107.28.1] § 5107.281 Mandatory participation in program; exemptions.

A participant of Ohio works first who is enrolled in a school district in a county that is participating in the learnfare program and is not younger than age six but not

older than age nineteen shall participate in the learnfare program unless one of the following is the case:

(A) The participant is not yet eligible for enrollment in first grade;

(B) The participant is subject to the LEAP program;

(C) The participant has received one of the following:

(1) A high school diploma;

(2) A certificate stating that the participant has achieved the equivalent of a high school education as measured by scores obtained on the tests of general educational development as published by the American council on education.

(D) The participant has been excused from school attendance pursuant to section 3321.04 of the Revised Code;

(E) If child care services for a member of the participant's household are necessary for the participant to attend school, child care licensed or certified under Chapter 5104. of the Revised Code or under sections 3301.52 to 3301.59 of the Revised Code and transportation to and from the child care are not available;

(F) The participant has been adjudicated a delinquent or unruly child pursuant to section 2151.28 of the Revised Code.

HISTORY: RC § 5107.19, 145 v H 152 (Eff 7-1-93); RC § 5107.28.1, 147 v H 408, Eff 10-1-97; 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is set by § 812.03 of 152 v H 119.

The effective date is set by section 26 of HB 408.

CHAPTER 5119: DEPARTMENT OF MENTAL HEALTH

§ 5119.64 Enforcement of provisions; definitions.

A board of alcohol, drug addiction, and mental health services established under Chapter 340. of the Revised Code is responsible for the enforcement of applicable federal requirements and rules of the board adopted under section 5119.66 of the Revised Code for the safety and effectiveness of facilities and programs of shelters for runaways located in the county.

(A) "Runaway minor" means any minor, whether a resident or nonresident of the state, who is separated from a person having responsibility for his care or education, and appears to be in need of emergency housing and other services. Included are minors who return to their families and those whose return is inadvisable for protective reasons or a stressful family situation. A minor may be considered to be in need of temporary emergency housing and short-term counseling with or without the consent of his parent, guardian, or custodian.

(B) "Shelter for runaways" means a facility that offers to provide and does provide to the public, crisis short-term counseling and temporary emergency housing for runaway minors.

HISTORY: 136 v H 254 (Eff 8-18-76); 138 v S 160 (Eff 10-31-80); 143 v H 317, Eff 10-10-89.

§ 5119.65 Who may operate a shelter for runaway minors.

(A) No person, organization, or public or private agency shall operate a shelter for runaway minors, except the public children services agency, unless such person,

organization, or agency complies with sections 5119.64 to 5119.68 of the Revised Code and rules adopted under such sections by the board of alcohol, drug addiction, and mental health services serving the alcohol, drug addiction, and mental health service district in which the shelter is located.

(B) Whoever violates division (A) of this section shall be fined not less than five or more than five hundred dollars.

HISTORY: 136 v H 254 (Eff 8-18-76); 138 v H 900 (Eff 7-1-80); 138 v S 160 (Eff 10-31-80); 141 v H 428 (Eff 12-23-86); 143 v H 317 (Eff 10-10-89); 147 v H 408. Eff 10-1-97.

The effective date is set by section 26 of HB 408.

§ 5119.66 Regulation of facilities and programs of shelters.

Each board of alcohol, drug addiction, and mental health services shall adopt rules governing shelters for runaways, reflecting the intent of Title III of the "Juvenile Justice and Delinquency Prevention Act of 1974," 88 Stat. 1109, 42 U.S.C. 5701, as amended, and regulations adopted thereunder. The board periodically shall review the rules, and shall consider in adopting and amending the rules other relevant standards for crisis child care and recommendations from individuals and groups in the community. Existing shelters for runaways shall participate in the development of the rules.

HISTORY: 136 v H 254 (Eff 8-18-76); 138 v S 160 (Eff 10-31-80); 143 v H 317. Eff 10-10-89.

§ 5119.67 Board may issue orders.

The board of alcohol, drug addiction, and mental health services may issue orders to secure compliance with sections 5119.64 to 5119.68 of the Revised Code and rules adopted thereunder. The board may hold hearings, issue subpoenas, compel testimony, and make adjudications. If the board finds that any shelter for runaways is being operated in violation of any provision of sections 5119.64 to 5119.68 of the Revised Code or any rule adopted thereunder, the board may issue an order for compliance within thirty days after holding the second of two public hearings.

HISTORY: 136 v H 254 (Eff 8-18-76); 138 v H 900 (Eff 7-1-80); 138 v S 160 (Eff 10-31-80); 143 v H 317. Eff 10-10-89.

§ 5119.68 Information to be furnished; list of shelters by county.

Each shelter for runaways shall submit to the board of alcohol, drug addiction, and mental health services serving the alcohol, drug addiction, and mental health service district in which it is located such information as the board requires concerning the operation of the shelter and compilations of data concerning runaway minors and other individuals served by the shelter.

The board shall, at least annually, send a list of shelters in operation in the county to the juvenile court and to the public children services agency.

HISTORY: 136 v H 254 (Eff 8-18-76); 138 v H 900 (Eff 7-1-80); 138 v S 160 (Eff 10-31-80); 141 v H 428 (Eff 12-23-86); 143 v H 317 (Eff 10-10-89); 147 v H 408. Eff 10-1-97.

The effective date is set by section 26 of HB 408.

CHAPTER 5120: DEPARTMENT OF REHABILITATION AND CORRECTION

§ 5120.16 Examination, observation, and classification; assignment to institution; transfer.

(A) Persons sentenced to any institution, division, or place under the control of the department of rehabilitation and correction are committed to the control, care, and custody of the department. Subject to division (B) of this section, the director of rehabilitation and correction or the director's designee may direct that persons sentenced to the department, or to any institution or place within the department, shall be conveyed initially to an appropriate facility established and maintained by the department for reception, examination, observation, and classification of the persons so sentenced. If a presentence investigation report was not prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 regarding any person sentenced to the department or to any institution or place within the department, the director or the director's designee may order the department's field staff to conduct an offender background investigation and prepare an offender background investigation report regarding the person. The investigation and report shall be conducted in accordance with division (A) of section 2951.03 of the Revised Code and the report shall contain the same information as a presentence investigation report prepared pursuant to that section.

When the examination, observation, and classification of the person have been completed by the facility and a written report of the examination, observation, and classification is filed with the commitment papers, the director or the director's designee, subject to division (B) of this section, shall assign the person to a suitable state institution or place maintained by the state within the director's department or shall designate that the person is to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if authorized by section 5120.161 [5120.16.1] of the Revised Code, there to be confined, cared for, treated, trained, and rehabilitated until paroled, released in accordance with section 2929.20, 2967.26, or 2967.28 of the Revised Code, or otherwise released under the order of the court that imposed the person's sentence. No person committed by a probate court, a trial court pursuant to section 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code subsequent to a finding of not guilty by reason of insanity, or a juvenile court shall be assigned to a state correctional institution.

If a person is sentenced, committed, or assigned for the commission of a felony to any one of the institutions or places maintained by the department or to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, the department, by order duly recorded and subject to division (B) of this section, may transfer the person to any other institution, or, if authorized by section 5120.161 [5120.16.1] of the Revised Code, to a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse.

(B) If the case of a child who is alleged to be a delinquent child is transferred for criminal prosecution to the appropriate court having jurisdiction of the offense

pursuant to section 2152.12 of the Revised Code, if the child is convicted of or pleads guilty to a felony in that case, if the child is sentenced to a prison term, as defined in section 2901.01 of the Revised Code, and if the child is under eighteen years of age when delivered to the custody of the department of rehabilitation and correction, all of the following apply regarding the housing of the child:

(1) Until the child attains eighteen years of age, subject to divisions (B)(2), (3), and (4) of this section, the department shall house the child in a housing unit in a state correctional institution separate from inmates who are eighteen years of age or older.

(2) The department is not required to house the child in the manner described in division (B)(1) of this section if the child does not observe the rules and regulations of the institution or the child otherwise creates a security risk by being housed separately.

(3) If the department receives too few inmates who are under eighteen years of age to fill a housing unit in a state correctional institution separate from inmates who are eighteen years of age or older, as described in division (B)(1) of this section, the department may house the child in a housing unit in a state correctional institution that includes both inmates who are under eighteen years of age and inmates who are eighteen years of age or older and under twenty-one years of age.

(4) Upon the child's attainment of eighteen years of age, the department may house the child with the adult population of the state correctional institution.

(C) The director or the director's designee shall develop a policy for dealing with problems related to infection with the human immunodeficiency virus. The policy shall include methods of identifying individuals committed to the custody of the department who are at high risk of infection with the virus and counseling those individuals.

Arrangements for housing individuals diagnosed as having AIDS or an AIDS-related condition shall be made by the department based on security and medical considerations and in accordance with division (B) of this section, if applicable.

HISTORY: 134 v H 494 (Eff 7-12-72); 137 v H 565 (Eff 11-1-78); 138 v S 297 (Eff 4-30-80); 138 v H 900 (Eff 7-1-80); 138 v H 965 (Eff 4-9-81); 139 v S 199 (Eff 1-1-83); 142 v H 455 (Eff 7-20-87); 143 v S 2 (Eff 11-1-89); 144 v S 331 (Eff 11-13-92); 145 v H 571 (Eff 10-6-94); 146 v S 310 (Eff 6-20-96); 146 v S 2 (Eff 7-1-96); 146 v H 124 (Eff 3-31-97); 146 v S 285 (Eff 7-1-97); 147 v H 215 (Eff 9-29-97); 147 v S 111 (Eff 3-17-98); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 5120.65.3] § 5120.653 Termination of inmate's participation.

An inmate's participation in the prison nursery program may be terminated by the department of rehabilitation and correction if one of the following occurs:

(A) The inmate fails to comply with the agreement entered into under division (A) of section 5120.652 [5120.65.2] of the Revised Code.

(B) The inmate's child becomes seriously ill, cannot meet medical criteria established by the department of rehabilitation and correction for the program, or otherwise cannot safely participate in the program.

(C) A court issues an order that designates a person other than the inmate as the child's residential parent and legal custodian.

(D) A juvenile court, in an action brought pursuant to division (A)(2) of section 2151.23 of the Revised Code, grants custody of the child to a person other than the inmate.

(E) An order is issued pursuant to section 3109.04 of the Revised Code granting shared parenting of the child.

(F) An order of disposition regarding the child is issued pursuant to division (A)(2), (3), or (4) of section 2151.353 [2151.35.3] of the Revised Code granting temporary, permanent, or legal custody of the child to a person, other than the inmate, or to a public children services agency or private child placing agency.

(G) The inmate is released from imprisonment.

HISTORY: 148 v H 661. Eff 3-15-2001.

CHAPTER 5123: DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

[ADMISSIONS GUIDELINES]

§ 5123.93 Guardianship of minor.

Minors with mental retardation shall remain under the guardianship of their parents or of a guardian appointed pursuant to Chapter 2111. of the Revised Code, notwithstanding institutionalization pursuant to any section of this chapter, unless parental rights have been terminated pursuant to a court finding that the child is neglected, abused, or dependent pursuant to Chapter 2151. of the Revised Code. If a minor with mental retardation has been found to be dependent, abused, or neglected, the public children services agency to whom permanent custody has been assigned pursuant to Chapter 2151. of the Revised Code shall have the same authority and responsibility it would have if the child were not mentally retarded and were not institutionalized. In no case shall the guardianship of a person with mental retardation be assigned to the managing officer or any other employee of an institution in which the person is institutionalized, or be assigned, unless there is a relationship by blood or marriage or unless the service is a protective service as defined in section 5123.55 of the Revised Code, to a person or agency who provides services to the person with mental retardation.

HISTORY: 135 v S 336 (Eff 7-1-75); 136 v H 85 (Eff 11-28-75); 147 v H 408 (Eff 10-1-97); 148 v H 538. Eff 9-22-2000.

CHAPTER 5139: YOUTH SERVICES

Section

- 5139.01 Definitions; department of youth services created.
- 5139.02 Organization and supervision of divisions; appointment of managing officers.
- 5139.03 Management of institutions; agreements with mental health department; transfer of surplus supplies.
- 5139.04 General duties of department of youth services.
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- 5139.10 When control by department ceases.
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- 5139.13 Duties as to facilities and treatment and training of children.
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[REGULATIONS]

- 5139.27 Adoption of rules for financial assistance.
 [5139.27.1] 5139.271 Conditions of financial assistance for construction or acquisition of detention facility.
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 5139.29 Adoption of rules for payment of assistance.
 5139.30 Authority to transfer children.
 5139.31 Inspection of schools and facilities.
 5139.32 Release or discharge of children.
 5139.33 Grants for county community-based programs and services for delinquent children.
 5139.34 Annual county grants.
 5139.35 Prior court consent required for placement in less restrictive setting.
 5139.36 Grants to operate community corrections facilities; minimum occupancy threshold.
 5139.38 Transfer to community facility for treatment prior to release.
 5139.39 Transfer to foster care facility.

[CARE, CUSTODY OF FELONY DELINQUENTS]

- 5139.41 Procedure for expending appropriation for care and custody of felony delinquents.
 5139.42 Repealed.
 5139.43 Felony delinquent care and custody program.
 5139.44 RECLAIM advisory committee.
 5139.45-5139.49 Repealed.

[RELEASE OR DISCHARGE]

- 5139.50 Release authority created; duties generally; policies.
 5139.51 Supervised release or discharge; requirements for release.
 5139.52 Hearing on alleged violation; apprehension of violators.
 5139.53 Designation of employees authorized to apprehend violators; carrying of firearms; deadly force policy.
 5139.54 Medical release or discharge.
 5139.55 Office of victims' services; administrator.
 5139.56 Victim may request notice of proceeding; victim's representative; presence at hearing; statement or comment.
 5139.85 Disposition of property of former inmates.
 5139.86 Cafeteria fund; industrial and entertainment fund; youth benefit fund; employee food service fund.
 5139.87 Federal juvenile justice programs funds.
 5139.99 Penalty.

§ 5139.01 Definitions; department of youth services created.

(A) As used in this chapter:

(1) "Commitment" means the transfer of the physical

custody of a child or youth from the court to the department of youth services.

(2) "Permanent commitment" means a commitment that vests legal custody of a child in the department of youth services.

(3) "Legal custody," insofar as it pertains to the status that is created when a child is permanently committed to the department of youth services, means a legal status in which the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control the child; the responsibility to provide the child with food, clothing, shelter, education, and medical care; and the right to determine where and with whom the child shall live, subject to the minimum periods of, or periods of, institutional care prescribed in sections 2152.13 to 2152.18 of the Revised Code; provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities.

(4) Unless the context requires a different meaning, "institution" means a state facility that is created by the general assembly and that is under the management and control of the department of youth services or a private entity with which the department has contracted for the institutional care and custody of felony delinquents.

(5) "Full-time care" means care for twenty-four hours a day for over a period of at least two consecutive weeks.

(6) "Placement" means the conditional release of a child under the terms and conditions that are specified by the department of youth services. The department shall retain legal custody of a child released pursuant to division (C) of section 2152.22 of the Revised Code or division (C) of section 5139.06 of the Revised Code until the time that it discharges the child or until the legal custody is terminated as otherwise provided by law.

(7) "Home placement" means the placement of a child in the home of the child's parent or parents or in the home of the guardian of the child's person.

(8) "Discharge" means that the department of youth services' legal custody of a child is terminated.

(9) "Release" means the termination of a child's stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.

(10) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(11) "Felony delinquent" means any child who is at least ten years of age but less than eighteen years of age and who is adjudicated a delinquent child for having committed an act that if committed by an adult would be a felony. "Felony delinquent" includes any adult who is between the ages of eighteen and twenty-one and who is in the legal custody of the department of youth services for having committed an act that if committed by an adult would be a felony.

(12) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

(13) "Public safety beds" means all of the following:

(a) Felony delinquents who have been committed to the department of youth services for the commission of an act, other than a violation of section 2911.01 or 2911.11 of the Revised Code, that is a category one offense or a category two offense and who are in the care and custody of an institution or have been diverted from

care and custody in an institution and placed in a community corrections facility:

(b) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a misdemeanor or a felony;

(c) Children who satisfy all of the following:

(i) They are at least ten years of age but less than eighteen years of age.

(ii) They are adjudicated delinquent children for having committed acts that if committed by an adult would be a felony.

(iii) They are committed to the department of youth services by the juvenile court of a county that has had one-tenth of one per cent or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years.

(iv) They are in the care and custody of an institution or a community corrections facility.

(d) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution are serving disciplinary time for having committed an act described in division (A)(18)(a), (b), or (c) of this section, and who have been institutionalized or institutionalized in a secure facility for the minimum period of time specified in divisions (A)(1)(b) to (e) of section 2152.16 of the Revised Code.

(e) Felony delinquents who are subject to and serving a three-year period of commitment order imposed by a juvenile court pursuant to divisions (A) and (B) of section 2152.17 of the Revised Code for an act, other than a violation of section 2911.11 of the Revised Code, that would be a category one offense or category two offense if committed by an adult.

(f) Felony delinquents who are described in divisions (A)(13)(a) to (e) of this section, who have been granted a judicial release to court supervision under division (B) of section 2152.22 of the Revised Code or a judicial release to the department of youth services supervision under division (C) of that section from the commitment to the department of youth services for the act described in divisions (A)(13)(a) to (e) of this section, who have violated the terms and conditions of that release, and who, pursuant to an order of the court of the county in which the particular felony delinquent was placed on release that is issued pursuant to division (D) of section 2152.22 of the Revised Code, have been returned to the department for institutionalization or institutionalization in a secure facility.

(g) Felony delinquents who have been committed to the custody of the department of youth services, who have been granted supervised release from the commitment pursuant to section 5139.51 of the Revised Code, who have violated the terms and conditions of that supervised release, and who, pursuant to an order of the court of the county in which the particular child was placed on supervised release issued pursuant to division (F) of section 5139.52 of the Revised Code, have had the supervised release revoked and have been returned to the department for institutionalization. A felony delinquent described in this division shall be a public safety bed only for the time during which the felony delinquent is institutionalized as a result of the revocation subsequent to the initial thirty-day period of institutionalization re-

quired by division (F) of section 5139.52 of the Revised Code.

(14) Unless the context requires a different meaning, "community corrections facility" means a county or multicounty rehabilitation center for felony delinquents who have been committed to the department of youth services and diverted from care and custody in an institution and placed in the rehabilitation center pursuant to division (E) of section 5139.36 of the Revised Code.

(15) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are under the exclusive control of its staff and to ensure that, because of that exclusive control, no child who has been institutionalized in the facility may leave the facility without permission or supervision.

(16) "Community residential program" means a program that satisfies both of the following:

(a) It is housed in a building or other structure that has no associated major restraining construction, including, but not limited to, a security fence.

(b) It provides twenty-four-hour care, supervision, and programs for felony delinquents who are in residence.

(17) "Category one offense" and "category two offense" have the same meanings as in section 2151.26 of the Revised Code.

(18) "Disciplinary time" means additional time that the department of youth services requires a felony delinquent to serve in an institution, that delays the felony delinquent's planned release, and that the department imposes upon the felony delinquent following the conduct of an internal due process hearing for having committed any of the following acts while committed to the department and in the care and custody of an institution:

(a) An act that if committed by an adult would be a felony;

(b) An act that if committed by an adult would be a misdemeanor;

(c) An act that is not described in division (A)(18)(a) or (b) of this section and that violates an institutional rule of conduct of the department.

(19) "Unruly child" has the same meaning as in section 2151.022 [2151.02.2] of the Revised Code.

(20) "Revocation" means the act of revoking a child's supervised release for a violation of a term or condition of the child's supervised release in accordance with section 5139.52 of the Revised Code.

(21) "Release authority" means the release authority of the department of youth services that is established by section 5139.50 of the Revised Code.

(22) "Supervised release" means the event of the release of a child under this chapter from an institution and the period after that release during which the child is supervised and assisted by an employee of the department of youth services under specific terms and conditions for reintegration of the child into the community.

(23) "Victim" means the person identified in a police report, complaint, or information as the victim of an act that would have been a criminal offense if committed by an adult and that provided the basis for adjudication proceedings resulting in a child's commitment to the legal custody of the department of youth services.

(24) "Victim's representative" means a member of the victim's family or another person whom the victim or another authorized person designates in writing, pursuant to section 5139.56 of the Revised Code, to represent the

victim with respect to proceedings of the release authority of the department of youth services and with respect to other matters specified in that section.

(25) "Member of the victim's family" means a spouse, child, stepchild, sibling, parent, stepparent, grandparent, other relative, or legal guardian of a child but does not include a person charged with, convicted of, or adjudicated a delinquent child for committing a criminal or delinquent act against the victim or another criminal or delinquent act arising out of the same conduct, criminal or delinquent episode, or plan as the criminal or delinquent act committed against the victim.

(26) "Judicial release to court supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to division (B) of section 2152.22 of the Revised Code during the period specified in that division.

(27) "Judicial release to department of youth services supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to division (C) of section 2152.22 of the Revised Code during the period specified in that division.

(28) "Juvenile justice system" includes all of the functions of the juvenile courts, the department of youth services, any public or private agency whose purposes include the prevention of delinquency or the diversion, adjudication, detention, or rehabilitation of delinquent children, and any of the functions of the criminal justice system that are applicable to children.

(29) "Metropolitan county criminal justice services agency" means an agency that is established pursuant to division (A) of section 5502.64 of the Revised Code.

(30) "Administrative planning district" means a district that is established pursuant to division (A) or (B) of section 5502.66 of the Revised Code.

(31) "Criminal justice coordinating council" means a criminal justice services agency that is established pursuant to division (D) of section 5502.66 of the Revised Code.

(32) "Comprehensive plan" means a document that coordinates, evaluates, and otherwise assists, on an annual or multi-year basis, all of the functions of the juvenile justice systems of the state or a specified area of the state, that conforms to the priorities of the state with respect to juvenile justice systems, and that conforms with the requirements of all federal criminal justice acts. These functions include, but are not limited to, all of the following:

- (a) Delinquency;
- (b) Identification, detection, apprehension, and detention of persons charged with delinquent acts;
- (c) Assistance to crime victims or witnesses, except that the comprehensive plan does not include the functions of the attorney general pursuant to sections 109.91 and 109.92 of the Revised Code;
- (d) Adjudication or diversion of persons charged with delinquent acts;
- (e) Custodial treatment of delinquent children;
- (f) Institutional and noninstitutional rehabilitation of delinquent children.

(B) There is hereby created the department of youth services. The governor shall appoint the director of the department with the advice and consent of the senate. The director shall hold office during the term of the appointing governor but subject to removal at the pleasure of the governor. Except as otherwise authorized in

section 108.05 of the Revised Code, the director shall devote the director's entire time to the duties of the director's office and shall hold no other office or position of trust or profit during the director's term of office.

The director is the chief executive and administrative officer of the department, and has all the powers of a department head set forth in Chapter 121. of the Revised Code. The director may adopt rules for the government of the department, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the department's records, papers, books, documents, and property. The director shall be an appointing authority within the meaning of Chapter 124. of the Revised Code. Whenever this or any other chapter or section of the Revised Code imposes a duty on or requires an action of the department, the duty or action shall be performed by the director or, upon the director's order, in the name of the department.

HISTORY: 130 v 1211 (Eff 10-7-63); 130 v 1211 (Eff 3-10-64); 130 v PHII, § 8 (Eff 12-16-64); 131 v 239 (Eff 7-22-65); 132 v S 277 (Eff 11-7-67); 132 v S 235 (Eff 11-14-67); 137 v H 1 (Eff 8-26-77); 139 v H 440 (Eff 11-23-81); 139 v S 550 (Eff 11-26-82); 140 v H 291 (Eff 7-1-83); 144 v S 331 (Eff 11-13-92); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 145 v H 335 (Eff 12-9-94); 146 v H 117 (Eff 6-30-95); 147 v H 215 (Eff 6-30-97, Eff 9-29-97)†; 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 149 v H 94, § 1 (Eff 9-5-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 94, § 6 (Eff 1-1-2002); 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 6-30-05.

The effective date is set by § 612.12 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v —).

† The provisions of § 233 of HB 215 (147 v —) provided for two effective dates for RC § 5139.01.

†† As enrolled, RC § 2151.26 has been renumbered to RC § 2152.12 in 148 v S 179.

§ 5139.02 Organization and supervision of divisions; appointment of managing officers.

(A)(1) As used in this section, "managing officer" means the assistant director, a deputy director, an assistant deputy director, a superintendent, a regional administrator, a deputy superintendent, or the superintendent of schools of the department of youth services, a member of the release authority, the chief of staff to the release authority, and the victims administrator of the office of victim services.

(2) Each division established by the director of youth services shall consist of managing officers and other employees, including those employed in institutions and regions as necessary to perform the functions assigned to them. The director, assistant director, or appropriate deputy director or managing officer of the department shall supervise the work of each division and determine general policies governing the exercise of powers vested in the department and assigned to each division. The appropriate managing officer or deputy director is responsible to the director or assistant director for the organization, direction, and supervision of the work of the division or unit and for the exercise of the powers and the performance of the duties of the department assigned to it and, with the director's approval, may establish bureaus or other administrative units within the department.

(B) The director shall appoint all managing officers, who shall be in the unclassified civil service. The director may appoint a person who holds a certified position in the classified service within the department to a position as a managing officer within the department. A person ap-

pointed pursuant to this division to a position as a managing officer shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment as managing officer, regardless of the number of positions the person held in the unclassified service. A managing officer's right to resume a position in the classified service may only be exercised when the director demotes the managing officer to a pay range lower than the managing officer's current pay range or revokes the managing officer's appointment to the position of managing officer. A managing officer forfeits the right to resume a position in the classified service when the managing officer is removed from the position of managing officer due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or Chapter 124. of the Revised Code, the rules of the director of youth services or the director of administrative services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. A managing officer also forfeits the right to resume a position in the classified service upon transfer to a different agency.

Reinstatement to a position in the classified service shall be to the position held in the classified service immediately prior to appointment as managing officer, or to another position certified by the director of administrative services as being substantially equal to that position. If the position the person previously held in the classified service immediately prior to appointment as a managing officer has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the department that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service. Service as a managing officer shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment as a managing officer. If a person is reinstated to a position in the classified service under this division, the person shall be returned to the pay range and step to which the person had been assigned at the time of the appointment as managing officer. Longevity, where applicable, shall be calculated pursuant to the provisions of section 124.181 [124.18.1] of the Revised Code.

(C) Each person appointed as a managing officer shall have received special training and shall have experience in the type of work that the person's division is required to perform. Each managing officer, under the supervision of the director, has entire charge of the division, institution, unit, or region for which the managing officer is appointed and, with the director's approval, shall appoint necessary employees and may remove them for cause.

HISTORY: 145 v H 152 (Eff 7-1-93); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3, Eff 1-1-2002; 151 v H 699, § 101.01, eff. 3-29-07.

The effective date is set by § 612.03 of 151 v H 699.

Not analogous to former RC § 5139.02 (130 v 1213, 132 v S 235; 137 v H 1; 139 v H 440; 140 v H 291), repealed 145 v H 152, § 2, eff 7-1-93.

The effective date is set by section 5 of SB 179.

§ 5139.03 Management of institutions; agreements with mental health department; transfer of surplus supplies.

The department of youth services shall control and manage all state institutions or facilities established or

created for the training or rehabilitation of delinquent children committed to the department, except where the control and management of an institution or facility is vested by law in another agency. The department shall employ, in addition to other personnel authorized under Chapter 5139. of the Revised Code, sufficient personnel to maintain food service and buildings and grounds operations.

The department of youth services shall, insofar as practicable, purchase foods and other commodities incident to food service operations from the department of mental health. The department of youth services may enter into agreements with the department of mental health providing for assistance and consultation in the construction of, or major modifications to, capital facilities of the department of youth services.

The directors of mental health and of youth services shall enter into written agreements to implement this section. Such directors may, from time to time, amend any agreements entered into under this section for the purposes of making more efficient use of personnel, taking advantage of economies in quantity purchasing, or for any other purpose which is mutually advantageous to both the department of youth services and the department of mental health.

The department of youth services may transfer any of its excess or surplus supplies to a community corrections facility. These supplies shall remain the property of the department for a period of five years from the date of the transfer. After the five-year period, the supplies shall become the property of the facility.

HISTORY: 130 v 1213 (Eff 10-7-63); 130 v PtII, 249 (Eff 12-16-64); 132 v S 235 (Eff 11-14-67); 134 v H 494 (Eff 7-12-72); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 147 v H 215. Eff 6-30-97.

§ 5139.04 General duties of department of youth services.

The department of youth services shall do all of the following:

(A) Support service districts through a central administrative office that shall have as its administrative head a deputy director who shall be appointed by the director of the department. When a vacancy occurs in the office of that deputy director, an assistant deputy director shall act as that deputy director until the vacancy is filled. The position of deputy director and assistant deputy director described in this division shall be in the unclassified civil service of the state.

(B) Receive custody of all children committed to it under Chapter 2152. of the Revised Code, cause a study to be made of those children, and issue any orders, as it considers best suited to the needs of any of those children and the interest of the public, for the treatment of each of those children;

(C) Obtain personnel necessary for the performance of its duties;

(D)

Adopt rules that regulate its organization and operation, that implement sections 5139.34 and 5139.41 to 5139.43 of the Revised Code, and that pertain to the administration of other sections of this chapter;

(E) Submit reports of its operations to the governor and the general assembly by the thirty-first day of January of each odd-numbered year;

(F) Conduct a program of research in diagnosis, training, and treatment of delinquent children to evaluate the

effectiveness of the department's services and to develop more adequate methods;

(G) Develop a standard form for the disposition investigation report that a juvenile court is required pursuant to section 2152.18 of the Revised Code to complete and provide to the department when the court commits a child to the legal custody of the department;

(H) Do all other acts necessary or desirable to carry out this chapter.

HISTORY: 130 v 1214 (Eff 10-7-63); 138 v H 394 (Eff 9-26-79); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 144 v S 359 (Eff 12-22-92); 145 v H 152 (Eff 7-1-93); 146 v H 117 (Eff 6-30-95); 146 v H 670 (Eff 12-2-96); 147 v H 215 (Eff 6-30-97; 9-29-97)[†]; 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3, Eff 1-1-2002; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

[†] The provisions of § 234 of HB 215 (147 v —) provided for two effective dates for RC § 5139.04.

§ 5139.05 Commitment order; release; access to records; information to be provided to parent, guardian or custodian; visitation denied for disciplinary reasons.

(A) The juvenile court may commit any child to the department of youth services as authorized in Chapter 2152. of the Revised Code, provided that any child so committed shall be at least ten years of age at the time of the child's delinquent act, and, if the child is ten or eleven years of age, the delinquent act is a violation of section 2909.03 of the Revised Code or would be aggravated murder, murder, or a first or second degree felony offense of violence if committed by an adult. Any order to commit a child to an institution under the control and management of the department shall have the effect of ordering that the child be committed to the department and assigned to an institution as follows:

(1) For an indefinite term consisting of the prescribed minimum period specified by the court under division (A)(1) of section 2152.16 of the Revised Code and a maximum period not to exceed the child's attainment of twenty-one years of age, if the child was committed pursuant to section 2152.16 of the Revised Code;

(2) Until the child's attainment of twenty-one years of age, if the child was committed for aggravated murder or murder pursuant to section 2152.16 of the Revised Code;

(3) For a period of commitment that shall be in addition to, and shall be served consecutively with and prior to, a period of commitment described in division (A)(1) or (2) of this section, if the child was committed pursuant to section 2152.17 of the Revised Code;

(4) If the child is ten or eleven years of age, to an institution, a residential care facility, a residential facility, or a facility licensed by the department of job and family services that the department of youth services considers best designated for the training and rehabilitation of the child and protection of the public. The child shall be housed separately from children who are twelve years of age or older until the child is released or discharged or until the child attains twelve years of age, whichever occurs first. Upon the child's attainment of twelve years of age, if the child has not been released or discharged, the department is not required to house the child separately.

(B)(1) Except as otherwise provided in section 5139.54 of the Revised Code, the release authority of the department of youth services, in accordance with section

5139.51 of the Revised Code and at any time after the end of the minimum period specified under division (A)(1) of section 2152.16 of the Revised Code, may grant the release from custody of any child committed to the department.

The order committing a child to the department of youth services shall state that the child has been adjudicated a delinquent child and state the minimum period. The jurisdiction of the court terminates at the end of the minimum period except as follows:

(a) In relation to judicial release procedures, supervision, and violations;

(b) With respect to functions of the court related to the revocation of supervised release that are specified in sections 5139.51 and 5139.52 of the Revised Code;

(c) In relation to its duties relating to serious youthful offender dispositional sentences under sections 2152.13 and 2152.14 of the Revised Code.

(2) When a child has been committed to the department under section 2152.16 of the Revised Code, the department shall retain legal custody of the child until one of the following:

(a) The department discharges the child to the exclusive management, control, and custody of the child's parent or the guardian of the child's person or, if the child is eighteen years of age or older, discharges the child.

(b) The committing court, upon its own motion, upon petition of the parent, guardian of the person, or next friend of a child, or upon petition of the department, terminates the department's legal custody of the child.

(c) The committing court grants the child a judicial release to court supervision under section 2152.22 of the Revised Code.

(d) The department's legal custody of the child is terminated automatically by the child attaining twenty-one years of age.

(e) If the child is subject to a serious youthful offender dispositional sentence, the adult portion of that dispositional sentence is imposed under section 2152.14 of the Revised Code.

(C) When a child is committed to the department of youth services, the department may assign the child to a hospital for mental, physical, and other examination, inquiry, or treatment for the period of time that is necessary. The department may remove any child in its custody to a hospital for observation, and a complete report of every observation at the hospital shall be made in writing and shall include a record of observation, treatment, and medical history and a recommendation for future treatment, custody, and maintenance. The department shall thereupon order the placement and treatment that it determines to be most conducive to the purposes of Chapters 2151. and 5139. of the Revised Code. The committing court and all public authorities shall make available to the department all pertinent data in their possession with respect to the case.

(D) Records maintained by the department of youth services pertaining to the children in its custody shall be accessible only to department employees, except by consent of the department, upon the order of the judge of a court of record, or as provided in divisions (D)(1) and (2) of this section. These records shall not be considered "public records," as defined in section 149.43 of the Revised Code.

(1) Except as otherwise provided by a law of this state or the United States, the department of youth services may release records that are maintained by the depart-

ment of youth services and that pertain to children in its custody to the department of rehabilitation and correction regarding persons who are under the jurisdiction of the department of rehabilitation and correction and who have previously been committed to the department of youth services. The department of rehabilitation and correction may use those records for the limited purpose of carrying out the duties of the department of rehabilitation and correction. Records released by the department of youth services to the department of rehabilitation and correction shall remain confidential and shall not be considered public records as defined in section 149.43 of the Revised Code.

(2) The department of youth services shall provide to the superintendent of the school district in which a child discharged or released from the custody of the department is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code the records described in divisions (D)(4)(a) to (d) of section 2152.18 of the Revised Code. Subject to the provisions of section 3319.321 [3319.32.1] of the Revised Code and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as amended, the records released to the superintendent shall remain confidential and shall not be considered public records as defined in section 149.43 of the Revised Code.

(E)(1) When a child is committed to the department of youth services, the department, orally or in writing, shall notify the parent, guardian, or custodian of a child that the parent, guardian, or custodian may request at any time from the superintendent of the institution in which the child is located any of the information described in divisions (E)(1)(a), (b), (c), and (d) of this section. The parent, guardian, or custodian may provide the department with the name, address, and telephone number of the parent, guardian, or custodian, and, until the department is notified of a change of name, address, or telephone number, the department shall use the name, address, and telephone number provided by the parent, guardian, or custodian to provide notices or answer inquiries concerning the following information:

(a) When the department of youth services makes a permanent assignment of the child to a facility, the department, orally or in writing and on or before the third business day after the day the permanent assignment is made, shall notify the parent, guardian, or custodian of the child of the name of the facility to which the child has been permanently assigned.

If a parent, guardian, or custodian of a child who is committed to the department of youth services requests, orally or in writing, the department to provide the parent, guardian, or custodian with the name of the facility in which the child is currently located, the department, orally or in writing and on or before the next business day after the day on which the request is made, shall provide the name of that facility to the parent, guardian, or custodian.

(b) If a parent, guardian, or custodian of a child who is committed to the department of youth services, orally or in writing, asks the superintendent of the institution in which the child is located whether the child is being disciplined by the personnel of the institution, what disciplinary measure the personnel of the institution are using for the child, or why the child is being disciplined, the superintendent or the superintendent's designee, on or before the next business day after the day on which the

request is made, shall provide the parent, guardian, or custodian with written or oral responses to the questions.

(c) If a parent, guardian, or custodian of a child who is committed to the department of youth services, orally or in writing, asks the superintendent of the institution in which the child is held whether the child is receiving any medication from personnel of the institution, what type of medication the child is receiving, or what condition of the child the medication is intended to treat, the superintendent or the superintendent's designee, on or before the next business day after the day on which the request is made, shall provide the parent, guardian, or custodian with oral or written responses to the questions.

(d) When a major incident occurs with respect to a child who is committed to the department of youth services, the department, as soon as reasonably possible after the major incident occurs, shall notify the parent, guardian, or custodian of the child that a major incident has occurred with respect to the child and of all the details of that incident that the department has ascertained.

(2) The failure of the department of youth services to provide any notification required by or answer any requests made pursuant to division (E) of this section does not create a cause of action against the state.

(F) The department of youth services, as a means of punishment while the child is in its custody, shall not prohibit a child who is committed to the department from seeing that child's parent, guardian, or custodian during standard visitation periods allowed by the department of youth services unless the superintendent of the institution in which the child is held determines that permitting that child to visit with the child's parent, guardian, or custodian would create a safety risk to that child, that child's parents, guardian, or custodian, the personnel of the institution, or other children held in that institution.

(G) As used in this section:

(1) "Permanent assignment" means the assignment or transfer for an extended period of time of a child who is committed to the department of youth services to a facility in which the child will receive training or participate in activities that are directed toward the child's successful rehabilitation. "Permanent assignment" does not include the transfer of a child to a facility for judicial release hearings pursuant to section 2152.22 of the Revised Code or for any other temporary assignment or transfer to a facility.

(2) "Major incident" means the escape or attempted escape of a child who has been committed to the department of youth services from the facility to which the child is assigned; the return to the custody of the department of a child who has escaped or otherwise fled the custody and control of the department without authorization; the allegation of any sexual activity with a child committed to the department; physical injury to a child committed to the department as a result of alleged abuse by department staff; an accident resulting in injury to a child committed to the department that requires medical care or treatment outside the institution in which the child is located; the discovery of a controlled substance upon the person or in the property of a child committed to the department; a suicide attempt by a child committed to the department that results in injury to the child requiring emergency medical services outside the institution in which the child is located; the death of a child committed to the department; an injury to a visitor

at an institution under the control of the department that is caused by a child committed to the department; and the commission or suspected commission of an act by a child committed to the department that would be an offense if committed by an adult.

(3) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(4) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(5) "Residential care facility" and "residential facility" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

HISTORY: 130 v 1215 (Eff 10-7-63); 130 v 1215 (Eff 3-10-64); 132 v H 1 (Eff 2-21-67); 136 v H 85 (Eff 11-28-75); 136 v H 839 (Eff 12-26-75); 137 v H 1 (Eff 8-26-77); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 145 v S 28 (Eff 6-23-93); 145 v H 152 (Eff 7-1-93); 146 v H 1 (Eff 1-1-96); 146 v S 269 (Eff 7-1-96); 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v H 106, § 1, eff. 9-16-04.

§ 5139.06 Disposition of child committed to department.

(A) When a child has been committed to the department of youth services, the department shall do both of the following:

(1) Place the child in an appropriate institution under the condition that it considers best designed for the training and rehabilitation of the child and the protection of the public, provided that the institutional placement shall be consistent with the order committing the child to its custody;

(2) Maintain the child in institutional care or institutional care in a secure facility for the required period of institutionalization in a manner consistent with division (A)(1) of section 2152.16 and divisions (A) to (F) of section 2152.17 of the Revised Code, whichever are applicable, and with section 5139.38 or division (B) or (C) of section 2152.22 of the Revised Code.

(B) When a child has been committed to the department of youth services and has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time, including, but not limited to, a prescribed period of time under division (A)(1)(a) of section 2152.16 of the Revised Code, the department, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to department of youth services supervision in accordance with division (B) or (C) of section 2152.22 of the Revised Code, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the applicable division. A child in those circumstances shall not be released from institutionalization or institutionalization in a secure facility except in accordance with section 2152.22 or 5139.38 of the Revised Code. When a child is released pursuant to a judicial release to court supervision under division (B) of section 2152.22 of the Revised Code, the department shall comply with division (B)(3) of that section and, if the court requests, shall send the committing court a report on the child's progress in the institution and recommendations for conditions of supervision by the court after release. When a child is released pursuant to a judicial release to department of youth services supervision under division (C) of section 2152.22 of the Revised Code, the department shall comply with division (C)(3) of that section relative to the child and

shall send the committing court and the juvenile court of the county in which the child is placed a copy of the treatment and rehabilitation plan described in that division and the conditions that it fixed. The court of the county in which the child is placed may adopt the conditions as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. Any violations of the conditions of the child's judicial release or early release shall be handled pursuant to division (D) of section 2152.22 of the Revised Code.

(C) When a child has been committed to the department of youth services, the department may do any of the following:

(1) Notwithstanding the provisions of this chapter, Chapter 2151., or Chapter 2152. of the Revised Code that prescribe required periods of institutionalization, transfer the child to any other state institution, whenever it appears that the child by reason of mental illness, mental retardation, or other developmental disability ought to be in another state institution. Before transferring a child to any other state institution, the department shall include in the minutes a record of the order of transfer and the reason for the transfer and, at least seven days prior to the transfer, shall send a certified copy of the order to the person shown by its record to have had the care or custody of the child immediately prior to the child's commitment. Except as provided in division (C)(2) of this section, no person shall be transferred from a benevolent institution to a correctional institution or to a facility or institution operated by the department of youth services.

(2) Notwithstanding the provisions of this chapter, Chapter 2151., or Chapter 2152. of the Revised Code that prescribe required periods of institutionalization, transfer the child under section 5120.162 [5120.16.2] of the Revised Code to a correctional medical center established by the department of rehabilitation and correction, whenever the child has an illness, physical condition, or other medical problem and it appears that the child would benefit from diagnosis or treatment at the center for that illness, condition, or problem. Before transferring a child to a center, the department of youth services shall include in the minutes a record of the order of transfer and the reason for the transfer and, except in emergency situations, at least seven days prior to the transfer, shall send a certified copy of the order to the person shown by its records to have had the care or custody of the child immediately prior to the child's commitment. If the transfer of the child occurs in an emergency situation, as soon as possible after the decision is made to make the transfer, the department of youth services shall send a certified copy of the order to the person shown by its records to have had the care or custody of the child immediately prior to the child's commitment. A transfer under this division shall be in accordance with the terms of the agreement the department of youth services enters into with the department of rehabilitation and correction under section 5120.162 [5120.16.2] of the Revised Code and shall continue only as long as the child reasonably appears to receive benefit from diagnosis or treatment at the center for an illness, physical condition, or other medical problem.

(3) Revoke or modify any order of the department except an order of discharge as often as conditions indicate it to be desirable;

(4) If the child was committed pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 of the Revised Code and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under those divisions, assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment and rehabilitation, the costs of which may be paid by the department, provided that the department shall notify the committing court, in writing, of the place and terms of the assignment at least fifteen days prior to the scheduled date of the assignment;

(5) Release the child from an institution in accordance with sections 5139.51 to 5139.54 of the Revised Code in the circumstances described in those sections.

(D) The department of youth services shall notify the committing court of any order transferring the physical location of any child committed to it in accordance with section 5139.35 of the Revised Code. Upon the discharge from its custody and control, the department may petition the court for an order terminating its custody and control.

HISTORY: 130 v 1217 (Eff 10-7-63); 136 v H 155 (Eff 6-29-75); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 144 v S 331 (Eff 11-13-92); 145 v H 152 (Eff 7-1-93); 145 v H 571 (Eff 10-6-94); 146 v H 1 (Eff 1-1-96); 147 v H 1 (Eff 7-1-98); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

§ 5139.07 Rehabilitation programs; placement in own home or in foster care.

(A)(1)(a) As a means of correcting the socially harmful tendencies of a child committed to it, the department of youth services may require a child to participate in vocational, physical, and corrective training and activities, and the conduct and modes of life that seem best adapted to rehabilitate the child and fit the child for return to full liberty without danger to the public welfare.

(b) Except as otherwise provided, the department shall require any child committed to it who has not attained a diploma or certificate of high school equivalence, to participate in courses leading toward a high school diploma or an Ohio certificate of high school equivalence. This requirement does not apply to a child in an assessment program or treatment intervention program prescribed by the department.

(c) The department may monetarily compensate the child for the activities described in this section by transferring the wages of the child for those activities to the appropriate youth benefit fund created under section 5139.86 of the Revised Code.

(d) This section does not permit the department to release a child committed to it from institutional care or institutional care in a secure facility, whichever is applicable, other than in accordance with sections 2152.22, 5139.06, 5139.38, and 5139.50 to 5139.54 of the Revised Code.

(2) The failure of the department of youth services to provide, pursuant to division (A)(1) of this section, an opportunity for any child committed to it to participate in courses that lead to a high school diploma or an Ohio certificate of high school equivalence, does not give rise to a claim for damages against the department.

(B) The department may require a child committed to it to return to the child's home or to be placed in a foster

care placement if it is authorized to make a placement of that nature under sections 2152.22, 5139.06, 5139.38, and 5139.50 to 5139.54 of the Revised Code. Any placement of that nature shall be made in accordance with those sections. The legal residence of a child so placed by the department is the place in which the child is residing in accordance with a department order of placement. The school district responsible for payment of tuition on behalf of the child so placed shall be determined pursuant to section 3313.64 or 3313.65 of the Revised Code.

HISTORY: 130 v 1218 (Eff 10-7-63); 133 v H 22 (Eff 9-23-69); 139 v S 140 (Eff 7-1-81); 139 v H 440 (Eff 11-23-81); 140 v H 210 (Eff 12-12-83); 145 v H 152 (Eff 7-1-93); 147 v H 215 (Eff 9-29-97); 147 v H 1 (Eff 7-1-98); 148 v S 115 (Eff 3-22-2001); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

The provisions of § 11 of SB 179 (148 v —) read, in part, as follows:

SECTION 11. * * * Section 5139.07 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 1 and Am. Sub. H.B. 215 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Comment, Legislative Service Commission

Section 5139.07 of the Revised Code is amended by this act [S.B. 115] and also by Am. Sub. 179 both of the 123rd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

§ 5139.08 Agreements with other agencies.

The department of youth services may enter into an agreement with the director of rehabilitation and correction pursuant to which the department of youth services, in accordance with division (C)(2) of section 5139.06 and section 5120.162 [5120.16.2] of the Revised Code, may transfer to a correctional medical center established by the department of rehabilitation and correction, children who are within its custody for diagnosis or treatment of an illness, physical condition, or other medical problem. The department of youth services may enter into any other agreements with the director of job and family services, the director of mental health, the director of mental retardation and developmental disabilities, the director of rehabilitation and correction, with the courts having probation officers or other public officials, and with private agencies or institutions for separate care or special treatment of children subject to the control of the department of youth services. The department of youth services may, upon the request of a juvenile court not having a regular probation officer, provide probation services for such court.

Upon request by the department of youth services, any public agency or group care facility established or administered by the state for the care and treatment of children and youth shall, consistent with its functions, accept and care for any child whose custody is vested in the department in the same manner as it would be required to do if custody had been vested by a court in such agency or group care facility. If the department has reasonable grounds to believe that any child or youth whose custody

is vested in it is mentally ill or mentally retarded, the department may file an affidavit under section 5122.11 or 5123.76 of the Revised Code. The department's affidavit for admission of a child or youth to such institution shall be filed with the probate court of the county from which the child was committed to the department. Such court may request the probate court of the county in which the child is held to conduct the hearing on the application, in which case the court making such request shall bear the expenses of the proceeding. If the department files such an affidavit, the child or youth may be kept in such institution until a final decision on the affidavit is made by the appropriate court.

HISTORY: 130 v 1218 (Eff 10-7-63); 130 v 1219 (Eff 3-10-64); 133 v H 688 (Eff 11-21-69); 134 v H 494 (Eff 7-12-72); 137 v H 725 (Eff 3-16-78); 138 v H 900 (Eff 7-1-80); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 142 v S 156 (Eff 7-1-88); 144 v S 331 (Eff 11-13-92); 147 v H 1 (Eff 7-1-98); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 5139.09 Re-examination of children.

The department of youth services shall make periodic re-examination of all children under its control for the purpose of determining whether existing orders in individual cases should be modified or continued in force. These examinations shall be made with respect to every child at least once annually.

HISTORY: 130 v 1220 (Eff 10-7-63); 139 v H 440. Eff 11-23-81.

§ 5139.10 When control by department ceases.

Unless the child has already received a final discharge, the control by the department of youth services of a child committed as a delinquent shall cease when the child reaches the age of twenty-one years.

HISTORY: 130 v 1220 (Eff 10-7-63); 139 v H 440. Eff 11-23-81.

§ 5139.11 Department's duty to aid in combatting and preventing juvenile delinquency.

The department of youth services shall do all of the following:

(A) Through a program of education, promotion, and organization, form groups of local citizens and assist these groups in conducting activities aimed at the prevention and control of juvenile delinquency, making use of local people and resources for the following purposes:

(1) Combatting local conditions known to contribute to juvenile delinquency;

(2) Developing recreational and other programs for youth work;

(3) Providing adult sponsors for delinquent children cases;

(4) Dealing with other related problems of the locality.

(B) Advise local, state, and federal officials, public and private agencies, and lay groups on the needs for and possible methods of the reduction and prevention of juvenile delinquency and the treatment of delinquent children;

(C) Consult with the schools and courts of this state on the development of programs for the reduction and

prevention of delinquency and the treatment of delinquents;

(D) Cooperate with other agencies whose services deal with the care and treatment of delinquent children to the end that delinquent children who are state wards may be assisted whenever possible to a successful adjustment outside of institutional care;

(E) Cooperate with other agencies in surveying, developing, and utilizing the recreational resources of a community as a means of combatting the problem of juvenile delinquency and effectuating rehabilitation;

(F) Hold district and state conferences from time to time in order to acquaint the public with current problems of juvenile delinquency and develop a sense of civic responsibility toward the prevention of juvenile delinquency;

(G) Assemble and distribute information relating to juvenile delinquency and report on studies relating to community conditions that affect the problem of juvenile delinquency;

(H) Assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combatting juvenile delinquency and crime, but no survey of that type shall be conducted unless local individuals and groups request it through their local authorities, and no request of that type shall be interpreted as binding the community to following the recommendations made as a result of the request;

(I) Evaluate the rehabilitation of children committed to the department and prepare and submit periodic reports to the committing court for the following purposes:

(1) Evaluating the effectiveness of institutional treatment;

(2) Making recommendations for judicial release under section 2152.22 of the Revised Code if appropriate and recommending conditions for judicial release;

(3) Reviewing the placement of children and recommending alternative placements where appropriate.

(J) Coordinate dates for hearings to be conducted under section 2152.22 of the Revised Code and assist in the transfer and release of children from institutionalization to the custody of the committing court;

(K)(1) Coordinate and assist juvenile justice systems by doing the following:

(a) Performing juvenile justice system planning in the state, including any planning that is required by any federal law;

(b) Collecting, analyzing, and correlating information and data concerning the juvenile justice system in the state;

(c) Cooperating with and providing technical assistance to state departments, administrative planning districts, metropolitan county criminal justice services agencies, criminal justice coordinating councils, and agencies, offices, and departments of the juvenile justice system in the state, and other appropriate organizations and persons;

(d) Encouraging and assisting agencies, offices, and departments of the juvenile justice system in the state and other appropriate organizations and persons to solve problems that relate to the duties of the department;

(e) Administering within the state any juvenile justice acts and programs that the governor requires the department to administer;

- (f) Implementing the state comprehensive plans;
- (g) Auditing grant activities of agencies, offices, organizations, and persons that are financed in whole or in part by funds granted through the department;
- (h) Monitoring or evaluating the performance of juvenile justice system projects and programs in the state that are financed in whole or in part by funds granted through the department;
- (i) Applying for, allocating, disbursing, and accounting for grants that are made available pursuant to federal juvenile justice acts, or made available from other federal, state, or private sources, to improve the criminal and juvenile justice systems in the state. All money from federal juvenile justice act grants shall, if the terms under which the money is received require that the money be deposited into an interest bearing fund or account, be deposited in the state treasury to the credit of the federal juvenile justice program purposes fund, which is hereby created. All investment earnings shall be credited to the fund.
- (j) Contracting with federal, state, and local agencies, foundations, corporations, businesses, and persons when necessary to carry out the duties of the department;
- (k) Overseeing the activities of metropolitan county criminal justice services agencies, administrative planning districts, and juvenile justice coordinating councils in the state;
- (l) Advising the general assembly and governor on legislation and other significant matters that pertain to the improvement and reform of the juvenile justice system in the state;
- (m) Preparing and recommending legislation to the general assembly and governor for the improvement of the juvenile justice system in the state;
- (n) Assisting, advising, and making any reports that are required by the governor, attorney general, or general assembly;
- (o) Adopting rules pursuant to Chapter 119. of the Revised Code.
- (2) Division (K)(1) of this section does not limit the discretion or authority of the attorney general with respect to crime victim assistance and criminal and juvenile justice programs.
- (3) Nothing in division (K)(1) of this section is intended to diminish or alter the status of the office of the attorney general as a criminal justice services agency.
- (4) The governor may appoint any advisory committees to assist the department that the governor considers appropriate or that are required under any state or federal law.

HISTORY: 130 v 1220 (Eff 10-7-63); 132 v S 235 (Eff 11-14-67); 135 v H 760 (Eff 8-22-73); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 145 v H 152 (Eff 7-1-93); 149 v H 94, § 1 (Eff 6-6-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 94, § 6. Eff 1-1-2002.

The effective date is set by section 8 of HB 94.

§ 5139.13 Duties as to facilities and treatment and training of children.

Effective until 1-1-08.

(A) The department of youth services shall do all of the following:

- (1) Control and manage all institutions for the rehabilitation of delinquent children and youthful offenders that are operated by the state, except where the control

and management of an institution is vested by law in another agency;

(2) Provide treatment and training for children committed to the department and assigned by the department to various institutions under its control and management, including, but not limited to, for a child committed to it for an act that is either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, treatment that is appropriate for a child who commits an act that is a sexually oriented offense that is not a registration-exempt sexually oriented offense or child-victim oriented offense and that is intended to ensure that the child does not commit any subsequent act that is a sexually oriented offense or a child-victim oriented offense;

(3) Establish and maintain appropriate reception centers for the reception of children committed to the department and employ competent persons to have charge of those centers and to conduct investigations;

(4) Establish and maintain any other facilities necessary for the training, treatment, and rehabilitation of children committed to the department.

(B) As used in this section, "sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

HISTORY: 130 v 1221 (Eff 10-7-63); 130 v 1222 (Eff 3-10-64); 132 v S 235 (Eff 11-14-67); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03.

§ 5139.13 Duties as to facilities and treatment and training for children.

Effective 1-1-08.

(A) The department of youth services shall do all of the following:

(1) Control and manage all institutions for the rehabilitation of delinquent children and youthful offenders that are operated by the state, except where the control and management of an institution is vested by law in another agency;

(2) Provide treatment and training for children committed to the department and assigned by the department to various institutions under its control and management, including, but not limited to, for a child committed to it for an act that is a sexually oriented offense or a child-victim oriented offense, treatment that is appropriate for a child who commits an act that is a sexually oriented offense or a child-victim oriented offense and that is intended to ensure that the child does not commit any subsequent act that is a sexually oriented offense or a child-victim oriented offense;

(3) Establish and maintain appropriate reception centers for the reception of children committed to the department and employ competent persons to have charge of those centers and to conduct investigations;

(4) Establish and maintain any other facilities necessary for the training, treatment, and rehabilitation of children committed to the department.

(B) As used in this section, "sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

HISTORY: 130 v 1221 (Eff 10-7-63); 130 v 1222 (Eff 3-10-64); 132 v S 235 (Eff 11-14-67); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.
The effective date is set by section 3 of SB 3.

[§ 5139.13.1] § 5139.131 Vocational education programs producing products or providing services.

The department of youth services may conduct programs for the vocational education of children committed to the department or involved in aftercare services provided by the department, under which services are provided or products are made, and offered, for sale. Any profits made from the selling of such products or services shall be deposited into the industrial and entertainment fund created under section 5139.86 of the Revised Code.

HISTORY: 145 v H 152. Eff 7-1-93.

§ 5139.16 Department may accept gifts.

The department of youth services may accept, hold, and use, for the benefit of the department or the children committed to it, any gift, donation, bequest, or devise, and may agree to and perform all conditions of the gift, donation, bequest, or devise, not contrary to law.

HISTORY: 130 v 1223 (Eff 10-7-63); 139 v H 440. Eff 11-23-81.

§ 5139.18 Supervision of children released from institutions; apprehension of violators.

(A) Except with respect to children who are granted a judicial release to court supervision pursuant to division (B) of section 2152.22 of the Revised Code, the department of youth services is responsible for locating homes or jobs for children released from its institutions, for supervision of children released from its institutions, and for providing or arranging for the provision to those children of appropriate services that are required to facilitate their satisfactory community adjustment.

(B) The department of youth services shall exercise general supervision over all children who have been released on placement from any of its institutions other than children who are granted a judicial release to court supervision pursuant to division (B) of section 2152.22 of the Revised Code. The director of youth services, with the consent and approval of the board of county commissioners of any county, may contract with the public children services agency of that county, the department of probation of that county established pursuant to section 2301.27 of the Revised Code, or the probation department or service established pursuant to sections 2151.01 to 2151.54 of the Revised Code for the provision of direct supervision and control over and the provision of supportive assistance to all children who have been released on placement into that county from any of its institutions, or, with the consent of the juvenile judge or the administrative judge of the juvenile court of any county, contract with any other public agency, institution, or organization that is qualified to provide the care and supervision that is required under the terms and conditions of the child's treatment plan for the provision of direct supervision and control over and the provision of supportive assistance to all children who have been released on placement into that county from any of its institutions.

(C) Whenever any placement official has reasonable cause to believe that any child released by a court pursuant to section 2152.22 of the Revised Code has violated the conditions of the child's placement, the official may request, in writing, from the committing court or transferee court a custodial order, and, upon reasonable and probable cause, the court may order any sheriff, deputy sheriff, constable, or police officer to apprehend the child. A child so apprehended may be confined in the detention facility of the county in which the child is apprehended until further order of the court. If a child who was released on supervised release by the release authority of the department of youth services or a child who was granted a judicial release to department of youth services supervision violates the conditions of the supervised release or judicial release, section 5139.52 of the Revised Code applies with respect to that child.

HISTORY: 130 v 1226 (Eff 10-7-63); 130 v 1227 (Eff 3-10-64); 132 v H 367 (Eff 9-14-67); 135 v H 760 (Eff 8-22-73); 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 145 v H 152 (Eff 7-1-93); 147 v H 408 (Eff 10-1-97); 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.19 Institution managing officers.

Subject to the rules of the department of youth services, each institution and community regional office under the jurisdiction of the department shall be under the control of a managing officer to be known as a superintendent or by other appropriate title. Such managing officer shall be appointed by the director of the department and shall be in the unclassified service and serve at the pleasure of the director. Each managing officer appointed under this section may, subject to the approval of the director, appoint an assistant managing officer and deputy managing officers, all of whom shall be in the unclassified civil service. Subject to Chapter 124. of the Revised Code, the director shall appoint the necessary employees and may remove such employees for cause.

HISTORY: 130 v 1228 (Eff 10-7-63); 132 v S 235 (Eff 11-14-67); 137 v H 1 (Eff 8-26-77); 139 v H 440 (Eff 11-23-81); 140 v H 291. Eff 7-1-83.

[§ 5139.19.1] § 5139.191 Apprehension of juvenile escapees.

Any sheriff, deputy sheriff, constable, officer of state or local police, or employee of the department of youth services shall apprehend any child who has escaped from an institution under the jurisdiction of the department and return the child. The written request of the superintendent of the institution from which the child has escaped shall be sufficient cause to authorize the apprehension and return of the child to the institution. Such request shall state the name and description of the child, that the child is under the jurisdiction of the department of youth services, and that the superintendent has personal knowledge that the child has escaped. A child so apprehended may be confined in the detention facility of the county in which the child is apprehended until removed to the proper institution.

HISTORY: 133 v S 84 (Eff 9-23-69); 139 v H 440 (Eff 11-23-81); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.20 Emergency releases to meet overcrowding conditions.

(A) Notwithstanding any other provision of the Revised Code that sets forth the minimum periods or period for which a child committed to the department of youth services is to be institutionalized or institutionalized in a secure facility or the procedures for the judicial release to court supervision or judicial release to department of youth services supervision, the department may grant emergency releases to children confined in state juvenile institutions if the governor, upon request of the director of the department authorizes the director, in writing, to issue a declaration that an emergency overcrowding condition exists in all of the institutions in which males are confined, or in all of the institutions in which females are confined, that are under the control of the department. If the governor authorizes the issuance of a declaration, the director may issue the declaration. If the director issues the declaration, the director shall file a copy of it with the secretary of state, which copy shall be a public record. Upon the filing of the copy, the department is authorized to grant emergency releases to children within its custody subject to division (B) of this section. The authority to grant the emergency releases shall continue until the expiration of thirty days from the day on which the declaration was filed. The director shall not issue a declaration that an emergency overcrowding condition exists unless the director determines that no other method of alleviating the overcrowding condition is available.

(B)(1) If the department is authorized under division (A) of this section to grant emergency releases to children within its custody, the department shall determine which, if any, children to release under that authority only in accordance with this division and divisions (C), (D), and (E) of this section. The department, in determining which, if any, children to release, initially shall classify each child within its custody according to the degree of offense that the act for which the child is serving the period of institutionalization would have been if committed by an adult. The department then shall scrutinize individual children for emergency release, based upon their degree of offense, in accordance with the categories and the order of consideration set forth in division (B)(2) of this section. After scrutiny of all children within the particular category under consideration, the department shall designate individual children within that category to whom it wishes to grant an emergency release.

(2) The categories of children in the custody of the department that may be considered for emergency release under this section, and the order in which the categories shall be considered, are as follows:

(a) Initially, only children who are not serving a period of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first, second, or third degree if committed by an adult may be considered.

(b) When all children in the category described in division (B)(2)(a) of this section have been scrutinized and all children in that category who have been designated for emergency release under division (B)(1) of this section have been so released, then all children who are not serving a period of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first or

second degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first or second degree if committed by an adult may be considered.

(c) When all children in the categories described in divisions (B)(2)(a) and (b) of this section have been scrutinized and all children in those categories who have been designated for emergency release under division (B)(1) of this section have been released, then all children who are not serving a term of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first or second degree if committed by an adult may be considered.

(d) In no case shall the department consider for emergency release any child who is serving a term of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first degree if committed by an adult, and in no case shall the department grant an emergency release to any such child pursuant to this section.

(C) An emergency release granted pursuant to this section shall consist of one of the following:

(1) A supervised release under terms and conditions that the department believes conducive to law-abiding conduct;

(2) A discharge of the child from the custody and control of the department if the department is satisfied that the discharge is consistent with the welfare of the individual and protection of the public;

(3) An assignment to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment or rehabilitation, the costs of which may be paid by the department.

(D) If a child is granted an emergency release pursuant to this section, the child thereafter shall be considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time under division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code. The department shall retain legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law.

(E)(1) If a child is granted an emergency release so that the child is released on supervised release or assigned to a family home, group care facility, or other place for treatment or rehabilitation, the department shall prepare a written treatment and rehabilitation plan for the child in accordance with division (E) of section 2152.22 of the Revised Code, which shall include the conditions of the child's release or assignment, and shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan and the conditions that it fixed. The court of the county in which the child is placed may adopt the conditions as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is released on supervised release or is assigned subject to specified conditions and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with any post-release conditions established by the court in its journal entry, the court of the county in which the child is placed, in its discretion,

may schedule a time for a hearing on whether the child violated any of the post-release conditions. If that court conducts a hearing and determines at the hearing that the child violated any of the post-release conditions established in its journal entry, the court, if it determines that the violation of the conditions was a serious violation, may order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of three months.

(2) The department also shall file a written progress report with the committing court regarding each child granted an emergency release pursuant to this section at least once every thirty days unless specifically directed otherwise by the court. The report shall include the information required of reports described in division (F) of section 2152.22 of the Revised Code.

HISTORY: 140 v H 291 (Eff 7-1-83); 146 v H 1 (Eff 1-1-96); 146 v S 2 (Eff 7-1-96); 147 v H 1 (Eff 7-1-98); 148 v S 179, § 3, Eff 1-1-2002.

Not analogous to former RC § 5139.20 (130 v 1228; 132 v H 343) repealed 139 v H 440, § 2, eff 11-23-81.

The effective date is set by section 5 of SB 179.

† Division (B)(2)(c). The word "degree" does not appear on the print copy of SB 179 (148 v —), however, it was not officially deleted.

§ 5139.21 Prohibition.

No person shall influence or attempt to influence any child under supervision of the department of youth services, to leave the institution or home in which he was placed, his home, or place of employment or to violate any of the conditions upon which he was released under supervision.

HISTORY: 130 v 1228 (Eff 10-7-63); 132 v H 491 (Eff 10-19-67); 139 v H 440, Eff 11-23-81.

§ 5139.22 County to bear transportation cost.

Each county shall bear all of the expenses incident to the transportation of a child committed to the department of youth services by the juvenile court of that county from that county to the institution to which the department has assigned the child and shall bear the fees and costs allowed in similar cases. The fees, costs, and expenses shall be paid from the county treasury upon itemized vouchers certified to by the judge of the juvenile court.

HISTORY: 130 v 1228 (Eff 10-7-63); 145 v H 152, Eff 7-1-93.

§ 5139.23 Lease of capital facilities from Ohio building authority.

The department of youth services shall lease capital facilities which are constructed, reconstructed, improved, or financed by the Ohio building authority pursuant to section 307.021 [307.02.1] and Chapter 152. of the Revised Code for the use of the department, and may enter into any other agreements with the authority ancillary to the construction, reconstruction, improvement, financing, leasing, or operation of such facilities,

including, but not limited to agreements required by the applicable bond proceedings authorized by Chapter 152. of the Revised Code. Rentals from such leases shall constitute available receipts as defined in section 152.09 of the Revised Code and may be pledged for the payment of bond service charges as provided in section 152.10 of the Revised Code.

HISTORY: 142 v H 812, Eff 6-29-85.

Not analogous to former RC § 5139.23 (133 v H 40), repealed 135 v H 760, § 2, eff 8-22-73.

§ 5139.24 Repealed, 148 v S 179, § 4 [130 v 1229; 139 v H 440]. Eff 1-1-2002.

This section concerned transfer of incorrigibles to reformatories; control after age twenty-one.

The effective date is set by section 5 of SB 179.

§ 5139.25 Naming of institutions.

The department of youth services may designate the institutions under its management and control, present and future, by appropriate respective names, regardless of present statutory designation.

HISTORY: 130 v 1229 (Eff 3-10-64); 139 v H 440, Eff 11-23-81.

[§ 5139.25.1] § 5139.251 Searches of visitors to institutions.

(A) As used in this section:

(1) "Body cavity search" and "strip search" have the same meanings as in section 5120.421 [5120.42.1] of the Revised Code.

(2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(3) "Drug of abuse" has the same meaning as in section 3719.011 [3719.01.1] of the Revised Code.

(4) "Intoxicating liquor" has the same meaning as in section 4301.01 of the Revised Code.

(B) For purposes of determining whether visitors to an institution under the control of the department of youth services are knowingly conveying, or attempting to convey, onto the grounds of the institution any deadly weapon, dangerous ordnance, drug of abuse, intoxicating liquor, or electronic communications device in violation of section 2921.36 of the Revised Code, the department may adopt rules, pursuant to Chapter 119. of the Revised Code, that are consistent with this section.

(C) For the purposes described in division (B) of this section, visitors who are entering or have entered an institution under the control of the department of youth services may be searched by the use of a magnetometer or similar device, by a pat-down of the visitor's person that is conducted by a person of the same sex as that of the visitor, and by an examination of the contents of pockets, bags, purses, packages, and other containers proposed to be conveyed or already conveyed onto the grounds of the institution. Searches of visitors authorized by this division may be conducted without cause, but shall be conducted uniformly or by automatic random selection. Discriminatory or arbitrary selection searches of visitors are prohibited under this division.

(D) For the purposes described in division (B) of this section, visitors who are entering or have entered an

institution under the control of the department of youth services may be searched by a strip or body cavity search, but only under the circumstances described in this division. In order for a strip or body cavity search to be conducted of a visitor, the highest officer present in the institution shall expressly authorize the search on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in the light of experience, that a visitor proposed to be so searched possesses, and intends to convey or already has conveyed, a deadly weapon, dangerous ordinance, drug of abuse, intoxicating liquor, or electronic communications device onto the grounds of the institution in violation of section 2921.36 of the Revised Code.

Except as otherwise provided in this division, prior to the conduct of the strip or body cavity search, the highest officer present in the institution shall cause the visitor to be provided with a written statement that sets forth the specific objective facts upon which the proposed search is based. In the case of an emergency under which time constraints make it impossible to prepare the written statement before the conduct of the proposed search, the highest officer in the institution instead shall cause the visitor to be orally informed of the specific objective facts upon which the proposed search is based prior to its conduct, and shall cause the preparation of the written statement and its provision to the visitor within twenty-four hours after the conduct of the search. Both the highest officer present in the institution and the visitor shall retain a copy of a written statement provided in accordance with this division.

Any strip or body cavity search conducted pursuant to this division shall be conducted in a private setting by a person of the same sex as that of the visitor. Any body cavity search conducted under this division additionally shall be conducted by medical personnel. This division does not preclude, and shall not be construed as precluding, a less intrusive search as authorized by division (C) of this section when reasonable suspicion as described in this division exists for a strip or body cavity search.

HISTORY: 143 v S 258 (Eff 8-22-90); 149 v H 510. Eff 3-31-2003.

§ 5139.26 Acquisition and disposal of land or property.

The department of youth services, with the approval of the governor and the attorney general, may buy, sell, lease, or exchange portions of land or property, real or personal, under the management and control of the department, or enter into contracts relative thereto, or grant easements or licenses for the use thereof, when such purchase, sale, lease, exchange, contract, easement, or license is advantageous to the state. An action may be brought to enforce any agreement authorized by this section. Revenues received from agreements entered into under this section shall be deposited in the state treasury to the credit of the general fund.

HISTORY: 130 v 1229 (Eff 3-10-64); 139 v H 440. Eff 11-23-81.

[REGULATIONS]

§ 5139.27 Adoption of rules for financial assistance.

The department of youth services shall adopt rules prescribing the minimum standards of construction for a school, forestry camp, or other facility established under

section 2151.65 of the Revised Code for which financial assistance may be granted to assist in defraying the cost of the construction of the school, forestry camp, or other facility. If an application for that financial assistance is filed with the department under section 2151.651 [2151.65.1] of the Revised Code, and the department finds that the application is in proper form and the specifications for the construction of the school, forestry camp, or other facility meet the minimum standards set forth in the rules adopted by the department, the department may, from moneys available to it for granting financial assistance for the construction of schools, forestry camps, or other facilities established under section 2151.65 of the Revised Code, grant financial assistance to the county making the application, subject to the approval of the controlling board, in an amount not to exceed one-half of the county's share of the cost of construction of the school, forestry camp, or other facility but not to exceed six thousand five hundred dollars for each bed unit provided for in the school, forestry camp, or other facility. As used in this section, "construction" means the building and the initial equipping of new structures and, to the extent provided for in rules adopted by the department, the acquisition, remodeling, and initial equipping of existing structures, excluding architect's fees and the cost of land acquisition.

A county that receives financial assistance under this section shall not be obligated to repay the assistance to the state unless the school, forestry camp, or other facility for which the assistance is granted is used within the ten-year period immediately following its establishment for other than the purpose of rehabilitating children between the ages of twelve to eighteen years, other than psychotic or mentally retarded children, who are designated delinquent children, as defined in section 2152.02 of the Revised Code, or unruly, as defined in section 2151.022 [2151.02.2] of the Revised Code, by order of a juvenile court. If the department of youth services finds that the school, forestry camp, or other facility is used for other than that purpose within that ten-year period, the county shall be obligated to repay the assistance to the state and, through its board of county commissioners, may enter into an agreement with the director of budget and management for the discharge of that obligation over a period not to exceed ten years in duration. Whenever a county is obligated to repay that assistance to the state and its board of county commissioners fails to enter into or fails to comply with an agreement for the discharge of that obligation, the tax commissioner, pursuant to section 5747.54 of the Revised Code, shall withhold from distribution to the county from the local government fund an amount sufficient to discharge the county from that obligation to the state.

HISTORY: 131 v 1240 (Eff 8-10-65); 135 v H 760 (Eff 8-22-73); 135 v S 174 (Eff 12-4-73); 136 v H 1 (Eff 6-13-75); 136 v H 818 (Eff 9-29-76); 138 v S 168 (Eff 10-2-80); 139 v H 440 (Eff 11-23-81); 141 v H 201 (Eff 1-1-86); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 5139.27.1] § 5139.271 Conditions of financial assistance for construction or acquisition of detention facility.

Subject to the approval of the controlling board, the department of youth services may grant and pay financial assistance to defray the county's share of the cost of

acquiring or constructing a district detention facility, established under section 2152.41 of the Revised Code, to any county making application under section 2152.43 of the Revised Code if the department finds that the application was made in accordance with its rules and the facility or the specifications for the facility meet minimum standards established by the department. No financial assistance shall be granted for defraying the cost of architects' fees or land.

The department shall adopt rules prescribing the minimum standards of construction and condition of existing structures, established under section 2152.41 of the Revised Code, for which financial assistance is granted under this section. The department may recommend programs of education and training and the qualifications desired for personnel of a district detention facility.

The amount of financial assistance granted to any county shall not exceed one-half of the county's share of the cost of acquisition or construction of the facility. The total of all state assistance for any home† shall not exceed six thousand five hundred dollars for each bed unit provided for in the facility.

A county that receives financial assistance under this section shall repay the assistance to the state if the facility for which the assistance is granted is used within the ten-year period immediately following its establishment for purposes other than those contained in section 2152.41 of the Revised Code. A board of county commissioners that uses the facility for any other purpose within that period shall enter into an agreement with the director of budget and management for the discharge of that obligation over a period not to exceed ten years. If a board of county commissioners fails to enter into an agreement for the discharge of that obligation, or fails to comply with the terms of such an agreement, the director shall direct the tax commissioner, pursuant to section 5747.54 of the Revised Code, to withhold from the distribution of the local government fund an amount sufficient to discharge the obligation.

As used in this section:

(A) "Construction" means the building and initial equipping of new structures.

(B) "Acquisition" means "acquisition" as defined in the rules of the department, which may include the purchase, remodeling, and initial equipping of existing structures.

HISTORY: 133 v H 1135 (Eff 9-16-70); 134 v H 475 (Eff 12-20-71); 135 v S 174 (Eff 12-4-73); 136 v H 818 (Eff 9-29-76); 137 v H 1 (Eff 8-26-77); 138 v S 168 (Eff 10-2-80); 139 v H 440 (Eff 11-23-81); 140 v H 37 (Eff 6-22-84); 141 v H 201 (Eff 1-1-86); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3. Eff 1-1-2002.

† In the third paragraph, the word "home" was not amended by SB 179 (148 v —) to read "facility".

The effective date is set by section 5 of SB 179.

[§ 5139.28.1] § 5139.281 Grants to detention facilities; approval of district detention facilities; in-service training programs for staff.

The department of youth services shall adopt rules prescribing the manner of application for financial assistance under this section for the operation and maintenance of a detention facility provided, or district detention facility established, under section 2151.41† of the Revised Code and prescribing minimum standards of

operation, including criteria for programs of education, training, counseling, recreation, health, and safety, and qualifications of personnel with which a facility shall comply as a condition of eligibility for assistance under this section. If the board of county commissioners providing a detention facility or the board of trustees of a district detention facility applies to the department for assistance and if the department finds that the application is in accordance with the rules adopted under this section and that the facility meets the minimum standards adopted under this section, the department may grant assistance to the applicant board for the operation and maintenance of each facility in an amount not to exceed fifty per cent of the approved annual operating cost. The board shall make a separate application for each year for which assistance is requested.

The department shall adopt any necessary rules for the care, treatment, and training in a district detention facility of children found to be delinquent children and committed to the facility by the juvenile court under section 2151.19 of the Revised Code and may approve for this purpose any facility that is found to be in compliance with the rules it adopts.

The department shall provide, at least once every six months, in-service training programs for staff members of detention facilities or district detention facilities and shall pay all travel and other necessary expenses incurred by participating staff members.

HISTORY: 136 v H 1196 (Eff 8-9-76); 137 v S 221 (Eff 11-23-77); 139 v H 440 (Eff 11-23-81); 145 v H 152 (Eff 7-1-93); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

† Was RC § 2152.41 intended? RC § 2151.41 was repealed in 141 v H 349, § 2, eff 3-6-86.

§ 5139.29 Adoption of rules for payment of assistance.

The department of youth services shall adopt and promulgate regulations prescribing the method of calculating the amount of and the time and manner for the payment of financial assistance granted under sections 5139.27 and 5139.271 [5139.27.1] of the Revised Code, for the construction or acquisition of a district detention facility established under section 2152.41 of the Revised Code, or for the construction and maintenance of a school, forestry camp, or other facility established under section 2151.65 of the Revised Code.

HISTORY: 131 v 1242 (Eff 8-10-65); 133 v H 1135 (Eff 9-16-70); 139 v H 440 (Eff 11-23-81); 149 v H 94, § 1 (Eff 9-5-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 94, § 4. Eff 1-1-2002.

The effective date is set by section 5 of HB 94.

§ 5139.30 Authority to transfer children.

The department of youth services may, by mutual agreement with the governing board of a school, forestry camp, or other facility established under section 2151.65 of the Revised Code, transfer to such school, forestry camp, or other facility any child committed to the department.

HISTORY: 131 v 1243 (Eff 8-10-65); 139 v H 440. Eff 11-23-81.

§ 5139.31 Inspection of schools and facilities.

The department of youth services may inspect any school, forestry camp, district detention facility, or other

facility for which an application for financial assistance has been made to the department under section 2152.43 or 2151.651 [2151.65.1] of the Revised Code or for which financial assistance has been granted by the department under section 5139.27, 5139.271 [5139.27.1], or 5139.281 [5139.28.1] of the Revised Code. The inspection may include, but need not be limited to, examination and evaluation of the physical condition of the school, forestry camp, district detention facility, or other facility, including any equipment used in connection with it; observation and evaluation of the training and treatment of children admitted to it; examination and analysis and copying of any papers, records, or other documents relating to the qualifications of personnel, the commitment of children to it, and its administration.

HISTORY: 131 v 1243 (Eff 8-10-65); 133 v H 1135 (Eff 9-16-70); 136 v H 1196 (Eff 8-9-76); 139 v H 440 (Eff 11-23-81); 149 v H 94, § 1 (Eff 9-5-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 94, § 4. Eff 1-1-2002.

The effective date is set by section 5 of HB 94.

§ 5139.32 Release or discharge of children.

(A) Whenever a child committed to the department of youth services is unable to benefit from the programs conducted by the department, as found under division (B) of this section, the department forthwith shall release or discharge such child from its jurisdiction and either return the child to the committing court, provided that such court so consents or directs, or otherwise secure for the child an environment more beneficial to the child's future development.

(B) The determination that a child is unable to benefit from the programs conducted by the department shall be made by the committing court on its own motion or upon application by the department or by a parent or the guardian of the person of the child, or, if the child has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum period set forth in Chapter 2152. of the Revised Code and the child's commitment order, by the department itself.

HISTORY: 131 v 1243 (Eff 8-10-65); 139 v H 440 (Eff 11-23-81); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.33 Grants for county community-based programs and services for delinquent children.

(A) The department of youth services shall make grants in accordance with this section to encourage counties to use community-based programs and services for juveniles who are adjudicated delinquent children for the commission of acts that would be felonies if committed by an adult.

(B) Each county seeking a grant under this section shall file an application with the department of youth services. The application shall be filed at the time and in accordance with procedures established by the department in rules adopted under this section. Each application shall be accompanied by a plan designed to reduce the county's commitment percentage, or to enable it to maintain or attain a commitment percentage that is equal to or below the statewide average commitment percent-

age. A county's commitment percentage is the percentage determined by dividing the number of juveniles the county committed to the department during the year by the number of juveniles who were eligible to be committed. The statewide average commitment percentage is the percentage determined by dividing the number of juveniles in the state committed to the department during the year by the number of juveniles who were eligible to be committed. These percentages shall be determined by the department using the most reliable data available to it.

Each plan shall include a method of ensuring equal access for minority youth to the programs and services for which the grant will be used.

The department shall review each application and plan to ensure that the requirements of this division are satisfied. Any county applying for a grant under this section that received a grant under this section during the preceding year and that failed to meet its commitment goals for that year shall make the changes in its plan that the department requires in order to continue to be eligible for grants under this section.

(C) Subject to division (E) of this section, the amounts appropriated for the purpose of making grants under this section shall be distributed annually on a per capita basis among the counties that have complied with division (B) of this section.

(D) The department shall adopt rules to implement this section. The rules shall include, but are not limited to, procedures and schedules for submitting applications and plans under this section, including procedures allowing joint-county applications and plans; and procedures for monitoring and evaluating the effectiveness of the programs and services financed with grant money, the enhancement of the use of local facilities and services, and the adequacy of the supervision and treatment provided to juveniles by those programs and services.

(E)(1) Three months prior to the implementation of the felony delinquent care and custody program described in section 5139.43 of the Revised Code, each county that is entitled to a grant under this section shall receive its grant money for the fiscal year or the remainder of its grant money for the fiscal year, other than any grant money to which it is entitled and that is set aside by the department of youth services for purposes of division (E)(2) of this section. The grant money so distributed shall be paid in a lump sum.

(2) During the first twelve months that the felony delinquent care and custody program described in section 5139.43 of the Revised Code is implemented in a county, any grant or the remainder of any grant to which a county is entitled and that is payable from the appropriation made to the department of youth services for community sanctions shall be distributed as follows:

(a) In the first quarter of the twelve-month period, the county shall receive one hundred per cent of the quarterly distribution.

(b) In the second quarter of the twelve-month period, the county shall receive seventy-five per cent of the quarterly distribution.

(c) In the third quarter of the twelve-month period, the county shall receive fifty per cent of the quarterly distribution.

(d) In the fourth quarter of the twelve-month period, the county shall receive twenty-five per cent of the quarterly distribution.

(3) Grant moneys received pursuant to divisions (E)(1) and (2) of this section shall be transmitted by the juvenile court of the recipient county to the county treasurer, shall be deposited by the county treasurer into the felony delinquent care and custody fund created pursuant to division (B)(1) of section 5139.43 of the Revised Code, and shall be used by the juvenile court in accordance with division (B)(2) of that section. The grant moneys shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders.

(4) One year after the commencement of its operation of the felony delinquent care and custody program described in section 5139.43 of the Revised Code, the department shall not make any further grants under this section.

HISTORY: 143 v S 268 (Eff 6-28-90); 145 v H 152 (Eff 7-1-93); 145 v H 715. Eff 7-22-94; 150 v H 95, § 1, eff. 9-26-03.

Not analogous to former RC § 5139.33 (132 v H 803; 133 v H 30; 135 v H 760; 139 v H 73; 139 v S 114), repealed 139 v H 440, § 2, eff 11-23-81.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 5139.34 Annual county grants.

(A) Funds may be appropriated to the department of youth services for the purpose of granting state subsidies to counties. A county or the juvenile court that serves a county shall use state subsidies granted to the county pursuant to this section only in accordance with divisions (B)(2)(a) and (3)(a) of section 5139.43 of the Revised Code and the rules pertaining to the state subsidy funds that the department adopts pursuant to division (D) of section 5139.04 of the Revised Code. The department shall not grant financial assistance pursuant to this section for the provision of care and services for children in a placement facility unless the facility has been certified, licensed, or approved by a state or national agency with certification, licensure, or approval authority, including, but not limited to, the department of job and family services, department of education, department of mental health, department of mental retardation and developmental disabilities, or American Correctional Association. For the purposes of this section, placement facilities do not include a state institution or a county or district children's home.

The department also shall not grant financial assistance pursuant to this section for the provision of care and services for children, including, but not limited to, care and services in a detention facility, in another facility, or in out-of-home placement, unless the minimum standards applicable to the care and services that the department prescribes in rules adopted pursuant to division (D) of section 5139.04 of the Revised Code have been satisfied.

(B) The department of youth services shall apply the following formula to determine the amount of the annual grant that each county is to receive pursuant to division (A) of this section, subject to the appropriation for this purpose to the department made by the general assembly:

(1) Each county shall receive a basic annual grant of fifty thousand dollars.

(2) The sum of the basic annual grants provided under division (B)(1) of this section shall be subtracted from the total amount of funds appropriated to the department of youth services for the purpose of making grants pursuant to division (A) of this section to determine the remaining portion of the funds appropriated. The remaining portion of the funds appropriated shall be distributed on a per capita basis to each county that has a population of more than twenty-five thousand for that portion of the population of the county that exceeds twenty-five thousand.

(C)(1) Prior to a county's receipt of an annual grant pursuant to this section, the juvenile court that serves the county shall prepare, submit, and file in accordance with division (B)(3)(a) of section 5139.43 of the Revised Code an annual grant agreement and application for funding that is for the combined purposes of, and that satisfies the requirements of, this section and section 5139.43 of the Revised Code. In addition to the subject matters described in division (B)(3)(a) of section 5139.43 of the Revised Code or in the rules that the department adopts to implement that division, the annual grant agreement and application for funding shall address fiscal accountability and performance matters pertaining to the programs, care, and services that are specified in the agreement and application and for which state subsidy funds granted pursuant to this section will be used.

(2) The county treasurer of each county that receives an annual grant pursuant to this section shall deposit the state subsidy funds so received into the county's felony delinquent care and custody fund created pursuant to division (B)(1) of section 5139.43 of the Revised Code. Subject to exceptions prescribed in section 5139.43 of the Revised Code that may apply to the disbursement, the department shall disburse the state subsidy funds to which a county is entitled in a lump sum payment that shall be made in July of each calendar year.

(3) Upon an order of the juvenile court that serves a county and subject to appropriation by the board of county commissioners of that county, a county treasurer shall disburse from the county's felony delinquent care and custody fund the state subsidy funds granted to the county pursuant to this section for use only in accordance with this section, the applicable provisions of section 5139.43 of the Revised Code, and the county's approved annual grant agreement and application for funding.

(4) The moneys in a county's felony delinquent care and custody fund that represent state subsidy funds granted pursuant to this section are subject to appropriation by the board of county commissioners of the county; shall be disbursed by the county treasurer as required by division (C)(3) of this section; shall be used in the manners referred to in division (C)(3) of this section; shall not revert to the county general fund at the end of any fiscal year; shall carry over in the felony delinquent care and custody fund from the end of any fiscal year to the next fiscal year; shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs, care, or services for alleged or adjudicated delinquent children, unruly children, or juvenile traffic offenders or for children who are at risk of becoming delinquent children, unruly children, or juvenile traffic offenders; and shall not be used to pay for the care and custody of felony delinquents who are in the care and custody of an institution pursuant to a commitment, recommitment, or revocation of a release on parole by the

juvenile court of that county or who are in the care and custody of a community corrections facility pursuant to a placement by the department with the consent of the juvenile court as described in division (E) of section 5139.36 of the Revised Code.

(5) As a condition of the continued receipt of state subsidy funds pursuant to this section, each county and the juvenile court that serves each county that receives an annual grant pursuant to this section shall comply with divisions (B)(3)(b), (c), and (d) of section 5139.43 of the Revised Code.

HISTORY: 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 145 v H 152 (Eff 7-1-93); 147 v H 215 (Eff 6-30-97); 148 v H 471, Eff 7-1-2000; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 5139.35 Prior court consent required for placement in less restrictive setting.

(A) Except as provided in division (C) of this section and division (C)(2) of section 5139.06 of the Revised Code, the department of youth services shall not place a child committed to it pursuant to section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code who has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, without first obtaining the prior consent of the committing court.

(B) Except as provided in division (C) of this section, the department of youth services shall notify the committing court, in writing, of any placement of a child committed to it pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code who has been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization under those divisions in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, at least fifteen days before the scheduled date of placement.

(C) If, pursuant to division (C)(2) of section 5139.06 of the Revised Code, the department of youth services transfers a child committed to it pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code to a correctional medical center established by the department of rehabilitation and correction, the department of youth services shall send the committing court a certified copy of the transfer order.

HISTORY: 139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 144 v S 331 (Eff 11-13-92); 146 v H 1 (Eff 1-1-96); 147 v H 1 (Eff 7-1-98); 148 v S 179, § 3, Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.36 Grants to operate community corrections facilities; minimum occupancy threshold.

(A) In accordance with this section and the rules adopted under it and from funds appropriated to the department of youth services for the purposes of this

section, the department shall make grants that provide financial resources to operate community corrections facilities for felony delinquents.

(B)(1) Each community corrections facility that intends to seek a grant under this section shall file an application with the department of youth services at the time and in accordance with the procedures that the department shall establish by rules adopted in accordance with Chapter 119. of the Revised Code. In addition to other items required to be included in the application, a plan that satisfies both of the following shall be included:

(a) It reduces the number of felony delinquents committed to the department from the county or counties associated with the community corrections facility.

(b) It ensures equal access for minority felony delinquents to the programs and services for which a potential grant would be used.

(2) The department of youth services shall review each application submitted pursuant to division (B)(1) of this section to determine whether the plan described in that division, the community corrections facility, and the application comply with this section and the rules adopted under it.

(C) To be eligible for a grant under this section and for continued receipt of moneys comprising a grant under this section, a community corrections facility shall satisfy at least all of the following requirements:

(1) Be constructed, reconstructed, improved, or financed by the Ohio building authority pursuant to section 307.021 [307.02.1] of the Revised Code and Chapter 152. of the Revised Code for the use of the department of youth services and be designated as a community corrections facility;

(2) Have written standardized criteria governing the types of felony delinquents that are eligible for the programs and services provided by the facility;

(3) Have a written standardized intake screening process and an intake committee that at least performs both of the following tasks:

(a) Screens all eligible felony delinquents who are being considered for admission to the facility in lieu of commitment to the department;

(b) Notifies, within ten days after the date of the referral of a felony delinquent to the facility, the committing court whether the felony delinquent will be admitted to the facility.

(4) Comply with all applicable fiscal and program rules that the department adopts in accordance with Chapter 119. of the Revised Code and demonstrate that felony delinquents served by the facility have been or will be diverted from a commitment to the department.

(D) The department of youth services shall determine the method of distribution of the funds appropriated for grants under this section to community corrections facilities.

(E)(1) The department of youth services shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the minimum occupancy threshold of community corrections facilities.

(2) The department may make referrals for the placement of children in its custody to a community corrections facility. At least forty-five days prior to the referral of a child or within any shorter period prior to the referral of the child that the committing court may allow, the department shall notify the committing court of its intent to place the child in a community corrections facility. The court shall have thirty days after the receipt of the notice

to approve or disapprove the placement. If the court does not respond to the notice of the placement within that thirty-day period, the department shall proceed with the placement and debit the county in accordance with sections 5139.41 to 5139.43 of the Revised Code. A child placed in a community corrections facility pursuant to this division shall remain in the legal custody of the department of youth services during the period in which the child is in the community corrections facility.

(3) Counties that are not associated with a community corrections facility may refer children to a community corrections facility with the consent of the facility. The department of youth services shall debit the county that makes the referral in accordance with sections 5139.41 to 5139.43 of the Revised Code.

(F) If the board or other governing body of a community corrections facility establishes an advisory board, the board or other governing authority of the community corrections facility shall reimburse the members of the advisory board for their actual and necessary expenses incurred in the performance of their official duties on the advisory board. The members of advisory boards shall serve without compensation.

HISTORY: 144 v S 351 (EFF 7-1-92); 145 v H 152 (EFF 7-1-93); 147 v H 215 (EFF 9-29-97); 147 v H 526 (EFF 9-1-98); 148 v S 181, EFF 9-4-2000; 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 9-29-05.

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 5139.36 (132 v S 278; 138 v S 168), repealed 139 v H 440, § 2, eff 11-23-81.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 5139.38 Transfer to community facility for treatment prior to release.

Within ninety days prior to the expiration of the prescribed minimum period of institutionalization of a felony delinquent committed to the department of youth services and with prior notification to the committing court, the department may transfer the felony delinquent to a community facility for a period of supervised treatment prior to ordering a release of the felony delinquent on supervised release or prior to the release and placement of the felony delinquent as described in section 5139.18 of the Revised Code. For purposes of transfers under this section, both of the following apply:

(A) The community facility may be a community corrections facility that has received a grant pursuant to section 5139.36 of the Revised Code, a community residential program with which the department has contracted for purposes of this section, or another private entity with which the department has contracted for purposes of this section. Division (E) of section 5139.36 of the Revised Code does not apply in connection with a transfer of a felony delinquent that is made to a community corrections facility pursuant to this section.

(B) During the period in which the felony delinquent is in the community facility, the felony delinquent shall remain in the custody of the department.

HISTORY: 145 v H 152 (EFF 7-1-93); 145 v H 715 (EFF 7-22-94); 147 v H 1, EFF 7-1-98.

Not analogous to former RC § 5139.38 (132 v S 278), repealed 139 v H 440, § 2, eff 11-23-81.

The effective date is set by section 3 of HB 1.

§ 5139.39 Transfer to foster care facility.

The department of youth services, in the manner provided in this chapter and Chapter 2151. of the Revised Code, may transfer to a foster care facility certified by the department of job, and family services under section 5103.03 of the Revised Code, any child committed to it and, in the event of a transfer of that nature, unless otherwise mutually agreed, the department of youth services shall bear the cost of care and services provided for the child in the foster care facility. A juvenile court may transfer to any foster facility certified by the department of job and family services any child between twelve and eighteen years of age, other than a psychotic or mentally retarded child, who has been designated a delinquent child and placed on probation by order of the juvenile court as a result of having violated any law of this state or the United States or any ordinance of a political subdivision of this state.

HISTORY: 132 v S 278 (EFF 11-7-67); 139 v H 440 (EFF 11-23-81); 145 v H 152 (EFF 7-1-93); 148 v H 471, EFF 7-1-2000.

The effective date is set by section 12(A) of HB 471.

[CARE, CUSTODY OF FELONY DELINQUENTS]

§ 5139.41 Procedure for expending appropriation for care and custody of felony delinquents.

The appropriation made to the department of youth services for care and custody of felony delinquents shall be expended in accordance with the following procedure that the department shall use for each year of a biennium. The procedure shall be consistent with sections 5139.41 to 5139.43 of the Revised Code and shall be developed in accordance with the following guidelines:

(A) The line item appropriation for the care and custody of felony delinquents shall provide funding for operational costs for the following:

(1) Institutions and the diagnosis, care, or treatment of felony delinquents at facilities pursuant to contracts entered into under section 5139.08 of the Revised Code;

(2) Community corrections facilities constructed, reconstructed, improved, or financed as described in section 5139.36 of the Revised Code for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions;

(3) County juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation services and programs that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children;

(4) Administrative expenses the department incurs in connection with the felony delinquent care and custody programs described in section 5139.43 of the Revised Code.

(B) From the appropriated line item for the care and custody of felony delinquents, the department, with the advice of the RECLAIM advisory committee established under section 5139.44 of the Revised Code, shall allocate annual operational funds for county juvenile programs, institutional care and custody, community corrections facilities care and custody, and administrative expenses

incurred by the department associated with felony delinquent care and custody programs. The department, with the advice of the RECLAIM advisory committee, shall adjust these allocations, when modifications to this line item are made by legislative or executive action.

(C) The department shall divide county juvenile program allocations among county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children. The department shall base funding on the county's previous year's ratio of the department's institutional and community correctional facilities commitments to that county's four year average of felony adjudications, divided by statewide ratios of commitments to felony adjudications, as specified in the following formula:

(1) The department shall give to each county a proportional allocation of commitment credits. The proportional allocation of commitment credits shall be calculated by the following procedures:

(a) The department shall determine for each county and for the state a four year average of felony adjudications.

(b) The department shall determine for each county and for the state the number of charged bed days, for both the department and community correctional facilities, from the previous year.

(c) The department shall divide the statewide total number of charged bed days by the statewide total number of felony adjudications, which quotient shall then be multiplied by a factor determined by the department.

(d) The department shall calculate the county's allocation of credits by multiplying the number of adjudications for each court by the result determined pursuant to division (C)(1)(c) of this section.

(2) The department shall subtract from the allocation determined pursuant to division (C)(1) of this section a credit for every chargeable bed day a youth stays in a department institution and two-thirds of credit for every chargeable bed day a youth stays in a community correctional facility. At the end of the year, the department shall divide the amount of remaining credits of that county's allocation by the total number of remaining credits to all counties, to determine the county's percentage, which shall then be applied to the total county allocation to determine the county's payment for the fiscal year.

(3) The department shall pay counties three times during the fiscal year to allow for credit reporting and audit adjustments, and modifications to the appropriated line item for the care and custody of felony delinquents, as described in this section. The department shall pay fifty per cent of the payment by the fifteenth of July of each fiscal year, twenty-five per cent by the fifteenth of January of that fiscal year, and twenty-five per cent of the payment by the fifteenth of June of that fiscal year.

(D) In fiscal year 2004, the payment of county juvenile programs shall be based on the following procedure:

(1) The department shall divide the funding earned by each court in fiscal year 2003 by the aggregate funding of all courts, resulting in a percentage.

(2) The department shall apply the percentage determined under division (D)(1) of this section to the total county juvenile program allocation for fiscal year 2004 to determine each court's total payment.

(3) The department shall make payments in accordance with the schedule established in division (C)(3) of this section.

HISTORY: 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 146 v H 117 (Eff 6-30-95); 146 v H 670 (Eff 12-2-96); 148 v S 179, § 3. Eff 1-1-2002; 150 v H 40, § 1, eff. 3-7-03; 150 v H 95, § 1, eff. 9-26-03.

Not analogous to former RC § 5139.41 (133 v H 700), repealed 136 v H 155, § 49, eff 6-29-75.

The effective date is set by section 179 of H.B. 95 (150 v —).

Publisher's Note:

This section is set out to correct an error in the bound volume.

§ 5139.42 Repealed H.B. 95. [145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 146 v H 117 (Eff 6-30-95); 147 v H 215 (Eff 6-30-97, 9-29-97); 147 v H 526 (Eff 9-1-98); 149 v H 400. Eff 4-3-2003.] Effective 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

This section concerned data from juvenile court reports to be used in developing formulae.

§ 5139.43 Felony delinquent care and custody program.

(A) The department of youth services shall operate a felony delinquent care and custody program that shall be operated in accordance with the formula developed pursuant to section 5139.41 of the Revised Code, subject to the conditions specified in this section.

(B)(1) Each juvenile court shall use the moneys disbursed to it by the department of youth services pursuant to division (B) of section 5139.41 of the Revised Code in accordance with the applicable provisions of division (B)(2) of this section and shall transmit the moneys to the county treasurer for deposit in accordance with this division. The county treasurer shall create in the county treasury a fund that shall be known as the felony delinquent care and custody fund and shall deposit in that fund the moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code. The county treasurer also shall deposit into that fund the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall not be commingled with any other county funds except state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code; shall not be used for any capital construction projects; upon an order of the juvenile court and subject to appropriation by the board of county commissioners, shall be disbursed to the juvenile court for use in accordance with the applicable provisions of division (B)(2) of this section; shall not revert to the county general fund at the end of any fiscal year; and shall carry over in the felony delinquent care and custody fund from the end of any fiscal year to the next fiscal year. At the end of each fiscal year, beginning June 30, 2008, the balance in the felony delinquent care and custody fund in any county shall not exceed the total moneys allocated to the county pursuant to sections 5139.34 and 5139.41 of the Revised Code during the previous fiscal year, unless that

county has applied for and been granted an exemption by the director of youth services. The department shall withhold from future payments to a county an amount equal to any moneys in the felony delinquent care and custody fund of the county that exceed the total moneys allocated pursuant to those sections to the county during the preceding fiscal year and shall reallocate the withheld amount. The department shall adopt rules for the withholding and reallocation of moneys disbursed under sections 5139.34 and 5139.41 of the Revised Code and for the criteria and process for a county to obtain an exemption from the withholding requirement. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders.

(2)(a) A county and the juvenile court that serves the county shall use the moneys in its felony delinquent care and custody fund in accordance with rules that the department of youth services adopts pursuant to division (D) of section 5139.04 of the Revised Code and as follows:

(i) The moneys in the fund that represent state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code shall be used to aid in the support of prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children or delinquent children or for children who are at risk of becoming unruly children or delinquent children. The county shall not use for capital improvements more than fifteen per cent of the moneys in the fund that represent the applicable annual grant of those state subsidy funds.

(ii) The moneys in the fund that were disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to division (B)(1) of this section in the fund shall be used to provide programs and services for the training, treatment, or rehabilitation of felony delinquents that are alternatives to their commitment to the department, including, but not limited to, community residential programs, day treatment centers, services within the home, and electronic monitoring, and shall be used in connection with training, treatment, rehabilitation, early intervention, or other programs or services for any delinquent child, unruly child, or juvenile traffic offender who is under the jurisdiction of the juvenile court.

The fund also may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders. Consistent with division (B)(1) of this section, a county and the juvenile court of a county shall not use any of those moneys for capital construction projects.

(iii) The county and the juvenile court that serves the county may not use moneys in the fund for the provision of care and services for children, including, but not limited to, care and services in a detention facility, in another facility, or in out-of-home placement, unless the minimum standards that apply to the care and services

and that the department prescribes in rules adopted pursuant to division (D) of section 5139.04 of the Revised Code have been satisfied.

(b) Each juvenile court shall comply with division (B)(3)(d) of this section as implemented by the department.

(3) In accordance with rules adopted by the department pursuant to division (D) of section 5139.04 of the Revised Code, each juvenile court and the county served by that juvenile court shall do all of the following that apply:

(a) The juvenile court shall prepare an annual grant agreement and application for funding that satisfies the requirements of this section and section 5139.34 of the Revised Code and that pertains to the use, upon an order of the juvenile court and subject to appropriation by the board of county commissioners, of the moneys in its felony delinquent care and custody fund for specified programs, care, and services as described in division (B)(2)(a) of this section, shall submit that agreement and application to the county family and children first council, the regional family and children first council, or the local intersystem services to children cluster as described in sections 121.37 and 121.38 of the Revised Code, whichever is applicable, and shall file that agreement and application with the department for its approval. The annual grant agreement and application for funding shall include a method of ensuring equal access for minority youth to the programs, care, and services specified in it.

The department may approve an annual grant agreement and application for funding only if the juvenile court involved has complied with the preparation, submission, and filing requirements described in division (B)(3)(a) of this section. If the juvenile court complies with those requirements and the department approves that agreement and application, the juvenile court and the county served by the juvenile court may expend the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code only in accordance with division (B)(2)(a) of this section, the rules pertaining to state subsidy funds that the department adopts pursuant to division (D) of section 5139.04 of the Revised Code, and the approved agreement and application.

(b) By the thirty-first day of August of each year, the juvenile court shall file with the department a report that contains all of the statistical and other information for each month of the prior state fiscal year. If the juvenile court fails to file the report required by division (B)(3)(b) of this section by the thirty-first day of August of any year, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation until the juvenile court fully complies with division (B)(3)(b) of this section.

(c) If the department requires the juvenile court to prepare monthly statistical reports and to submit the reports on forms provided by the department, the juvenile court shall file those reports with the department on the forms so provided. If the juvenile court fails to prepare and submit those monthly statistical reports within the department's timelines, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised

Code the applicable allocation until the juvenile court fully complies with division (B)(3)(c) of this section. If the juvenile court fails to prepare and submit those monthly statistical reports within one hundred eighty days of the date the department establishes for their submission, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation, and the state subsidy funds and the remainder of the applicable allocation shall revert to the department. If a juvenile court states in a monthly statistical report that the juvenile court adjudicated within a state fiscal year five hundred or more children to be delinquent children for committing acts that would be felonies if committed by adults and if the department determines that the data in the report may be inaccurate, the juvenile court shall have an independent auditor or other qualified entity certify the accuracy of the data on a date determined by the department.

(d) If the department requires the juvenile court and the county to participate in a fiscal monitoring program or another monitoring program that is conducted by the department to ensure compliance by the juvenile court and the county with division (B) of this section, the juvenile court and the county shall participate in the program and fully comply with any guidelines for the performance of audits adopted by the department pursuant to that program and all requests made by the department pursuant to that program for information necessary to reconcile fiscal accounting. If an audit that is performed pursuant to a fiscal monitoring program or another monitoring program described in this division determines that the juvenile court or the county used moneys in the county's felony delinquent care and custody fund for expenses that are not authorized under division (B) of this section, within forty-five days after the department notifies the county of the unauthorized expenditures, the county either shall repay the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund or shall file a written appeal with the department. If an appeal is timely filed, the director of the department shall render a decision on the appeal and shall notify the appellant county or its juvenile court of that decision within forty-five days after the date that the appeal is filed. If the director denies an appeal, the county's fiscal agent shall repay the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund within thirty days after receiving the director's notification of the appeal decision. If the county fails to make the repayment within that thirty-day period and if the unauthorized expenditures pertain to moneys allocated under sections 5139.41 to 5139.43 of the Revised Code, the department shall deduct the amount of the unauthorized expenditures from the next allocation of those moneys to the county in accordance with this section or from the allocations that otherwise would be made under those sections to the county during the next state fiscal year in accordance with this section and shall return that deducted amount to the state's general revenue fund. If the county fails to make the repayment within that thirty-day period and if the unauthorized expenditures pertain to moneys granted pursuant to section 5139.34 of the Revised Code, the department shall deduct the amount of the unauthorized expendi-

tures from the next annual grant to the county pursuant to that section and shall return that deducted amount to the state's general revenue fund.

(C) The determination of which county a reduction of the care and custody allocation will be charged against for a particular youth shall be made as outlined below for all youths who do not qualify as public safety beds. The determination of which county a reduction of the care and custody allocation will be charged against shall be made as follows until each youth is released:

(1) In the event of a commitment, the reduction shall be charged against the committing county.

(2) In the event of a recommitment, the reduction shall be charged against the original committing county until the expiration of the minimum period of institutionalization under the original order of commitment or until the date on which the youth is admitted to the department of youth services pursuant to the order of recommitment, whichever is later. Reductions of the allocation shall be charged against the county that recommitted the youth after the minimum expiration date of the original commitment.

(3) In the event of a revocation of a release on parole, the reduction shall be charged against the county that revokes the youth's parole.

(D) A juvenile court is not precluded by its allocation amount for the care and custody of felony delinquents from committing a felony delinquent to the department of youth services for care and custody in an institution or a community corrections facility when the juvenile court determines that the commitment is appropriate.

HISTORY: 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 146 v H 117 (Eff 6-30-95); 147 v H 215 (Eff 6-30-97; 9-29-97†); 147 v H 1 (Eff 7-1-98); 148 v H 283, Eff 6-30-99; 150 v H 95, § 1, eff. 9-26-03; 152 v H 119, § 101.01, eff. 9-29-07.

The effective date is set by § 812.03 of 152 v H 119.

Not analogous to former RC § 5139.43 (139 v H 440), repealed 139 v S 550, § 24, eff 1-1-84.

The effective date is set by section 179 of H.B. 95 (150 v —). See Comment, Legislative Service Commission, following RC § 5139.07.

† The provisions of § 236 of HB 215 (147 v —) provided for two effective dates for RC § 5139.43.

§ 5139.44 RECLAIM advisory committee.

(A)(1) There is hereby created the RECLAIM advisory committee that shall be composed of the following nine members:

(a) Two members shall be juvenile court judges appointed by the Ohio association of juvenile and family court judges.

(b) One member shall be the director of youth services or the director's designee.

(c) One member shall be the director of budget and management or the director's designee.

(d) One member shall be a member of a senate committee dealing with finance or criminal justice issues appointed by the president of the senate.

(e) One member shall be a member of a committee of the house of representatives dealing with finance or criminal justice issues appointed by the speaker of the house of representatives.

(f) One member shall be a member of a board of county commissioners appointed by the county commissioners association of Ohio.

(g) Two members shall be juvenile court administrators appointed by the Ohio association of juvenile and family court judges.

(2) The members of the committee shall be appointed or designated within thirty days after the effective date of this section, and the director of youth services shall be notified of the names of the members.

(3) Members described in divisions (A)(1)(a), (f), and (g) of this section shall serve for terms of two years and shall hold office from the date of the member's appointment until the end of the term for which the member was appointed. Members described in divisions (A)(1)(b) and (c) of this section shall serve as long as they hold the office described in that division. Members described in divisions (A)(1)(d) and (e) of this section shall serve for the duration of the session of the general assembly during which they were appointed, provided they continue to hold the office described in that division. The members described in divisions (A)(1)(a), (d), (e), (f), and (g) may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(4) Membership on the committee does not constitute the holding of an incompatible public office or employment in violation of any statutory or common law prohibition pertaining to the simultaneous holding of more than one public office or employment. Members of the committee are not disqualified from holding by reason of that membership and do not forfeit because of that membership their public office or employment that qualifies them for membership on the committee notwithstanding any contrary disqualification or forfeiture requirement under existing Revised Code sections.

(B) The director of youth services shall serve as an interim chair of the RECLAIM advisory committee until the first meeting of the committee. Upon receipt of the names of the members of the committee, the director shall schedule the initial meeting of the committee that shall take place at an appropriate location in Columbus and occur not later than sixty days after the effective date of this section. The director shall notify the members of the committee of the time, date, and place of the meeting. At the initial meeting, the committee shall organize itself by selecting from among its members a chair, vice-chair, and secretary. The committee shall meet at least once each quarter of the calendar year but may meet more frequently at the call of the chair.

(C) In addition to its functions with respect to the RECLAIM program described in section 5139.41 of the Revised Code, the RECLAIM advisory committee periodically shall do all of the following:

(1) Evaluate the operation of the RECLAIM program by the department of youth services, evaluate the implementation of the RECLAIM program by the counties, and evaluate the efficiency of the formula described in section 5139.41 of the Revised Code. In conducting these evaluations, the committee shall consider the public policy that RECLAIM funds are to be expended to provide the most appropriate programs and services for felony delinquents and other youthful offenders.

(2) Advise the department of youth services, the office of budget and management, and the general assembly on the following changes that the committee believes should be made:

(a) Changes to sections of the Revised Code that pertain to the RECLAIM program, specifically the formula specified in section 5139.41 of the Revised Code;

(b) Changes in the funding level for the RECLAIM program, specifically the amounts distributed under the formula for county allocations, community correctional facilities, and juvenile correctional facility budgets.

HISTORY: 150 v H 95, § 1, eff. 9-26-03.

Not analogous to former RC 146 v H 670, § 2 [145 v H 152; 145 v H 715; 146 v H 117]. Effective 12-2-96. §§ 5139.44 was repealed and reenacted in H.B. 95, Effective 6-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 5139.45 Repealed H.B. 95. [145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 146 v H 117 (Eff 6-30-95); 146 v H 670. Eff 12-2-96.] Effective 9-26-03.

The effective date is set by section 180 of H.B. 95 (150 v —). This section concerned grants from contingency programs.

[RELEASE OR DISCHARGE]

§ 5139.50 Release authority created; duties generally; policies.

(A) The release authority of the department of youth services is hereby created as a bureau in the department. The release authority shall consist of five members who are appointed by the director of youth services and who have the qualifications specified in division (B) of this section. The members of the release authority shall devote their full time to the duties of the release authority and shall neither seek nor hold other public office. The members shall be in the unclassified civil service.

(B) A person appointed as a member of the release authority shall have a bachelor's degree from an accredited college or university or equivalent relevant experience and shall have the skills, training, or experience necessary to analyze issues of law, administration, and public policy. The membership of the release authority shall represent, insofar as practicable, the diversity found in the children in the legal custody of the department of youth services.

In appointing the five members, the director shall ensure that the appointments include all of the following:

(1) At least four members who have five or more years of experience in criminal justice, juvenile justice, or an equivalent relevant profession;

(2) At least one member who has experience in victim services or advocacy or who has been a victim of a crime or is a family member of a victim;

(3) At least one member who has experience in direct care services to delinquent children.

(C) The initial appointments of members of the release authority shall be for a term of six years for the chairperson and one member, a term of four years for two members, and a term of two years for one member. Thereafter, members shall be appointed for six-year terms. At the conclusion of a term, a member shall hold office until the appointment and qualification of the

member's successor. The director shall fill a vacancy occurring before the expiration of a term for the remainder of that term and, if a member is on extended leave or disability status for more than thirty work days, may appoint an interim member to fulfill the duties of that member. A member may be reappointed, but a member may serve no more than two consecutive terms regardless of the length of the member's initial term. A member may be removed for good cause by the director.

(D) The director of youth services shall designate as chairperson of the release authority one of the members who has experience in criminal justice, juvenile justice, or an equivalent relevant profession. The chairperson shall be a managing officer of the department, shall supervise the members of the board and the other staff in the bureau, and shall perform all duties and functions necessary to ensure that the release authority discharges its responsibilities. The chairperson shall serve as the official spokesperson for the release authority.

(E) The release authority shall do all of the following:

(1) Serve as the final and sole authority for making decisions, in the interests of public safety and the children involved, regarding the release and discharge of all children committed to the legal custody of the department of youth services, except children placed by a juvenile court on judicial release to court supervision or on judicial release to department of youth services supervision, children who have not completed a prescribed minimum period of time or prescribed period of time in a secure facility, or children who are required to remain in a secure facility until they attain twenty-one years of age;

(2) Establish written policies and procedures for conducting reviews of the status for all youth in the custody of the department, setting or modifying dates of release and discharge, specifying the duration, terms, and conditions of release to be carried out in supervised release subject to the addition of additional consistent terms and conditions by a court in accordance with section 5139.51 of the Revised Code, and giving a child notice of all reviews;

(3) Maintain records of its official actions, decisions, orders, and hearing summaries and make the records accessible in accordance with division (D) of section 5139.05 of the Revised Code;

(4) Cooperate with public and private agencies, communities, private groups, and individuals for the development and improvement of its services;

(5) Collect, develop, and maintain statistical information regarding its services and decisions;

(6) Submit to the director an annual report that includes a description of the operations of the release authority, an evaluation of its effectiveness, recommendations for statutory, budgetary, or other changes necessary to improve its effectiveness, and any other information required by the director.

(F) The release authority may do any of the following:

(1) Conduct inquiries, investigations, and reviews and hold hearings and other proceedings necessary to properly discharge its responsibilities;

(2) Issue subpoenas, enforceable in a court of law, to compel a person to appear, give testimony, or produce documentary information or other tangible items relating to a matter under inquiry, investigation, review, or hearing;

(3) Administer oaths and receive testimony of persons under oath;

(4) Request assistance, services, and information from a public agency to enable the authority to discharge its responsibilities and receive the assistance, services, and information from the public agency in a reasonable period of time;

(5) Request from a public agency or any other entity that provides or has provided services to a child committed to the department's legal custody information to enable the release authority to properly discharge its responsibilities with respect to that child and receive the information from the public agency or other entity in a reasonable period of time.

(G) The release authority may delegate responsibilities to hearing officers or other designated staff under the release authority's auspices. However, the release authority shall not delegate its authority to make final decisions regarding policy or the release of a child.

The release authority shall adopt a written policy and procedures governing appeals of its release and discharge decisions.

(H) The legal staff of the department of youth services shall provide assistance to the release authority in the formulation of policy and in its handling of individual cases.

HISTORY: 147 v H 1 (Eff 1-1-98); 147 v H 526 (Eff 9-1-98); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002; 151 v H 530, § 101.01, eff. 6-30-06.

The effective date is set by § 812.03 of 151 v H 530.

Not analogous to former RC § 5139.50 (133 v H 700), repealed 136 v H 155, § 49, eff 6-29-75.

§ 5139.51 Supervised release or discharge; requirements for release.

(A) The release authority of the department of youth services shall not release a child who is in the custody of the department of youth services from institutional care or institutional care in a secure facility and shall not discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of twenty-one years of age, whichever is applicable under the order of commitment, other than as is provided in section 2152.22 of the Revised Code. The release authority may conduct periodic reviews of the case of each child who is in the custody of the department and who is eligible for supervised release or discharge after completing the minimum period of time or period of time in an institution prescribed by the committing court. At least thirty days prior to conducting a periodic review of the case of a child who was committed to the department regarding the possibility of supervised release or discharge and at least thirty days prior to conducting a release review, a release hearing, or a discharge review under division (E) of this section, the release authority shall give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. If a child is on supervised release and has had the child's parole revoked, and if, upon release, there is insufficient time to provide the notices otherwise required by this division, the release authority, at least ten days prior to the child's release, shall provide reasonable notice of the child's release to the court that committed the child, to

the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. The court or prosecuting attorney may submit to the release authority written comments regarding, or written objections to, the supervised release or discharge of that child. Additionally, if the child was committed for an act that is a category one or category two offense, the court or prosecuting attorney orally may communicate to a representative of the release authority comments regarding, or objections to, the supervised release or discharge of the child or, if a hearing is held regarding the possible release or discharge of the child, may communicate those comments at the hearing. In conducting the review of the child's case regarding the possibility of supervised release or discharge, the release authority shall consider any comments and objections so submitted or communicated by the court or prosecutor and any statements or comments submitted or communicated under section 5139.56 of the Revised Code by a victim of an act for which the child was committed to the legal custody of the department or by the victim's representative of a victim of an act of that type.

The release authority shall determine the date on which a child may be placed on supervised release or discharged. If the release authority believes that a child should be placed on supervised release, it shall comply with division (B) of this section. If the release authority believes that a child should be discharged, it shall comply with division (C) or (E) of this section. If the release authority denies the supervised release or discharge of a child, it shall provide the child with a written record of the reasons for the decision.

(B)(1) When the release authority decides to place a child on supervised release, consistent with division (D) of this section, the department shall prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released from an institution on supervised release and, at least thirty days prior to the release of the child on the supervised release, shall send to the committing court and the juvenile court of the county in which the child will be placed a copy of the supervised release plan and the terms and conditions of release. The juvenile court of the county in which the child will be placed, within fifteen days after its receipt of the copy of the supervised release plan, may add to the supervised release plan any additional consistent terms and conditions it considers appropriate, provided that the court may not add any term or condition that decreases the level or degree of supervision specified by the release authority in the plan, that substantially increases the financial burden of supervision that will be experienced by the department of youth services, or that alters the placement specified by the plan.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed does not add to the supervised release plan any additional terms and conditions, the court shall enter the supervised release plan in its journal within that fifteen-day period and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan. The journalized plan shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed adds to the supervised release plan any additional terms and conditions, the court shall

enter the supervised release plan and the additional terms and conditions in its journal and, within that fifteen-day period, shall send to the release authority a copy of the journal entry of the supervised release plan and additional terms and conditions. The journalized supervised release plan and additional terms and conditions added by the court that satisfy the criteria described in this division shall apply regarding the child's supervised release.

If, within fifteen days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed neither enters in its journal the supervised release plan nor enters in its journal the supervised release plan plus additional terms and conditions added by the court, the court and the department of youth services may attempt to resolve any differences regarding the plan within three days. If a resolution is not reached within that three-day period, thereafter, the supervised release plan shall be enforceable to the same extent as if the court actually had entered the supervised release plan in its journal.

(2) When the release authority receives from the court a copy of the journalized supervised release plan and, if applicable, a copy of the journalized additional terms and conditions added by the court, the release authority shall keep the original copy or copies in the child's file and shall provide a copy of each document to the child, the employee of the department who is assigned to supervise and assist the child while on release, and the committing court.

(C) If a child who is in the custody of the department of youth services was committed pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 of the Revised Code and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under those divisions and if the release authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the release authority, without approval of the court that committed the child, may discharge the child from the department's custody and control without placing the child on supervised release. Additionally, the release authority may discharge a child in the department's custody without the child being placed on supervised release if the child is removed from the jurisdiction of this state by a court order of a court of this state, another state, or the United States, or by any agency of this state, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law. At least fifteen days before the scheduled date of discharge of the child without the child being placed on supervised release, the department shall notify the committing court, in writing, that it is going to discharge the child and of the reason for the discharge. Upon discharge of the child without the child being placed on supervised release, the department immediately shall certify the discharge in writing and shall transmit the certificate of discharge to the committing court.

(D) In addition to requirements that are reasonably related to the child's prior pattern of criminal or delinquent behavior and the prevention of further criminal or delinquent behavior, the release authority shall specify the following requirements for each child whom it releases:

(1) The child shall observe the law.

(2) The child shall maintain appropriate contact, as specified in the written supervised release plan for that child.

(3) The child shall not change residence unless the child seeks prior approval for the change from the employee of the department assigned to supervise and assist the child, provides that employee, at the time the child seeks the prior approval for the change, with appropriate information regarding the new residence address at which the child wishes to reside, and obtains the prior approval of that employee for the change. *

(E) The period of a child's supervised release may extend from the date of release from an institution until the child attains twenty-one years of age. If the period of supervised release extends beyond one year after the date of release, the child may request in writing that the release authority conduct a discharge review after the expiration of the one-year period or the minimum period or period. If the child so requests, the release authority shall conduct a discharge review and give the child its decision in writing. The release authority shall not grant a discharge prior to the discharge date if it finds good cause for retaining the child in the custody of the department until the discharge date. A child may request an additional discharge review six months after the date of a previous discharge review decision, but not more than once during any six-month period after the date of a previous discharge review decision.

(F) At least two weeks before the release authority places on supervised release or discharge a child who was committed to the legal custody of the department, the release authority shall provide notice of the release or discharge as follows:

(1) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing an act that is a category one or category two offense, the release authority shall notify, by the specified deadline, all of the following of the release or discharge:

(a) The prosecuting attorney of the county in which the child was adjudicated a delinquent child and committed to the custody of the department;

(b) Whichever of the following is applicable:

(i) If upon the supervised release or discharge the child will reside in a municipal corporation, the chief of police or other chief law enforcement officer of that municipal corporation;

(ii) If upon the supervised release or discharge the child will reside in an unincorporated area of a county, the sheriff of that county.

(2) In relation to the placement on supervised release or discharge of a child who was committed to the department for committing any act, the release authority shall notify, by the specified deadline, each victim of the act for which the child was committed to the legal custody of the department who, pursuant to section 5139.56 of the Revised Code, has requested to be notified of the placement of the child on supervised release or the discharge of the child, provided that, if any victim has designated a person pursuant to that section to act on the victim's behalf as a victim's representative, the notification required by this division shall be provided to that victim's representative.

HISTORY: 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3, Eff 1-1-2002.

Not analogous to former RC § 5139.51 (133 v H 700), repealed 136 v H 155, § 49, eff 6-29-75.

The effective date is set by section 5 of SB 179.

§ 5139.52 Hearing on alleged violation; apprehension of violators.

(A) At any time during a child's supervised release or during the period of a child's judicial release to department of youth services supervision, if the regional administrator or the employee of the department assigned to supervise and assist the child has reasonable grounds to believe that the child has violated a term or condition of the supervised release or judicial release, the administrator or employee may request a court to issue a summons that requires the child to appear for a hearing to answer charges of the alleged violation. The summons shall contain a brief statement of the alleged violation, including the date and place of the violation, and shall require the child to appear for a hearing before the court at a specific date, time, and place.

(B)(1) At any time while a child is on supervised release or during the period of a child's judicial release to department of youth services supervision, a regional administrator or a designee of a regional administrator, upon application of the employee of the department assigned to supervise and assist the child as described in this division, may issue, or cause to be issued, an order of apprehension for the arrest of the child for the alleged violation of a term or condition of the child's supervised release or judicial release. An application requesting an order of apprehension shall set forth that, in the good faith judgment of the employee of the department assigned to supervise and assist the child making the application, there is reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the child's supervised release or judicial release, shall state the basis for that belief, and shall request that the child be taken to an appropriate place of secure detention pending a probable cause determination. As an alternative to an order of apprehension for the child, a regional administrator or the employee of the department assigned to supervise and assist the child may request a court to issue a warrant for the arrest of the child.

Subject to the provision of prior notice required by division (D)(1) of this section, if a regional administrator or a designee of a regional administrator issues, in writing, an order of apprehension for the arrest of a child, a staff member of the department of youth services who has been designated pursuant to division (A)(1) of section 5139.53 of the Revised Code as being authorized to arrest and who has received the training described in division (B)(1) of that section, or a peace officer, as defined in section 2935.01 of the Revised Code, may arrest the child, without a warrant, and place the child in secure detention in accordance with this section.

If a child is on supervised release or judicial release to department of youth services supervision, any peace officer, as defined in section 2935.01 of the Revised Code, may arrest the child without a warrant or order of apprehension if the peace officer has reasonable grounds to believe that the child has violated or is violating any of the following that has been prescribed by the release authority or department of youth services relative to the child:

(a) A condition that prohibits the child's ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance, all as defined in section 2923.11 of the Revised Code;

(b) A condition that prohibits the child from being within a specified structure or geographic area;

(c) A condition that confines the child to a residence, facility, or other structure;

(d) A condition that prohibits the child from contacting or communicating with any specified individual;

(e) A condition that prohibits the child from associating with a specified individual;

(f) Any other rule, term, or condition governing the conduct of the child that has been prescribed by the release authority.

(2) Subject to the provision of prior notice required by division (D)(1) of this section, a staff member of the department of youth services who is designated by the director pursuant to division (A)(1) of section 5139.53 of the Revised Code and who has received the training described in division (B)(1) of that section, a peace officer, as defined in section 2935.01 of the Revised Code, or any other officer with the power to arrest may execute a warrant or order of apprehension issued under division (B)(1) of this section and take the child into secure custody.

(C) A staff member of the department of youth services who is designated by the director of youth services pursuant to division (A)(1) of section 5139.53 of the Revised Code and who has received the training described in division (B)(1) of that section, a peace officer, as defined in section 2935.01 of the Revised Code, or any other officer with the power to arrest may arrest without a warrant or order of apprehension and take into secure custody a child in the legal custody of the department, if the staff member, peace officer, or other officer has reasonable cause to believe that the child who is on supervised release or judicial release to department of youth services supervision has violated or is violating a term or condition of the supervised release or judicial release in any of the following manners:

(1) The child committed or is committing an offense or delinquent act in the presence of the staff member, peace officer, or other officer.

(2) There is probable cause to believe that the child violated a term or condition of supervised release or judicial release and that the child is leaving or is about to leave the state.

(3) The child failed to appear before the release authority pursuant to a summons for a modification or failed to appear for a scheduled court hearing.

(4) The arrest of the child is necessary to prevent physical harm to another person or to the child.

(D)(1) Except as otherwise provided in this division, prior to arresting a child under this section, either in relation to an order of apprehension or a warrant for arrest or in any other manner authorized by this section, a staff member or employee of the department of youth services shall provide notice of the anticipated arrest to each county, municipal, or township law enforcement agency with jurisdiction over the place at which the staff member or employee anticipates making the arrest. A staff member or employee is not required to provide the notice described in this division prior to making an arrest in any emergency situation or circumstance described under division (C) of this section.

(2) If a child is arrested under this section and if it is known that the child is on supervised release or judicial release to department of youth services supervision, a juvenile court, local juvenile detention facility, or jail shall notify the appropriate department of youth services

regional office that the child has been arrested and shall provide to the regional office or to an employee of the department of youth services a copy of the arrest information pertaining to the arrest.

(3) Nothing in this section limits the power to make an arrest that is granted to specified peace officers under section 2935.03 of the Revised Code, to any person under section 2935.04 of the Revised Code, or to any other specified category of persons by any other provision of the Revised Code, or the power to take a child into custody that is granted pursuant to section 2151.31 of the Revised Code.

(E) If a child who is on supervised release or who is under a period of judicial release to department of youth services supervision is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, all of the following apply:

(1) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody, the juvenile court, in making its determinations at a detention hearing as to whether to hold the child in secure custody up to seventy-two hours so that a motion to revoke the child's supervised release or judicial release may be filed, may consider, in addition to all other evidence and information considered, the circumstances of the child's arrest and, if the arrest was pursuant to an order of apprehension, the order and the application for the order.

(2) If no motion to revoke the child's supervised release or judicial release has been filed within seventy-two hours after the child is taken into secure custody and if the child has not otherwise been released prior to the expiration of that seventy-two-hour period, the child shall be released upon the expiration of that seventy-two-hour period.

(3) If the person is eighteen, nineteen, or twenty years of age, the person may be confined in secure detention in the jail of the county in which the person is taken into custody. If the person is under eighteen years of age, the person may be confined in secure detention in the nearest juvenile detention facility.

(4) If a motion to revoke the child's supervised release or judicial release is filed after the child has been taken into secure custody and the court decides at the detention hearing to release the child from secure custody, the court may release the child on the same terms and conditions that are currently in effect regarding the child's supervised release or judicial release, pending revocation or subsequent modification.

(F) If a child who is on supervised release is arrested under an order of apprehension, under a warrant, or without a warrant as described in division (B)(1), (B)(2), or (C) of this section and taken into secure custody, and if a motion to revoke the child's supervised release is filed, the juvenile court of the county in which the child is placed promptly shall schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If a child is released on supervised release and the juvenile court of the county in which the child is placed otherwise has reason to believe that the child has not complied with the terms and conditions of the supervised release, the court of the county in which the child is placed, in its discretion, may schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If the court of the county in which the child is

placed on supervised release conducts a hearing and determines at the hearing that the child did not violate any term or condition of the child's supervised release, the child shall be released from custody, if the child is in custody at that time, and shall continue on supervised release under the terms and conditions that were in effect at the time of the child's arrest, subject to subsequent revocation or modification. If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of thirty days, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period.

This division does not apply regarding a child who is under a period of judicial release to department of youth services supervision. Division (D) of section 2152.22 of the Revised Code applies in relation to a child who is under a period of judicial release to department of youth services supervision.

HISTORY: 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3. Eff 1-1-2002.

Not analogous to former RC § 5139.52 (133 v H 700), repealed 136 v H 155, § 49, eff 6-29-75.

The effective date is set by section 5 of SB 179.

§ 5139.53 Designation of employees authorized to apprehend violators; carrying of firearms; deadly force policy.

(A)(1) The director of youth services shall designate certain employees of the department of youth services, including regional administrators, as persons who are authorized, in accordance with section 5139.52 of the Revised Code, to execute an order of apprehension or a warrant for, or otherwise to arrest, children in the custody of the department who are violating or are alleged to have violated the terms and conditions of supervised release or judicial release to department of youth services supervision.

(2) The director of youth services may designate some of the employees designated under division (A)(1) of this section as employees authorized to carry a firearm issued by the department while on duty for their protection in carrying out official duties.

(B)(1) An employee of the department designated by the director pursuant to division (A)(1) of this section as having the authority to execute orders of apprehension or

warrants and to arrest children as described in that division shall not undertake an arrest until the employee has successfully completed training courses regarding the making of arrests by employees of that nature that are developed in cooperation with and approved by the executive director of the Ohio peace officer training commission. The courses shall include, but shall not be limited to, training in arrest tactics, defensive tactics, the use of force, and response tactics.

(2) The director of youth services shall develop, and shall submit to the governor for the governor's approval, a deadly force policy for the department. The deadly force policy shall require each employee who is designated under division (A)(2) of this section to carry a firearm in the discharge of official duties to receive training in the use of deadly force, shall specify the number of hours and the general content of the training in the use of deadly force that each of the designated employees must receive, and shall specify the procedures that must be followed after the use of deadly force by any of the designated employees. Upon receipt of the policy developed by the director under this division, the governor, in writing, promptly shall approve or disapprove the policy. If the governor, in writing, disapproves the policy, the director shall develop and resubmit a new policy under this division, and no employee shall be trained under the disapproved policy. If the governor, in writing, approves the policy, the director shall adopt it as a department policy and shall distribute it to each employee designated under (A)(2) of this section to carry a firearm in the discharge of official duties. An employee designated by the director pursuant to division (A)(2) of this section to carry a firearm in the discharge of official duties shall not carry a firearm until the employee has successfully completed both of the following:

(a) Training in the use of deadly force that comports with the policy approved by the governor and developed and adopted by the director under division (B)(2) of this section. The training required by this division shall be conducted at a training school approved by the Ohio peace officer training commission and shall be in addition to the training described in divisions (B)(1) and (2)(b) of this section that the employee must complete prior to undertaking an arrest and separate from and independent of the training required by division (B)(2)(b) of this section.

(b) A basic firearm training program that is conducted at a training school approved by the Ohio peace officer training commission and that is substantially similar to the basic firearm training program for peace officers conducted at the Ohio peace officer training academy and has received a certificate of satisfactory completion of that program from the executive director of the Ohio peace officer training commission. The training described in this division that an employee must complete prior to carrying a firearm shall be in addition to the training described in division (B)(1) of this section that the employee must complete prior to undertaking an arrest.

(C) After receipt of a certificate of satisfactory completion of a basic firearm training program, to maintain the right to carry a firearm in the discharge of official duties, an employee authorized under this section to carry a firearm shall successfully complete a firearms requalification program in accordance with section 109.801 [109.80.1] of the Revised Code.

(D) Each employee authorized to carry a firearm shall give bond to the state to be approved by the clerk of the

court of common pleas in the county of that employee's residence. The bond shall be in the sum of one thousand dollars, conditioned to save the public harmless by reason of the unlawful use of a firearm. A person injured or the family of a person killed by the employee's improper use of a firearm may have recourse on the bond.

(E) In addition to the deadly force policy adopted under division (B)(2) of this section, the director of youth services shall establish policies for the carrying and use of firearms by the employees that the director designates under this section.

HISTORY: 147 v H 1 (Eff 7-1-98); 147 v H 526 (Eff 9-1-98); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393, Eff 7-5-2002.

Not analogous to former RC § 5139.53 (133 v H 700; 134 v H 494), repealed 136 v H 155, § 49, eff 6-29-75.

§ 5139.54 Medical release or discharge.

(A) Notwithstanding any other provision for determining when a child shall be released or discharged from the legal custody of the department of youth services, including jurisdictional provisions in section 2152.22 of the Revised Code, the release authority, for medical reasons, may release a child upon supervised release or discharge the child from the custody of the department when any of the following applies:

(1) The child is terminally ill or otherwise in imminent danger of death.

(2) The child is incapacitated due to injury, disease, illness, or other medical condition and is no longer a threat to public safety.

(3) The child appears to be a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code.

(B) When considering whether to release or discharge a child under this section for medical reasons, the release authority may request additional medical information about the child or may ask the department to conduct additional medical examinations.

(C) The release authority shall determine the appropriate level of supervised release for a child released under this section. The terms and conditions of the release may require periodic medical reevaluations as appropriate. Upon granting a release or discharge under this section, the release authority shall give notice of the release and its terms and conditions or of the discharge to the court that committed the child to the custody of the department.

(D) The release authority shall submit annually to the director of youth services a report that includes all of the following information for the previous calendar year:

(1) The number of children the release authority considered for medical release or discharge;

(2) The nature of the injury, disease, illness, or other medical condition of each child considered for medical release or discharge;

(3) The decision made by the release authority for each child, including the reasons for denying medical release or discharge or for granting it;

(4) The number of children on medical release who were returned to a secure facility or whose supervised release was revoked.

HISTORY: 147 v H 1 (Eff 7-1-98); 148 v S 179, § 3, Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.55 Office of victims' services; administrator.

(A)(1) The office of victims' services is hereby created within the release authority of the department of youth services. The office of victims' services shall provide assistance to victims, victims' representatives, and members of a victim's family. The assistance shall include, but shall not be limited to, all of the following:

(a) If the court has provided the name and address of the victims of the child's acts to the department of youth services, notification that the child has been committed to the department, notification of the right of the victim or another authorized person to designate a person as a victim's representative under section 5139.56 of the Revised Code and of the actions that must be taken to make that designation, and notification of the right to be notified of release reviews, pending release hearings, revocation reviews, and discharge reviews related to that child and of the right to participate in release proceedings under that section and of the actions that must be taken to exercise those rights;

(b) The provision of information about the policies and procedures of the department of youth services and the status of children in the legal custody of the department.

(2) The office shall make available information to assist victims of delinquent children on supervised release or in a secure facility.

(B) The office of victims' services shall employ a victims administrator who shall administer the duties of the office. The victims administrator shall be in the unclassified civil service and a managing officer of the department. The office shall employ other staff members to assist the members of the release authority and hearing representatives in identifying victims' issues, ensure that the release authority upholds the provisions of section 5139.56 of the Revised Code, and make recommendations to the release authority in accordance with policies adopted by the department.

(C) The office of victims' services shall coordinate its activities with the chairperson of the release authority. The victims administrator and other employees of the office shall have full access to the records of children in the legal custody of the department in accordance with division (D) of section 5139.05 of the Revised Code.

HISTORY: 147 v H 1 (Eff 7-1-98); 148 v H 283 (Eff 9-29-99); 148 v S 179, § 3, Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

§ 5139.56 Victim may request notice of proceeding; victim's representative; presence at hearing; statement or comment.

(A) The victim of an act for which a child has been committed to the legal custody of the department of youth services may submit a written request to the release authority to notify the victim of all release reviews, pending release hearings, supervised release revocation hearings, and discharge reviews relating to the child, of the placement of the child on supervised release, and of the discharge of the child. If the victim is a minor, is incapacitated, incompetent, or chooses to be represented by another person, the victim may designate in writing a person to act on the victim's behalf as a victim's representative and to request and receive the notices. If the victim is deceased, the executor or administrator of the

victim's estate or, if there is no executor or administrator of the victim's estate, a member of the victim's family may designate in writing a person to act on the victim's behalf as a victim's representative and to request and receive the notices. If more than one person seeks to act as the representative of the victim, the release authority shall designate one person to act as the victim's representative. If the victim chooses not to have a representative, the victim shall be the sole person accorded rights under this section. The release authority may give notice by any means reasonably calculated to provide prompt actual notice.

If a victim, an executor or administrator, or a member of a victim's family designates a person in writing pursuant to this division to act on the victim's behalf as a victim's representative, the victim, executor, administrator, or family member, or the victim's representative, shall notify the release authority that the victim's representative is to act for the victim. A victim, executor, administrator, or member of a victim's family who has designated a person in writing pursuant to this division to act on the victim's behalf as a victim's representative may revoke the authority of that person to act as the victim's representative. Upon the revocation, the victim, executor, administrator, or member of the victim's family shall notify the release authority in writing that the authority of the person to so act has been revoked. At any time after the revocation, the victim, executor, administrator, or member of the victim's family may designate in writing a different person to act on the victim's behalf as a victim's representative.

The victim or victim's representative shall provide the release authority an address or telephone number at which notice may be given and shall notify the release authority in writing of any changes in that information. If at any time the victim or victim's representative elects to waive notice and other rights afforded by this section, the victim or victim's representative may do so in a written statement to the release authority.

(B) If a victim or victim's representative has requested notice of release reviews, pending release hearings, supervised release revocation hearings, and discharge reviews related to a child, of the placement of the child on supervised release, and of the discharge of the child, the release authority shall give that person notice of a release review, release hearing, or discharge review at least thirty days prior to the date of the review or hearing. The notice shall specify the date, time, and place of the review or hearing, the right of the victim or victim's representative to make an oral or written statement addressing the impact of the offense or delinquent act upon the victim or oral or written comments regarding the possible release or discharge, and, if the notice pertains to a hearing, the right to attend, and make the statements or comments at the hearing. Upon receiving notice that a release hearing is scheduled, a victim or victim's representative who intends to attend the release hearing, at least two days prior to the hearing, shall notify the release authority of the victim's or representative's intention to be present at the release hearing so that the release authority may ensure appropriate accommodations and security. If the child is placed on supervised release or is discharged, the release authority shall provide notice of the release or discharge to the victim or victim's representative in accordance with division (F) of section 5139.51 of the Revised Code. If the child is on supervised release, if a court has scheduled a hearing pursuant to division (F) of

section 5139.52 of the Revised Code to consider the revocation of the supervised release, and if the release authority has been informed of the hearing, the release authority promptly shall notify the victim or victim's representative of the date, time, and place of the hearing.

(C) If a victim or victim's representative has requested notice of release reviews, pending release hearings, supervised release revocation hearings, and discharge reviews related to a child, of the placement of the child on supervised release, and of the discharge of the child, and if a release review, release hearing, or discharge review is scheduled or pending, the release authority shall give that person an opportunity to provide a written statement or communicate orally with a representative of the release authority regarding the possible release or discharge or to make oral or written comments regarding the possible release or discharge to a representative of the release authority, regardless of whether the victim or victim's representative is present at a hearing on the matter. If a victim or victim's representative is present at a release hearing, the authority shall give that person an opportunity to make the oral or written statement or comments at the hearing. The oral or written statement and comments may address the impact of the offense or delinquent act upon the victim, including the nature and extent of any harm suffered, the extent of any property damage or economic loss, any restitution ordered by the committing court and the progress the child has made toward fulfillment of that obligation, and the victim's recommendation for the outcome of the release hearing. A written statement or written comments submitted by a victim or a victim's representative under this section are confidential, are not a public record, and shall be returned to the release authority at the end of a release hearing by any person who receives a copy of them.

At a release hearing before the release authority, a victim or victim's representative may be accompanied by another person for support, but that person shall not act as a victim's representative. The release authority and other employees of the department of youth services shall make reasonable efforts to minimize contact between the child and the victim, victim's representative, or support person before, during, and after the hearing. The release authority shall use a separate waiting area for the victim, victim's representative, and support person if a separate area is available.

(D) At no time shall a victim or victim's representative be compelled to disclose the victim's address, place of employment, or similar identifying information to the child or the child's parent or legal guardian. Upon request of a victim or a victim's representative, the release authority shall keep in its files only the address or telephone number to which it shall send notice of a release review, pending release hearing, supervised release revocation hearing, discharge review, grant of supervised release, or discharge.

(E) No employer shall discharge, discipline, or otherwise retaliate against a victim or victim's representative for participating in a hearing before the release authority. This division generally does not require an employer to compensate an employee for time lost as a result of attendance at a hearing before the release authority.

(F) The release authority shall make reasonable, good faith efforts to comply with the provisions of this section. Failure of the release authority to comply with this section does not give rise to a claim for damages against

the release authority and does not require modification of a final decision by the release authority.

(G) If a victim is in the legal custody of the department of youth services and resides in a secure facility or in another secure residential program, including a community corrections facility, or is incarcerated, the release authority may modify the victim's rights under this section to prevent a security risk, hardship, or undue burden upon a public official or agency with a duty under this section. If the victim resides in another state under similar circumstances, the release authority may make similar modifications of the victim's rights.

HISTORY: 147 v H 1 (Eff 7-1-98); 147 v H 526. Eff 9-1-98.

§ 5139.85 Disposition of property of former inmates.

(A) Whenever any child under the jurisdiction of the department of youth services dies, and any personal funds or property of the child remain in the hands of the department and no demand is made upon the department by the decedent's legally appointed executor or administrator, all money and other personal property of the decedent remaining in the custody or possession of the department shall be held by the department for a period of one year from the date of death of the decedent, for the benefit of the heirs, legatees, or successors in interest of the decedent, during which time the department shall make a reasonable effort to locate the owner or his legally appointed executor or administrator.

Upon the expiration of the one-year period, any money remaining unclaimed in the custody or possession of the department shall be delivered to the state treasurer for deposit in the general revenue fund, except that of the total amount of unclaimed money in a child's personal account, the department may transfer an amount not to exceed one hundred dollars to the industrial and entertainment fund established under the authority of section 5139.86 of the Revised Code.

Upon the expiration of the one-year period, all personal property, other than cash, remaining unclaimed in the custody or possession of the department shall be disposed of as provided in division (C) of this section.

(B) Whenever any child under the jurisdiction of the department of youth services escapes, or is discharged or paroled, and any personal funds in excess of twenty dollars or property of the child remain in the hands of the department, and no demand is made upon the department by the owner of the funds or property or his legally appointed representative, all money in excess of twenty dollars and other intangible property of the child, other than deeds, contracts, assignments, or transfers, remaining in the custody or possession of the department shall be held for the period of the minority of such ward and for a period of one year thereafter, for the benefit of such ward or his successors in interest, during which time the department shall make reasonable effort to locate the owner or his legally appointed executor or administrator.

Any personal funds in amounts of twenty dollars or less shall be transferred to the industrial and entertainment fund established under section 5139.86 of the Revised Code unless they are demanded by the child or his legal representative at the time of discharge or parole.

Upon the expiration of such period of time, any money in excess of twenty dollars or other intangible personal property, other than deeds, contracts, assignments, or

transfers, remaining unclaimed in custody or possession of the department shall be delivered to the state treasurer for deposit in the general revenue fund, except that of the total amount of unclaimed money in a child's personal account, the department may transfer an amount not to exceed one hundred dollars to the industrial and entertainment fund established under the authority of section 5139.86 of the Revised Code. Upon the expiration of one year from the date of such escape, discharge, or parole, any tangible personal property shall be disposed of as provided in division (C) of this section.

(C) Any property remaining after the provisions of divisions (A) and (B) of this section have been complied with shall be disposed of as follows:

(1) All deeds, contracts, assignments, or transfers shall be filed by the department with the county recorder of the county of commitment of such child or as otherwise provided by law.

(2) All tangible personal property other than money, remaining unclaimed in the department's custody or possession, shall be sold by the department at public auction and the proceeds of the sale delivered to the state treasurer for deposit in the general revenue fund. If the department considers it expedient, it may accumulate the property of several children and sell the property in such lots as it may determine, provided that it makes a determination as to each child's share of the proceeds.

(3) If any tangible personal property covered by this section is not salable at public auction, or if it has no intrinsic value, or if the value is not sufficient to justify its retention by the department to be offered for sale at public auction at a later date, the department may order it destroyed.

HISTORY: 131 v 1244 (Eff 11-5-65); 139 v H 440 (Eff 11-23-81); 145 v H 715. Eff 7-22-94.

§ 5139.86 Cafeteria fund; industrial and entertainment fund; youth benefit fund; employee food service fund.

(A) Each managing officer of an institution or regional office under the jurisdiction of the department of youth services, with the approval of the director of the department, may establish local funds designated as follows:

(1) The cafeteria fund, created and maintained for the benefit of the institution, into which shall be deposited all money received from the sale of cafeteria meals. The fund shall be used to pay costs of providing employee meals, and to reimburse the employee food service fund for amounts spent from that fund to support cafeteria operations. Reimbursements to the employee food service fund shall be made in such amounts and at such times as directed by the director of budget and management.

(2) The industrial and entertainment fund, created and maintained for the benefit of the children confined in the institution or placed in the region. The fund shall receive profits from commissary sales, any vocational education programs provided under section 5139.131 [5139.13.1] of the Revised Code, vending machine leases, and yearbook sales; unclaimed youth benefit funds; any moneys received from commissions on telephone systems established for the use of confined children; any amounts transferred to the fund pursuant to division (A) or (B) of section 5139.85 of the Revised Code; and any donations designated for the benefit of confined children or chil-

dren placed in the region. Expenditures from the industrial and entertainment fund shall be used solely for the benefit of the children confined in the institution or placed in the region.

(3) The youth benefit fund, created and maintained for the benefit of the children who are confined in the institution or placed in the region. The fund may receive and disburse all benefits that are due a child, including, but not limited to, social security payments, railroad retirement payments, veterans administration payments, any allowances, and any monetary compensation of the child as provided in section 5139.07 of the Revised Code.

(B) The managing officer of the institution or regional office, subject to the approval of the director of the department, shall establish policies and procedures for the operation of the cafeteria fund, industrial and entertainment fund, and youth benefit fund.

(C) There is hereby created in the state treasury the employee food service fund, consisting of money received from institutional cafeterias and money received from the sale of surplus property. The fund shall be used to purchase food, supplies, and cafeteria equipment for the institutions.

(D) As used in this section, "profits" means the revenue from the sale of commissary items over and above operating costs and a reserve established by the managing officer of the institution.

HISTORY: 139 v H 440 (Eff 11-23-81); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 7-22-94); 147 v H 215. Eff 9-29-97.

The effective date is set by section 222 of HB 215.

§ 5139.87 Federal juvenile justice programs funds.

(A) The department of youth services shall serve as the state agent for the administration of all federal juvenile justice grants awarded to the state.

(B) There are hereby created in the state treasury the federal juvenile justice programs funds. A separate fund shall be established each federal fiscal year. All federal grants and other moneys received for federal juvenile programs shall be deposited into the funds. All receipts deposited into the funds shall be used for federal juvenile programs. All investment earnings on the cash balance in a federal juvenile program fund shall be credited to that fund for the appropriate federal fiscal year.

(C) All rules, orders, and determinations of the office of criminal justice services regarding the administration of federal juvenile justice grants that are in effect on the effective date of this amendment shall continue in effect as rules, orders, and determinations of the department of youth services.

HISTORY: 149 v H 94. Eff 9-5-2001; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

§ 5139.99 Penalty.

Whoever violates section 5139.21 of the Revised Code shall be fined not less than ten nor more than five hundred dollars or imprisoned not more than one year, or both.

HISTORY: 130 v 1229. Eff 3-10-64.

CHAPTER 5153: COUNTY CHILDREN SERVICES

§ 5153.14 Reports.

The executive director shall prepare and submit an annual report to the public children services agency at the end of each calendar year and shall file copies of such report with the department of job and family services, the board of county commissioners, and the juvenile court. The executive director shall submit the inspection reports required under section 5153.16 of the Revised Code and such other reports as are required by law, by the rules of the director of job and family services, or by the board of county commissioners to specified governmental bodies and officers and shall provide reports to the public, when so authorized.

HISTORY: 127 v 1012 (Eff 9-14-57); 133 v S 49 (Eff 8-13-69); 137 v H 523 (Eff 1-9-79); 141 v H 428 (Eff 12-23-86); 144 v H 82 (Eff 9-10-91); 147 v H 408 (Eff 10-1-97); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 5153.16 Duties of public children services agency as to children in need of public care or protective services.

(A) Except as provided in section 2151.422 [2151.42.2] of the Revised Code, in accordance with rules adopted under section 5153.166 [5153.16.6] of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:

(1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

(2) Enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the department of job and family services, department of mental health, department of mental retardation and developmental disabilities, other department, any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any child, or with respect to any matter, in the interests of the child, provided the permanent custody of a child shall not be transferred by a parent to the public children services agency without the consent of the juvenile court;

(3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;

(4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service;

(5) Provide social services to any unmarried girl adjudicated to be an abused, neglected, or dependent child who is pregnant with or has been delivered of a child;

(6) Make available to the bureau for children with medical handicaps of the department of health at its request any information concerning a crippled child found to be in need of treatment under sections 3701.021 [3701.02.1] to 3701.028 [3701.02.8] of the Revised Code

who is receiving services from the public children services agency;

(7) Provide temporary emergency care for any child considered by the public children services agency to be in need of such care, without agreement or commitment;

(8) Find certified foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;

(9) Subject to the approval of the board of county commissioners and the state department of job and family services, establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision;

(10) Acquire and operate a county children's home, establish, maintain, and operate a receiving home for the temporary care of children, or procure certified foster homes for this purpose;

(11) Enter into an agreement with the trustees of any district children's home, respecting the operation of the district children's home in cooperation with the other county boards in the district;

(12) Cooperate with, make its services available to, and act as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency shall not be required to provide supervision of or other services related to the exercise of parenting time rights granted pursuant to section 3109.051 [3109.05.1] or 3109.12 of the Revised Code or companionship or visitation rights granted pursuant to section 3109.051 [3109.05.1], 3109.11, or 3109.12 of the Revised Code unless a juvenile court, pursuant to Chapter 2151. of the Revised Code, or a common pleas court, pursuant to division (E)(6) of section 3113.31 of the Revised Code, requires the provision of supervision or other services related to the exercise of the parenting time rights or companionship or visitation rights;

(13) Make investigations at the request of any superintendent of schools in the county or the principal of any school concerning the application of any child adjudicated to be an abused, neglected, or dependent child for release from school, where such service is not provided through a school attendance department;

(14) Administer funds provided under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under section 5101.141 [5101.14.1] of the Revised Code;

(15) In addition to administering Title IV-E adoption assistance funds, enter into agreements to make adoption assistance payments under section 5153.163 of the Revised Code;

(16) Implement a system of safety and risk assessment, in accordance with rules adopted by the director of job and family services, to assist the public children services agency in determining the risk of abuse or neglect to a child;

(17) Enter into a plan of cooperation with the board of county commissioners under section 307.983 [307.98.3] of the Revised Code and comply with each fiscal agreement the board enters into under section 307.98 of the Revised Code that include family services duties of public

children services agencies and contracts the board enters into under sections 307.981 [307.98.1] and 307.982 [307.98.2] of the Revised Code that affect the public children services agency;

(18) Make reasonable efforts to prevent the removal of an alleged or adjudicated abused, neglected, or dependent child from the child's home, eliminate the continued removal of the child from the child's home, or make it possible for the child to return home safely, except that reasonable efforts of that nature are not required when a court has made a determination under division (A) (2) of section 2151.419 [2151.41.9] of the Revised Code;

(19) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan approved under division (E) of section 2151.417 [2151.41.7] of the Revised Code and to complete whatever steps are necessary to finalize the permanent placement of the child;

(20) Administer a Title IV-A program identified under division (A)(4)(c) or (f) of section 5101.80 of the Revised Code that the department of job and family services provides for the public children services agency to administer under the department's supervision pursuant to section 5101.801 [5101.80.1] of the Revised Code;

(21) Administer the kinship permanency incentive program created under section 5101.802 [5101.80.2] of the Revised Code under the supervision of the director of job and family services;

(22) Provide independent living services pursuant to sections 2151.81 to 2151.84 of the Revised Code.

(B) The public children services agency shall use the system implemented pursuant to division (A)(16) of this section in connection with an investigation undertaken pursuant to division (F)(1) of section 2151.421 [2151.42.1] of the Revised Code to assess both of the following:

(1) The ongoing safety of the child;

(2) The appropriateness of the intensity and duration of the services provided to meet child and family needs throughout the duration of a case.

(C) Except as provided in section 2151.422 [2151.42.2] of the Revised Code, in accordance with rules of the director of job and family services, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency may do the following:

(1) Provide or find, with other child serving systems, specialized foster care for the care of children in a specialized foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code;

(2)(a) Except as limited by divisions (C)(2)(b) and (c) of this section, contract with the following for the purpose of assisting the agency with its duties:

(i) County departments of job and family services;

(ii) Boards of alcohol, drug addiction, and mental health services;

(iii) County boards of mental retardation and developmental disabilities;

(iv) Regional councils of political subdivisions established under Chapter 167. of the Revised Code;

(v) Private and government providers of services;

(vi) Managed care organizations and prepaid health plans.

(b) A public children services agency contract under division (C)(2)(a) of this section regarding the agency's

duties under section 2151.421 [2151.42.1] of the Revised Code may not provide for the entity under contract with the agency to perform any service not authorized by the department's rules.

(c) Only a county children services board appointed under section 5153.03 of the Revised Code that is a public children services agency may contract under division (C)(2)(a) of this section. If an entity specified in division (B) or (C) of section 5153.02 of the Revised Code is the public children services agency for a county, the board of county commissioners may enter into contracts pursuant to section 307.982 [307.98.2] of the Revised Code regarding the agency's duties.

HISTORY: 127 v 1012 (Eff 9-14-57); 133 v S 49 (Eff 8-13-69); 134 v H 913 (Eff 10-4-71); 134 v H 494 (Eff 7-12-72); 135 v H 1138 (Eff 10-2-74); 137 v H 523 (Eff 1-9-79); 138 v H 378 (Eff 7-1-80); 138 v H 900 (Eff 7-1-80); 140 v H 37 (Eff 6-22-84); 141 v H 428 (Eff 12-23-86); 144 v H 298 (Eff 7-26-91); 144 v H 478 (Eff 1-14-93); 145 v H 152 (Eff 7-1-93); 146 v H 274 (Eff 8-8-96); 147 v H 215 (Eff 6-30-97); 147 v H 408 (Eff 10-1-97); 147 v H 352 (Eff 10-1-97); 147 v H 484 (Eff 3-18-99); 148 v H 471 (Eff 7-1-2000); 148 v H 448 (Eff 10-5-2000); 148 v H 332 (Eff 1-1-2001); 148 v S 180 (Eff 3-22-2001); 149 v H 94 (Eff 9-5-2001); 149 v H 38. Eff 11-1-2002; 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 9-29-05; 151 v S 238, § 1, eff. 9-21-06.

The effective date is set by § 612.03 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v —).

Department of Youth Services

Chapter 5139-2 Personnel; Visitors

Section

- 5139-2-15 Prohibited activity relating to weapons, intoxicating liquors, tobacco products, drugs, unauthorized correspondence, communication devices, and hunting.
- 5139-2-28 Search of visitors and staff at Ohio department of youth services institutions.

§ 5139-2-15 Prohibited activity relating to weapons, intoxicating liquors, tobacco products, drugs, unauthorized correspondence, communication devices, and hunting.

(A) The purpose of this rule is to describe prohibited activities by department of youth services (ODYS) personnel, visitors, or trespassers to ODYS property and institutions. Prohibited activities are those deemed threatening to the safety and welfare of the youth.

(1) All ODYS personnel and visitors will be responsible for the implementation of this rule.

(2) The specific responsibility for the implementation of this rule rests with the managing officers of the ODYS institutions or their designees.

(B) All ODYS personnel and all visitors are prohibited from conveying into any ODYS institution, or onto the grounds of any ODYS institution, the following items:

(1) Weapons of any kind, or facsimiles thereof, including but not limited to any type of firearms, longbow, crossbow, sling shot, tomahawk, switchblade knife, or any knife with a blade over three inches. No person or persons will hunt, trap, or target practice on any ODYS property with any of the above weapons or facsimiles thereof.

(2) Intoxicating liquors.

(3) Any form of tobacco product.

(4) Any medication, sedatives, stimulants, or narcotic drug for any youth except as officially requested by the managing officer of the institution. Personnel will not convey into any ODYS institution any stimulant, narcotic medicine, or drug for their own use without the authorization of the managing officer or staff member designated by the managing officer.

(5) Any medication, sedatives, stimulants, or narcotic drug for any youth except as officially requested by the managing officer of the institution. Personnel will not convey into any ODYS institution any stimulant, narcotic medicine, or drug for their own use without the authorization of the managing officer or staff member designated by the managing officer.

(6) Any communication or recording device, including but not limited to pager, cellular phone, walkie-talkie, or camera, not issued by the State of Ohio unless authorized by the managing officer or designee.

(C) The managing officer of all ODYS institutions will immediately bring all possible violations of this rule to the attention of the deputy director of the division of institutions and the chief inspector's office.

(D) Violations of this rule may result in the arrest and/or possible criminal prosecution against the employee, visitor, or trespasser pursuant to *section 2921.37 of the Revised Code for violations under section 2921.36 of the Revised Code*.

(E) Law enforcement officers are to be asked to deposit their weapons in the trunk of their vehicle or in a locked box outside of the institution's secure perimeter. Law enforcement officers will only be permitted to carry weapons into a secure perimeter of an institution with the approval of the director of the agency.

History: Eff 9-27-79; 1-26-96; 11-10-01; 10-30-06

§ 5139-2-28 Search of visitors and staff at Ohio department of youth services institutions.

(A) This rule is to set guidelines for the search of visitors and employees at various institutions operated by the Ohio department of youth services (ODYS). These guidelines are intended to assure the ability of ODYS to prevent the introduction of weapons or other contraband into the institutions, while at the same time providing for only the minimum inconvenience and embarrassment necessary to accomplish this goal.

(1) The overall responsibility rests with the director of ODYS through the respective deputy director.

(2) The responsibility for the specific implementation of this rule rests with the managing officers.

(B) Visitors who are otherwise approved under the rules of the individual institution will be searched prior to their being allowed to enter the secure perimeter of the facility. Each institution will provide an area where searches of a visitor's person can be conducted.

(1) If, after visitation has commenced, institutional officials have reasonable grounds to believe a visitor is in possession of contraband, including a weapon, then that visitor will be required to submit to a further search. In these cases, the visitor should be escorted to an area isolated from the view of other visitors and youth where the search can be conducted to minimize embarrassment.

(2) All searches of a visitor's person under this rule will be confined to a metal detector and/or a "pat down" search, plus an examination of articles which the visitor may be carrying in his/her pockets, or articles on the visitor's person (handbags, wallets, etc.). All "pat down" searches of a visitor's person must be conducted by staff members of the same sex.

(3) If a visitor refuses to submit to a search at any time, that visitor will be required to leave the institution premises and further visitation privileges may be denied where it is deemed necessary. ODYS staff should not argue with, or agitate visitors regarding searches, but it must be made clear that visitation privileges can and will be terminated where a visitor fails to cooperate with staff members. Termination of the visitation privileges is the sole action which a staff member may take against a visitor under this rule. (The individual in charge of the institution may exercise the police power granted by

section 2921.37 of the Revised Code, to arrest an individual for violation of section 2921.36 of the Revised Code.). If a visitor refuses to leave the premises when requested to do so, the state highway patrol should be summoned for assistance.

(C) All persons entering an ODYS institution will be required to submit to a metal detector search to include emptying of pockets and a search of all bags, boxes entering with that person. ODYS has a compelling interest in maintaining institutions free of contraband and weapons. Employees should be aware that these search procedures are a part of the conditions of their employment and it is expected that their cooperation will be forthcoming. Failure to submit to a search pursuant to this rule shall be considered adequate cause for the dismissal of an employee.

(1) An employee at a correctional facility shall be subject to further search if the institution's superintendent, or his designee, determines that there is probable cause to believe that the employee is in possession of a weapon or other contraband. "Probable cause" as used in this rule shall mean that the evidence presented leads to the reasonable belief that the employee is in possession of contraband or a weapon. A finding of probable cause shall be based upon reliable, probative evidence, which may include hearsay and other information or evidence which would not generally be admissible in a court of law. The superintendent or his designee shall set forth in writing the evidence relied upon in making his finding of probable cause as soon as practicable, after such finding is actually made.

(2) Once the finding of probable cause is made, the employee shall be subject to search at the direction of the superintendent, or his designee. The highway patrol will be summoned and they will send an officer who will be available to assure an orderly process and to take the employee into custody if charges are to be filed. ODYS staff will be responsible for physically conducting the search. All searches for cause of an employee shall be conducted by a staff member of the same sex. If an employee refuses to submit to a search, no physical coercion shall be used but the employee shall be ordered to leave the premises immediately and will be subject to disciplinary action, up to and including dismissal.

(3) In most cases no action will be taken prior to the arrival of the highway patrol; however, in cases where time is of the essence and where there is no time to await the arrival of the highway patrol, an expedited procedure should be used. This expedited procedure should be used, for example, where there is clear and convincing evidence that the employee is in possession of contraband and, further, intends to destroy or distribute such contraband before the patrol could reasonably be expected to arrive. In these types of cases, where exigent circumstances exist, the state highway patrol should be summoned immediately and then ODYS staff should proceed in the following manner. The individual employee should be initially escorted to an area isolated from the view of other employees and youth in order to avoid any unnecessary embarrassment. Where practical, a union representative, or other suitable employee witness should also be present. Once the employee is isolated, he will be "patted down" to assure that there are no weapons on his person. No further search should be conducted by ODYS staff until the arrival of the highway patrol. The employee may be detained in this area for a reasonable time until the arrival of the highway patrol.

(4) Once a highway patrol officer arrives, he will assure an orderly process and observe any further search which is deemed necessary. In no case shall an employee be detained against his will nor physically compelled to submit to a search by ODYS staff. If an employee refuses to be searched or to remain under observation until the highway patrol arrives, the employee should be advised that he will be subject to disciplinary action up to and including dismissal, and required to immediately leave the premises.

(5) In cases where there has been a finding of probable cause by the superintendent or his designee that an employee possesses a weapon, and there is further reason to believe that the employee intends to harm himself or others in the immediate future, ODYS staff should proceed in the following manner. The Ohio highway patrol should be summoned immediately and the suspected employee should be isolated as much as possible and as inconspicuously as possible. The employee can be isolated by either moving him away from other individuals or by moving other individuals away from him. Care must be taken so that whatever action is undertaken to isolate the employee is inconspicuous and does not arouse the employee's suspicion and possibly precipitate an incident or confrontation. The superintendent must use his own best judgment in this type of situation and the safety of the youth, visitors and other employees must always be of paramount importance. No attempt should be made to search the employee prior to the arrival of the patrol and, as always, upon their arrival the patrol shall be in charge of the matter and further direction will come from them.

(D) Any employee who is subjected to a search under this rule may request that the action of the superintendent or other staff members be reviewed through the existing grievance procedure. Since the superintendent or his designee will necessarily be the subject of such grievance, the grievance will proceed directly to the fourth level (director level review) for consideration.

History: Eff 9-27-79; 11-3-80; 1-26-96; 11-10-01; 10-30-06

Chapter 5139-4

Confidentiality

§ 5139-4-01 Use of confidential data, photographs, and names of youth under Ohio department of youth services Jurisdiction. [Repealed]

History: Eff 1-5-76; 11-10-01; Repealed Eff. 2-3-04

Chapter 5139-5

Grievance Procedure for Youth

§ 5139-5-02 The office of the chief inspector.

(A) Pursuant to Section 5139.04 of the Revised Code the office of the chief inspector is established to administer an effective grievance procedure for youth and to perform other duties assigned by the director.

(B) The chief inspector is appointed, pursuant to Section 5139.02 of the Revised Code, by the director of the department of youth services to serve in the unclassified service at the pleasure of the director.

(C) The chief inspector shall:

(1) Serve as the chief administrator of the grievance procedure for youth;

(2) Be responsible for recommending to the director the final resolution of youth grievance appeals;

(3) Investigate and monitor practices within the department of youth services to ensure that all laws as well as rules, regulations and directives of the department and subordinate facilities are being followed and applied fairly throughout the system, and report to the director any noncompliance with recommendations for corrective action;

(4) Maintain for a period of three years complete files on each grievance appealed to the office of chief inspector;

(5) Require periodic reports from each institution and regional office with information relating to the youth grievance procedure;

(6) Submit to the director an annual report including a statistical and narrative summary as to the numbers and nature of all grievances processed during the report period, their disposition, and the status of all pending grievances by institution and region throughout the department of youth services. The annual report shall be a public record and shall be available to the public during reasonable hours. The annual report will be filed with the office of the governor and with any standing legislative committee on juvenile correction herein after established;

(7) Continuously monitor the utilization and operation of the youth grievance procedure;

(8) Initiate and supervise on going training for department staff to maintain an active awareness and understanding of the youth grievance procedure;

(9) Conduct periodic audits of all records filed for each institution and regional office to ensure proper documentation and utilization of the grievance procedure for youth;

(10) Monitor the orientation of youth to the use of the grievance procedure;

(11) With approval of the director, appoint any assistants necessary to fulfill the mission of the office;

(12) Perform other duties related to grievance procedures as appropriate and/or assigned by the director.

(D) The chief inspector shall have all necessary authority to perform the required duties and responsibilities of the office of chief inspector. The chief inspector shall have full investigative powers and complete access at any time to all facilities, offices, or installations under the jurisdiction of the department of youth services. All records, files, documentation, and any other information shall be available to the chief inspector upon request. Any employee of the department of youth services who falsifies information or otherwise obstructs an investigation of the chief inspector in any manner will be subject to disciplinary action.

(E) The office of the chief inspector shall not accept jurisdiction of a grievance until all administrative remedies have been exhausted at the local institution or regional office, with the exception of grievances that allege that a managing officer was personally involved in a violation of law or policy and approved it or did nothing to prevent it. A grievance directed against a managing

officer shall be referred immediately to the attention of the chief inspector for investigation and disposition.

(F) Upon receipt of a grievance against a managing officer, the chief inspector shall send notice to all affected parties setting forth the date the grievance was received by the chief inspector and specifying that the grievance will be investigated and reviewed within ten working days. All affected parties shall be provided with a copy of the chief inspector's decision.

(G) The chief inspector may establish procedures for the resolution of emergency grievances on a priority basis. An emergency grievance is one which requires immediate resolution in order to avoid irreparable harm to the youth or the institution.

History: Eff 9-6-94; 4-14-05

Chapter 5139-17

Finances of Community Residential Networks

Section

5139-17-03 Overview; days of care reporting.

5139-17-04 Contract period and reporting requirements.

§ 5139-17-03 Overview; days of care reporting.

An attendance record form designed to record and accumulate agency days of childcare will be provided by the department and must be maintained at the community residential provider for a period of three years after the close of the department's fiscal year. The originals are to be submitted on or before the fifth of each month to the department's regional office responsible for the provider's operation for validation. Upon validation, a regional office staff member will sign and forward the originals to the central office bureau of accounting, retain a copy for their files and forward a copy to the provider.

History: Eff 6-24-80; 2-14-81; 11-26-82; 8-4-86; 11-10-01

§ 5139-17-04 Contract period and reporting requirements.

(A) The department shall execute a written contract with each community residential provider from which residential services are to be purchased. The contract shall:

(1) Include all terms of the contract in one instrument, be dated, and be executed by authorized representatives of all parties to the contract, prior to the date of implementation, unless emergency approval is given.

(2) Have a definite effective date and a maximum durational term for the provision of services under the contract.

(3) Include the maximum dollar amount for the services to be provided.

(4) Provide the rate(s) of service in the contract.

(5) Include a statement that the community residential provider shall comply with the standards specified in Chapters and 5139-17 of the Administrative Code.

(6) Specify the location of the community residential provider to be used in providing residential services for department youth.

History: Eff 6-24-80; 2-14-81; 11-26-82; 8-4-86; 11-10-01; 10-30-06

Chapter 5139-25

Notice

§ 5139-25-01 Notice procedure.

The procedure of the Ohio department of youth services for giving public notice relative to the adoption, amendment or rescission of rules under Chapter 119. of the Revised Code shall be:

(A) The department shall cause a statement of its intention to consider adopting, amending or rescinding a rule, a brief synopsis or a general statement of said proposed rule for adoption, amendment or rescission, a statement of the reason or purpose for adopting, amending or rescinding the rule, and the date, time and place of hearing on the proposed action, to be published in the Register of Ohio, by the department at least thirty days prior to the date set for the hearing of the proposed action of such rule and may be published in other publications if deemed necessary by the department. The notice must meet the requirements of division (A) of section 119.03 of the Revised Code.

(B) The department shall furnish the public notice required under section 119.03 of the Revised Code and as detailed by paragraph (A) of this rule to any person who requests notice in writing. Such requests shall be responded to promptly, but the department cannot in all cases guarantee notice thirty days prior to the hearing date.

(C) A copy of the proposed rule to be adopted, amended or rescinded shall be filed with the secretary of state and the director of the legislative service commission and two copies shall be filed with the joint committee on agency rule review at least thirty days prior to the date set for the public hearing on the proposed action.

(D) The department shall furnish a legible copy of the text of the proposed rule to be adopted, amended or rescinded to any person upon request.

(E) If the department makes a substantive revision in the text of the proposed rule, amendment or rescission after it is filed with the joint committee on agency rule review, secretary of state and director of the legislative service commission, the department shall promptly file two copies of the full text of the proposed rule, amendment or rescission in its revised form with the joint committee on agency rule review, one copy with the secretary of state and one copy with the director of the legislative service commission.

(F) If after public hearing the department determines that the proposal shall be adopted, amended or rescinded, or in the case of an emergency rule, that the adoption shall be made final, a copy of said rule as adopted, amended or rescinded shall be filed with the secretary of state and the director of the legislative service commission in the number of copies required under Chapter 119. of the Revised Code.

(G) Prior to the effective date of the rule, amendment or rescission, the department shall make a reasonable effort to inform those affected by the rule, amendment or rescission and to have available for distribution to those requesting it, the full text of the rule as adopted, amended or rescinded. In the case of an emergency rule,

such effort shall be made prior to the ninetieth day following the initial filing of the adopted emergency rule.

(H) This rule is adopted in accordance with the express provisions of division (A) of section 119.03 of the Revised Code.

(I) Failure to provide notice of the hearing pursuant to paragraph (B) of this rule, and/or failure to furnish the text of the rule, amendment, or rescission pursuant to paragraphs (D) and (G) of this rule shall not invalidate any action of the department in connection therewith.

History: Eff 2-14-81; 8-10-84; 10-25-02

Chapter 5139-35

Community Residential Centers

Section

5139-35-01	Definitions.
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5139-35-18	Juvenile rights.
5139-35-19	Control and treatment of children.
5139-35-20	Evaluation and data collection.

§ 5139-35-01 Definitions.

(A) "Admissions officer" means for purposes of this chapter, the admissions officer is that person responsible for carrying out the admissions process.

(B) "Admissions process" means the point of entry into a program, during admission processing, the child receives an orientation to the goals of the program and program rules and regulations. Assignment to living quarters and to appropriate staff members is also completed at this time.

(C) "Annual average daily population" means the number arrived at by adding up the official resident count taken at an appointed time each day consistently for a full fiscal year and dividing that figure by the total number of days in the year.

(D) "Approval" means written authorization for a residential center to receive financial assistance from the department under state law and is issued by the department when a facility meets applicable standards.

(E) "Chemical agent" means an active substance, such as tear gas, used to deter activities that might cause personal injury or property damage.

(F) "Child care staff member" means for the purpose of staff/child ratio, one whose duty is primarily the supervision of child or the immediate supervisor of child supervision staff. This would not include teachers, cooks, tradesmen, etc., whose child supervision duties are incidental to their primary responsibility.

(G) "Code of ethics" means a set of rules describing acceptable standards of conduct for all employees.

(H) "Community residential center" means a facility, referred to hereafter as CRC, in which children, including the children of any staff residing at the facility, are given care and supervision twenty-four hours a day.

(I) "Community resources" means those social and welfare agencies, service clubs, citizen interest groups and citizen volunteers who have the potential to assist children. These various resources, which may be public or private, national or local, have the potential for help ranging from material and financial assistance, to guidance, counseling, and supportive services.

(J) "Compliance" means compliance with this chapter shall be determined as follows:

(1) Twelve months following the effective date of this chapter, and at all times thereafter, one hundred percent compliance with all standards labeled as "mandatory."

(2) Twelve months following the effective date of this chapter through twenty-four months after the effective date of this chapter, sixty per cent of standards labeled as "recommended" must be complied with.

(3) Twenty-four months and one day through thirty-six months following the effective date of this chapter, seventy per cent of standards labeled as "recommended" must be complied with.

(4) Thirty-six months and one day through forty-eight months after the effective date of this chapter, eighty per cent of standards labeled as "recommended" must be complied with.

(5) Forty-eight months and one day and thereafter, ninety per cent of those standards labeled as "recommended" must be complied with.

(K) "Conflict of interest" means any employee action that adversely affects the interest of the agency. Outside concerns may bring undue pressure upon the employee in his/her effort to make decisions concerning official duties.

(L) "Contraband" means any item possessed by children or found within the facility that is illegal by law or that is expressly prohibited by those legally charged with the responsibility for administration and operation of the facility or program.

(M) "Contractual arrangement" means an agreement between parties to provide services to children for remuneration.

(N) "Corporal punishment" means any act of inflicting punishment directly on the body, causing pain or injury.

(O) "Department" the Ohio department of youth services.

(P) "Director" means the director of the Ohio department of youth services.

(Q) "Dormitory" means any room sleeping more than five children.

(R) "Emergency" any significant disruption of normal facility or agency procedure, policy, or activity caused by riot, escape, fire, natural disaster,

(S) "Emergency care" means care an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the child population by the medical director, physician, other staff, local ambulance services and/or outside hospital emergency rooms. This care shall be expedited by following specific written procedures for medical emergencies described in Chapter 5139-14 of the Administrative Code.

(T) "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area, whether or not enclosing a building or a set of buildings, which is used for the lawful custody and treatment of children.

(U) "Facility administrator" means any official, regardless of local title (e.g., director, administrator, superintendent), who has the responsibility for day-to-day management of the facility.

(V) "First aid" means care for a condition that requires immediate assistance from a person trained in first aid and care and the use of the facility's first-aid kits.

(W) "Grievance" means a circumstance or action considered to be unjust and grounds for complaint.

(X) "Health care" means the sum of all action taken, preventive and therapeutic, to provide for the physical and mental well being of the population of a facility. Health care includes medical and dental services, and environmental conditions.

(Y) "Health care personnel" means individuals whose primary duties are to provide health services to residents in keeping with their respective levels of health care training or experience. (See qualified health personnel.)

(Z) "Health trained personnel (medically trained personnel)" means child care and administrative personnel who are trained and appropriately supervised to carry out certain specific duties with regard to the administration of health care.

(AA) "Hearing" means a proceeding to determine a course of action, such as the placement of a child, or to determine guilt or innocence in a disciplinary matter. Argument, witnesses, or evidence are heard by a judicial officer or administrative body in making the determination.

(BB) "Isolation" means the physical separation of the child from the normal group activities either for disciplinary or medical reasons.

(CC) "Least restrictive physical restraint" means the least amount of direct physical contact required on the part of a staff member to prevent a child from harming him/herself or others, or for the protection of property.

(DD) "Life safety code" means a manual published and updated by the national fire protection association specifying minimum standards for fire safety. Two chapters are devoted to corrections facilities.

(EE) "Living unit" means an area of a detention center which is comprised of the room(s) in which residents sleep, a day room and sanitation facilities. The day room and the sanitation facilities may be adjacent to the sleeping area.

(FF) "Medical screening" means a system of structured observation/initial health assessment to identify newly arrived children who pose a health or safety threat to themselves or others.

(GG) "New plant" means a facility which has been constructed, as contrasted to renovated, remodeled or added to.

(HH) "Orientation" means the process, or the period of time, in which a new employee is acquainted with all aspects of the detention center.

(II) "Parent governmental agency (parent agency)" means the administrative department or division to whom the agency seeking funding or approval reports; it is the policy setting body.

(JJ) "Physical force" means any violence, compulsion or constraint physically exerted upon or against a person's body by any means, including the use of firearms, chemical agents, clubs, or direct bodily contact.

(KK) "Placing agency" means the agency which refers the child for out-of-home placement.

(LL) "Policy" means a course or line of action adopted and pursued by an agency that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the personnel and units must operate. They are statements of guiding principle that should be followed in directing activities toward the attainment of objectives. Their attainment may lead to compliance with standards as well as compliance with the overall goals of the agency/system.

(MM) "Procedure" means the detailed and sequential actions that must be executed to ensure that a policy is fully implemented. It is the method of performing an operation, or a manner of proceeding on a course of action. It differs from a policy in that it directs action in a particular situation to perform a specific task within the guidelines of policy.

(NN) "Program" means the plan or system through which a correctional agency works to meet its goals.

(OO) "Provisional approval" means the written authorization for residential center to operate under state law which may be issued by the department when a residential facility is temporarily unable to comply with one or more standards but is in the process of coming into full compliance.

(PP) "Qualified health care personnel" means physicians, dentists and other professional and technical workers who by state law engage in activities that support, complement or supplement the functions of physicians and/or dentists and who are licensed, registered or certified as appropriate to their qualification or registration.

(QQ) "Rated capacity" means the number of residents which a facility was originally designed to house, or currently has the capacity to house as a result of later, planned modifications, exclusive or extraordinary arrangements to accommodate overcrowded conditions.

(RR) "Records" means information concerning the individual's personal, delinquent or criminal and medical history, behavior, and activities while in custody, including but not limited to: commitment papers, court orders, detainers, personal property receipts, visitors' lists, photographs, fingerprints, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence.

(SS) "Referral" means the process by which a child is introduced to an agency or service where the assistance needed can be obtained.

(TT) "Renovation" means a significant structural or design change in the physical plant of a facility.

(UU) "Residents" means all children who reside in a facility.

(VV) "Responsible health care authority" means the individual or medical resource such as a hospital or clinic to whom has been delegated the responsibility for the facility's health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services provided to children.

(WW) "Restraining device" means any mechanical object designed to physically control or incapacitate a person. These include wrist manacles, ankle manacles, straight jackets, let irons, restraining straps and other such devices.

(XX) "Restraint" means the extraordinary restriction of a child's freedom or freedom of movement.

(YY) "Safety equipment" means firefighting equipment, i.e., chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first-aid kits, stretchers, and emergency alarms.

(ZZ) "Search" means an examination falling into one of the following three categories;

(1) "Frisk search" means a search of a resident's clothes, head cavities, and a through pat down.

(2) "Strip search" means a visual search of a resident's naked body and a search of the resident's clothing while they are not being worn.

(3) "Cavity search" means a probe of a resident's lower body cavity(ies) to be conducted by trained medical personnel only.

(AAA) "Security perimeter" means a secure boundary which encloses the entire portion of the facility in which residents are confined. Passage through this boundary must be strictly controlled.

(BBB) "Secure institution" means any facility that is designed and operated to ensure that all entrances and exits are under the exclusive control of the facility's staff, thereby not allowing a child to leave the facility unsupervised or without permission.

(CCC) "Security devices" means locks, gates, doors, bars, fences, screens, ceiling, floors, walls and barriers used to confine and control detained persons. Also included are electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain facility security.

(DDD) "Serious incident" means a situation in which injury serious enough to warrant professional medical attention occurs involving a resident, employee, or visitor on the grounds of the institution. Also, a situation containing an imminent threat to the security of the institution and/or to the safety of residents, employees, or visitors on the grounds of the institution.

History: Eff 2-3-04

§ 5139-35-02 Approval process.

(A) Application

(1) Any CRC which is designed to accommodate not more than one hundred fifty children at any one time, and which believes that it meets the requirements of Chapter 5139-35 of the Administrative Code, may apply for approval and financial assistance.

(2) A new applicant may apply on forms provided by the department at any time. However, a period of sixty days may be required to process the application.

(3) Renewal applicants should submit, on an annual basis, a formal application on forms provided by the department, sixty days prior to the expiration of their current approval.

(B) Procedure for approval

(1) As part of the application process, staff of the department will make an on-site visit to the facility and review supporting materials to determine the agency's compliance with the standards as set forth in Chapter 5139-35 of the Administrative Code.

(2) The department shall make a decision on the application and send one of the following to the applicant:

(a) A notice of approval if the applicant meets standards set forth in Chapter 5139-35 of the Administrative Code. The approval is effective on the date of the signature of the director.

(b) A provisional approval if the applicant is temporarily unable to comply with one or more standards. The provisional approval will have a plan approved by the department to correct the areas of noncompliance in a stated time period. The provisional approval shall be issued for no more than six months and is not renewable.

(c) A notice of nonapproval if the applicant has not demonstrated its compliance with the standards set forth in Chapter 5139-35 of the Administrative Code. The notice of nonapproval shall cite the standard(s) which has/have not been met and shall be sent by certified mail.

(3) A notice of nonapproval is effective in thirty days unless appealed to the director of the department. Such appeal shall include the right to have a peer review under the provisions of paragraph (D)(1) of this rule.

(4) Within thirty days following the receipt of the appeal, the director shall render a decision in writing by certified mail to the CRC or order that a hearing be conducted to consider legal or factual issues of the appeal.

(5) If a hearing is conducted, the director shall render a decision in writing by certified mail to the CRC within thirty days of the hearing. The decision of the director shall be final.

(C) Duration of approval

(1) All approvals will automatically expire one year from the date of issuance, unless revoked sooner or unless an application for reapproval has been timely received and has not been finally acted upon.

(2) The department shall be advised, in writing, of any proposed operational change of the CRC so that the department can determine whether the change is in conformance with Chapter 5139-35 of the Administrative Code.

(D) Revocation of approval

(1) If the department believes that a CRC is in violation of provisions of Chapter 5139-35 of the Administration Code, it will inform the CRC of its intention to issue a letter of revocation under provisions of paragraph (D)(2) of this rule. The CRC will be informed of its right to request a peer review. The department shall establish policy and procedure which govern: (a) the decision to grant a peer review; and (b) the peer review process.

(2) The failure of a CRC to maintain compliance with the provisions of Chapter 5139-35 of the Administrative Code may result in the revocation of approval of the CRC, such revocation shall be in writing, specifying the provision(s) of Chapter 5139-35 of the Administrative Code which has/have been violated.

(3) A revocation is effective in thirty days unless appealed to the director of the department.

(4) Within thirty days following the receipt of the appeal, the director shall render a decision in writing by certified mail to the CRC or order that a hearing be conducted to consider legal or factual issues of the appeal.

(5) If a hearing is conducted, the director shall render a decision in writing by certified mail to the CRC within thirty days of the hearing. The decision of the director shall be final.

History: Eff 12-11-88

§ 5139-35-03 Administration, organization and management.

(A) The following standard is mandatory: The community residential center ("CRC") has a policy manual that is made available to staff.

(B) The following standards are recommended:

(1) There exists a written statement that describes the philosophy, goals or purposes of the CRC, which is reviewed at least annually and updated, if necessary. The CRC administrator participates in the formulation of specific CRC goals and objectives.

(2) Written policy and procedure provide for a communication system within the CRC that requires, at a minimum, that the CRC administrator meet at least quarterly with the supervisory staff, and all department heads meet monthly with their key staff members.

(3) There is an operations manual that delineates written policy and procedures for operating and maintaining the CRC. The manual is explained and made available to all employees at the time of their employment. There is an organizational chart for the CRC staff that accurately reflects the structure of authority, responsibility and accountability within the CRC.

(4) The CRC and its programs are managed by a single administrative officer to whom all employees or units of management are responsible.

(5) The CRC meets all applicable licensing requirements of the jurisdiction in which it is located.

(6) The agency documents its efforts to conduct a continuing planned program of public information and education.

(7) The CRC shall not admit any child/youth who is a resident of another state or country unless the CRC documents in the child's case record that the party making the placement has the legal authority to make the placement. All such placements shall be made in conformity with the terms of section 2151.56 of the Revised Code or section 5103.20 to 5103.28 of the Revised Code.

(8) The CRC shall allow authorized staff of the department to inspect all aspects of the CRC. Such inspections may include, but not be limited to, evaluation of the physical condition of the CRC, observation and evaluation of the care and services provided to residents by interviewing staff and residents of the rehabilitation center, reviewing case records, and by other appropriate means.

(9) A CRC shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of children in care which require that:

(a) The written consent of a child and the child's parent(s) or guardian be obtained before the child is photographed for fund raising or program publicity purposes.

(b) All photographs and recordings be used in a manner which respects the dignity and confidentiality of the child.

(10) A CRC shall have written policies regarding the participation of children in research projects. These policies shall conform to the 45 C.F.R. 46.101 to .119.

(C) The following standard is recommended for public agencies: A publicly operated CRC shall have an advisory board of at least five persons representing the juvenile justice system, educational and other youth services agencies of the community. The board shall meet at least annually.

(D) The following standards are recommended for private agencies:

(1) The governing body of the agency shall be responsible for the operation of the CRC. This body shall consist of at least five members representing the juvenile justice system, educational and other youth service agencies of the community.

(2) The agency shall be incorporated in compliance with section 5103.04 and Chapter 1701. or 1702. of the Revised Code.

History: Eff 12-11-88; 11-3-04

§ 5139-35-04 Fiscal management.

The following standards are recommended:

(A) There exists an adequate system of budgeting and accounting which controls the fiscal operation of the CRC and the personal funds of residents.

(B) A CRC shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the CRC, the executive personnel of the CRC, or the members of the immediate family of members of the governing body or executive personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the CRC. The CRC shall make a written disclosure of any financial transaction with the CRC in which a member of the board or his/her immediate family is involved.

History: Eff 12-11-88

§ 5139-35-05 Personnel.

(A) The following standards are mandatory:

(1) When children are present during the waking hours, there shall be at least one child-care staff member for each twelve children at the CRC and a female child care worker shall be on duty at all times when female residents are present. A ratio of twenty-five children to one child-care staff member shall be required for sleeping hours.

(2) An agency shall request the bureau of criminal identification and investigation (BCII) to conduct a criminal records check with respect to any prospective employee who has applied to the agency for appointment or employment.

(3) The agency shall inform each prospective employee at the time of initial application, that as a precondition to being approved for that position:

(a) The person is required to complete the BCII prescribed criminal records check form and provide a set of fingerprint impressions; and

(b) A criminal records check is required to be conducted by BCII and, except as provided in paragraph (A)(19) of this rule, satisfactorily completed if the prospective employee comes under final consideration for appointment or employment.

(4) The agency shall provide each person listed in paragraph (A)(2) of this rule with a copy of the BCII prescribed criminal records check form and a BCII standard impression sheet to obtain fingerprint impressions.

(5) Any person listed in paragraph (A)(2) of this rule who receives a copy of the BCII prescribed criminal records check form and a BCII standard impression sheet and who is requested by the agency to complete the form and provide a set of fingerprints impressions shall:

(a) Complete the form or provide all the information necessary to complete the form;

(b) Provide the impression sheet with the impressions of the person's fingerprints; and

(c) Submit the completed form and the impression sheet to the agency.

(6) If a prospective employee seeking appointment or employment by an agency fails to provide the information necessary to complete the form or fails to provide fingerprint impressions, the prospective employee shall not be employed by the agency.

(7) The agency shall obtain the completed form and fingerprint impression sheet from each person listed in paragraph (A)(2) of this rule and forward the form and fingerprint impression sheet to BCII at the time the agency requests a criminal records check.

(8) The agency shall request that BCII obtain information from the federal bureau of investigation (FBI) as a part of the criminal records check for the person if:

(a) The person does not present proof of residency in Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested; or

(b) The person does not provide evidence that within that five-year period, BCII has requested information about the person from the FBI in a criminal records check.

(9) The agency may request that BCII include information from the FBI in the criminal records check if the person presents proof of residency in Ohio for that five-year period.

(10) The agency shall pay to BCII the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted.

(11) The agency may charge a prospective employee a fee for the costs incurred in obtaining a criminal records check. A fee charged by the agency shall not exceed the fee paid by the agency to BCII. If a fee is charged, the agency shall notify the person at the time of initial application of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment.

(12) The report of any criminal records check conducted by BCII in accordance with section 109.572 of the Revised Code and pursuant to a request made by the agency is not a public record. The report shall be made available only to the following persons:

(a) The person who is the subject of the criminal records check or the person's representative.

(b) The agency requesting the criminal records check or its representative.

(c) Any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, approval or certification to the person.

(d) ODYS employees as required for approval, inspection or monitoring purposes.

(13) Reports from BCII or any other local, state, or federal agency regarding a person's criminal record are valid for a period of one year from the date of the report.

(14) An agency shall document that any person hired after October 29, 1993 as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home care shall not have been convicted of or pleaded guilty to any of the offenses listed in paragraph (A)(15)(a) of this rule except as provided in paragraph (A)(16) of this rule.

(15) Except as provided in paragraph (A)(16) of this rule, an agency shall not, as of October 29, 1993, hire a prospective employee as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home-care if the person has been

convicted of or pleaded guilty to any of the following offenses:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state that is substantially equivalent to any of the offenses listed in paragraph (A)(15)(a) of this rule.

(16) A prospective employee convicted of or who has pleaded guilty to an offense listed in paragraph (A)(15)(a) of this rule may be hired by an agency as an administrator, child care staff or caseworker, or in any other position responsible for a child's care in out-of-home care only if the following conditions have been met:

(a) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the prospective employee was fully discharged from any imprisonment or probation arising from the conviction. A prospective employee who has had a misdemeanor record of conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.

(b) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.

(c) The victim of the offense was not one of the following:

(1) A person under the age of eighteen.

(2) A functionally impaired person as defined in division (A) of section 2901.10 of the Revised Code.

(3) A mentally retarded person as defined in division (K) of section 5123.01 of the Revised Code.

(4) A developmentally disabled person as defined in division (Q) of section 5123.01 of the Revised Code.

(5) A person with a mental illness as defined in division (A) of section 5122.01 of the Revised Code.

(6) A person sixty years of age or older.

(d) Hiring the prospective employee will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining whether to hire the prospective employee:

(1) The person's age at the time of the offense.

(2) The nature and seriousness of the offense.

(3) The circumstances under which the offense was committed.

(4) The degree to which the person participated in the offense.

(5) The time elapsed since the person was fully discharged from imprisonment or probation.

(6) The likelihood that the circumstances leading to the offense will recur.

(7) Whether the person is a repeat offender.

(8) The person's employment record.

(9) The person's efforts at rehabilitation and the results of those efforts.

(10) Whether any criminal proceedings are pending against the person.

(11) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph (A)(15)(a) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled.

(12) Any others factors the PCSA, PCPA, PNA considers relevant.

(17) It is the prospective employee's duty to provide written verification that the conditions specified in paragraph (A)(16) of this rule are met. If the prospective employee fails to provide such proof or if the agency determines that the proof offered by the prospective employee is inconclusive or insufficient, the person shall not be hired. Any doubt shall be resolved in favor of protecting the children the agency serves.

(18) To determine whether a prospective employee is qualified to be hired pursuant to paragraph (A)(15)(a) of this rule, a criminal records check shall be conducted pursuant to this rule.

(19) An agency may conditionally hire a prospective employee until the criminal records check required by this rule is completed and the agency receives the results of the criminal record check, if the prospective employee submits to the agency a signed statement attesting that the prospective employee has not been convicted of or pleaded guilty to any offense listed in paragraph (A)(15)(a) of this rule. If the results of the criminal record check indicate that the person does not qualify for employment, the agency shall release the person from employment.

(20) The provisions of paragraph (A)(16) of this rule must be considered for any prospective employee who has been convicted of, or pleaded guilty to, one or more of the offenses listed in paragraph (A)(15)(a) of this rule even if the person's record has been sealed by a court pursuant to section 2953.32 of the Revised Code because the information contained in the sealed record bears a direct and substantial relationship to the care of children who may be entrusted to the person's care.

(21) A conviction of, or plea of guilty to, an offense listed in paragraph (A)(15)(a) of this rule shall not prevent a prospective employee's hire if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967, of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(22) Current employees suspected of involvement in any of the offenses listed in paragraph (A)(15)(a) of this rule shall be terminated, suspended or removed from contact with residents until the public children services agency or law enforcement agency has completed its investigation and has made applicable recommendations.

(23) An agency shall assure that all staff hired or who are under any personal service contract who are required by law to possess any professional licensure or certification are so licensed or certified.

(B) The following standards are recommended:

(1) Each CRC shall have written policies and procedures concerning personnel matters including, but not limited to, job descriptions and job qualifications. The policies and procedures shall be approved by the parent agency and be available to all employees.

(2) Written policy and procedure provide for provisional appointment to ensure the availability of personnel for short-term, full-time or part-time work in an emergency situation.

(3) Written policy and procedure provide for a written annual performance evaluation of all employees, which is based on defined criteria and is reviewed and discussed with the employee.

(4) Written policy and procedure provide for a current, accurate, and confidential personnel record for each employee; confidentiality is ensured by restricting its availability to only the employee who is the subject of the record and to other agency employees who have a need for the record in the performance of their duties. A written procedure exists whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

(5) There is a written employee grievance procedure which is available to all employees.

History: Eff 12-11-88; 8-16-99

§ 5139-35-06 Training and staff development.

(A) The following standards are mandatory:

(1) Written policy and procedure provide that all new full-time child-care staff receive twenty-four hours of orientation training before assuming independent responsibility for a particular job. This orientation training is to include at a minimum orientation to the purpose, goal, policies and procedures of the institution and parent agencies, working conditions and regulations, responsibilities and rights of employees, an overview of the juvenile justice and correctional fields and some preparatory instruction related to the particular job.

(2) Written policy and procedure provide that all child-care staff receive an additional thirty-two hours of training annually. This training covers the following and other related subjects: security procedures, supervision of children, use of force regulations, report writing, juvenile rules and regulations, rights and responsibilities of children, fire and emergency procedures, inter-personal relations, social/cultural life style of the child population, child growth and development, communication skills, first aid, suicide prevention and assessment. Formal first-aid training shall be required and shall be included in the thirty-two-hour requirement.

(B) The following standards are recommended:

(1) Written policy and procedure provide that all managerial staff receive forty hours of training during their first year of employment and twenty hours of training each subsequent year of employment. This training covers the following areas and other related subjects: general management and related subjects; labor laws; employee-management relations; the interactions of elements of the criminal justice systems; and relationships with other agencies.

(2) Written policy and procedure provide that employees other than child-care staff receive at least sixteen hours of orientation training and, minimally, an additional sixteen hours annually, appropriate to their work assignment.

History: Eff 12-11-88

§ 5139-35-07 Juvenile records.

The following standards are recommended:

(A) An admittance record is completed for every child admitted to the CRC and contains at least the following information:

Date and time of admission;
Name and "also known as (AKA)";
Last known address;
Legal custody status;
Offenses;
Sex;
Date of birth;
Place of birth;
Race or nationality;
Education and school attended;
Employment, if any;
Religion;
Health status;

Name, relationship, address and telephone of parent(s)/person(s) the child resided with prior to the time of admission;

Driver's license number, social security and medicaid number, if applicable;

A physical description;
A recent photograph;
Emergency contact;
Placing agency and contact.

(B) The record maintained on each child is kept in a secure place within the CRC and includes, at a minimum, the following information:

Initial intake information form;
Documented legal authority to accept juveniles;
Visitors' names and dates of visits, if any;
Disciplinary record, if any;
Final discharge report;
Incident reports;
Medical information;
Name of child's attorney, if any;
Individual service plan;
Progress reports.

(C) There is a single master file identifying all children in the CRC.

(D) Policy and procedure require records be safeguarded from inappropriate disclosure.

History: Eff 12-11-88

§ 5139-35-08 Physical plant.

(A) The following standards are mandatory:

(1) The CRC shall have exits that are properly positioned, clear, and distinctly and permanently marked in order to ensure the timely evacuation of children and staff in the event of fire or other emergency.

(2) All sleeping rooms in the CRC shall have, at a minimum, access to, but not necessarily within the sleeping room, and the following sanitation facilities: toilet above floor level, available for use twenty-four hours a day; wash basin and drinking water; hot and cold running water. A bed above floor level and storage space shall be provided.

(3) The CRC conforms to all applicable zoning ordinances.

(4) Each child is provided a bed, a mattress and a supply of linen.

(5) The CRC conforms to all applicable state and local building fire codes.

(6) If the CRC is on the grounds of any type of adult correctional facility, it is a separate self-contained unit.

(7) Written policy and procedure provide that male and female children do not occupy the same sleeping rooms.

(8) Written policy and procedure provide that children and adults do not share sleeping rooms.

(9) The CRC has, at a minimum, one operable wash basin with hot and cold running water for every six children.

(10) The CRC has, at a minimum, one operable shower or bathing facility with hot and cold running water for every six children.

(11) The CRC has one operable washer and one operable dryer for every sixteen children, or equivalent laundry capacity is available within one mile of the CRC.

(12) Within reasonable limits, the agency permits children to decorate their living and sleeping quarters with personal possessions, pictures and posters.

(13) There is counseling or interview space available in or near the living unit.

(14) Space to accommodate group meetings of the children is provided in the CRC.

(15) A visiting area is provided in the CRC.

(B) The following standards are recommended for existing CRCs and mandatory for new plants and additions to existing CRCs:

(1) For CRCs whose admissions policy allows for seriously ill, mentally disordered, injured or nonambulatory children to be maintained in the CRC, there is at least one single occupancy room for them that provides for staff viewing.

(2) At least thirty-five square feet of floor space per child as determined by the annual average daily population is provided in the recreation areas, and windows at standard viewing height allowing for an external view.

(3) All sleeping rooms in CRCs shall have provisions for natural lighting and provide for seating space.

(4) A minimum of sixty square feet of floor space per child is provided in the sleeping area of the facility of which no more than four square feet is closet or wardrobe space.

(5) The CRC has, at a minimum, one operable toilet for every six children. Toilets shall have seats and shall be enclosed with partitions and doors.

(C) The following standards are recommended:

(1) The average daily population during any given month does not exceed the rated capacity of the CRC.

(2) The sleeping area provides some degree of privacy.

(3) The CRC operates with living units of no more than twenty-five children each, based on the annual average daily population.

(4) The governing authority designates who is permitted to live in the CRC.

History: Eff 12-11-88

§ 5139-35-09 New plant.

(A) The following standards are mandatory:

(1) The CRC is constructed to provide for physically handicapped persons.

(2) Each living unit is designed so that individual rooms, day rooms, and program staff offices are in close

proximity to children for purposes of communication and interaction.

(3) Living units are designed for single- or double-occupancy sleeping rooms.

(4) With the exception of the auditorium/gymnasium, the CRC shall contain air conditioning and a back-up ventilation system.

(5) The CRC operates with living units of no more than fifteen children each, based on the annual average daily population.

(6) Handicapped children are housed in a manner that provides for their safety and security. Housing units used by them are designed for their use, and provide the maximum possible integration with the general population. Appropriate programs and activities are accessible to handicapped children who reside in the CRC.

(7) The CRC is within one-half mile of public transportation or other means of transportation are available.

(8) The total indoor activity area provides space for at least one hundred square feet per child based on the annual average daily population.

(9) There are at least fifteen square feet of floor space per person for those occupying the dining room or dining area.

(10) When the CRC provides food service, the kitchen is a separate and distinct area with ten square feet per child or two hundred square feet, whichever is less.

(11) There is an outdoor recreation area well-maintained and adequately designed to accommodate regularly scheduled recreation and group athletic activities.

(12) Space is available for religious services.

(13) When medical services are provided in-house, the CRC has a medical room with medical examination facilities available.

(14) Confinement rooms shall be in close proximity to the living unit and shall provide for washing, drinking, toilet and safety needs of the confined children.

(15) There is storage space provided for the storage of children's property and personal belongings.

(16) When there is a medical isolation room separate from the living unit, such room shall be equipped to provide for washing, drinking, toilet use, and safety needs of confined children.

(17) There are adequate areas for clothing, bedding, and CRC supplies.

(18) Closets for storage of cleaning supplies and equipment are located in each principal area and are well ventilated.

(B) The following standards are recommended:

(1) A needs assessment study is prepared in conjunction with appropriate local and state bodies.

(2) The CRC site location is determined with participation from the community in which it is to be located.

History: Eff 12-11-88

§ 5139-35-10 Safety and emergency procedures.

(A) The following standards are mandatory:

(1) The CRC complies with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the agency.

(2) Written policy and procedure specify CRC fire prevention regulations and practices to ensure the safety of staff, clients and visitors. These include, but are not limited to:

Provision for an adequate fire protection service;

A system of fire inspections and testing of equipment at least quarterly;

An annual inspection by local or state fire officials or other qualified person(s);

Availability of fire protection equipment at appropriate locations throughout the CRC.

(3) The CRC has written fire and other emergency plans which are communicated to all employees and children and reviewed and updated, if needed, at least annually.

(4) Written emergency plans are disseminated to appropriate local authorities. Directions to and the location of exits, fire extinguishers, first-aid equipment, and other emergency equipment are posted in the CRC.

(5) All CRC personnel are trained in the implementation of written emergency plans.

(6) The CRC conducts quarterly emergency evacuation drills under varied conditions and during hours when a majority of children are present in the CRC. These are to be documented and retained for at least one year.

(7) The CRC has a fire alarm system and an automatic detection system which is approved by the authority having jurisdiction. All system elements are tested on a quarterly basis; adequacy and operation of the systems are approved by a state fire official or other qualified authority annually.

(8) Exits in the CRC are in compliance with either state or local fire safety authorities, whichever has primary jurisdiction over the CRC. If there is not an applicable state or local fire authority, there is documentation by an independent qualified source that the CRC complies with national fire safety codes.

(B) The following standards are recommended:

(1) The CRC has available to it the services of a qualified fire and safety officer who reviews all policies and procedures related to safety and fire prevention.

(2) The CRC has access to an alternate power source to maintain essential services in an emergency.

(3) There is a written plan which provides for continuous CRC operation in the event of a concerted employee work stoppage or other job action. Copies of this plan are available to all supervisory personnel who are required to familiarize themselves with its contents.

(C) The following standard is recommended for existing CRCs and mandatory for new plants:

Within ninety days after the effective date of this rule, specifications for the selection and approval of newly acquired furnishings for living areas indicate the fire safety performance requirements of the material selected. Such materials are subject to careful fire safety evaluation before purchase or use. Neoprene or cotton mattresses treated with boric acid are recommended. Polyurethane is not to be used in any living area.

History: Eff 12-11-88

§ 5139-35-11 Security and control.

(A) The following standards are mandatory:

(1) Written policy and procedure limit the use of physical force to instances of self-protection, protection of the child or others, and the prevention of property damage. In no event is physical force justifiable as punishment. In situations where physical force is used, only the least degree of force necessary to control a situation may be used.

(2) After any incident of physical force, the staff member involved shall, during or immediately after

his/her shift, write an incident report to his/her supervisor. The report shall detail the circumstances requiring physical force and the mental and physical condition of the involved child.

(3) The staff member who receives a report concerning an incidence of physical force shall determine the need for medical treatment of the involved child.

(B) The following standards are recommended:

(1) Written policies and procedures require reporting of suspected or alleged child abuse or neglect incidents to the public children services agency or law enforcement agency of appropriate jurisdiction and the court which has placed the child.

(2) When a child has been involved in a situation in which physical restraint or force, by a staff member or child, has been used, a detailed written incident report must be submitted within twenty-four hours to the court which has placed the child. In the event that the child requires medical attention, the court which has placed the child shall be notified immediately.

(3) The CRC administrator or designee reviews all reports of incidences of physical force or physical restraint. The CRC administrator or designee shall take necessary action, including the notification of authorities under the child abuse reporting statute, section 2151.421 of the Revised Code.

(4) The CRC shall cooperate with the public children services agency or law enforcement agency during an investigation of suspected or alleged child abuse or neglect. Cooperation shall include, but not be limited to, permitting access to:

(a) The alleged child victim.

(b) The alleged perpetrator.

(c) Witnesses.

(d) Staff.

(e) Incident reports or logs, medical and dental records, personnel records, training records, procedural records, and other records which relate to the investigation of alleged child abuse or neglect.

(5) There exists written policies and procedures concerning security and control, which are available to all personnel. These policies and procedures are reviewed annually and updated as necessary.

(6) The use of chemical agents and related restraining devices is discouraged. Written policy and procedure govern the availability, control and use of chemical agents and related security devices. Control agents and related security devices are used only in accordance with the written policy and procedure. A written report is prepared following all uses of force incidents and is submitted to the CRC administrator.

(7) Written policy and procedure require that all security perimeter entrances, exterior doors and all doors the CRC administrator determines should be locked are kept locked, except when used for admission or exit of employees, detained children or visitors, and in emergencies.

(8) The CRC shall maintain a system of accounting for the whereabouts of its children at all times.

(9) Written policy and procedure require that staff maintain a daily log that records routine and emergency situations.

(10) The written plan for searches of the CRC and children to control contraband has been reviewed by legal counsel to ascertain the legality of the plan.

(11) The policy regarding searches for the control of contraband is published, made available to staff and

children, and reviewed at least annually and updated if necessary.

(12) Written policy and procedure provide for the least-intrusive method of search consistent with the safety and security of the CRC. Frisk searches and/or strip searches are conducted without specific authorization only upon entry to the CRC and at all other times are based upon a reasonable belief that the child is carrying contraband. Manual or instrument inspection of the child's lower body cavity or cavities is conducted only when there is reason to do so and when authorized by the CRC administrator or designee.

(13) All strip searches and body cavity searches will be conducted in privacy. Manual or instrument inspection of lower body cavity or cavities is done only by medical personnel. All strip searches and body cavity searches of female residents may be conducted only by female staff. Such searches of male residents may be conducted only by male staff. However, medical personnel may conduct searches of children of either sex. Strip searches may not be conducted in the presence of the opposite sex, except for reasons of safety and security.

(14) Except in emergency situations, firearms are not permitted in the CRC beyond the security perimeter. Staff are prohibited from bringing in and/or possessing any weapons within the CRC.

(15) Written policy and procedure govern the control and use of keys.

(16) Written policy and procedure govern the control and use of tools, medical and culinary equipment.

(17) There are written procedures for handling escapes, runaways and unauthorized absences. These are reviewed at least annually and updated as necessary.

(18) The use of restraining devices is discouraged. Written policy and procedure provide that instruments of restraint are never applied as punishment and are applied only in accordance with written policy and procedure.

(19) Written policy and procedure govern safety and security precautions pertaining to agency and staff vehicles.

(20) Transportation is available for use in emergencies.

History: Eff 12-11-88

§ 5139-35-12 Food service.

(A) The following standards are mandatory:

(1) Written policy and procedure shall provide that an adequate diet including snacks, when provided by the center, incorporating the four basic food groups based on the most recent dietary allowance is provided to all children. Menus are reviewed annually by the responsible health care authority or a licensed dietitian.

(2) Written policy and procedure shall provide that any CRC housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided as ordered by the responsible health care authority.

(3) Written policy shall prohibit meals and/or snacks being used in any punitive manner as a consequence of behavior.

(4) Written policy and procedure shall specify that food service shall be properly supervised and shall comply with the applicable sanitation and health code as promulgated by federal, state and local authorities.

(5) Written policy and procedure shall specify that children shall be encouraged to eat a variety of food served, but no child shall be subjected to coercion,

including forced feeding for refusing to eat, unless for medical or treatment-related reasons.

(B) The following standards are recommended:

(1) Written policy, procedure and practice shall provide that there not be more than fourteen hours between meals and at least three meals and a snack shall be made available at regular times during each twenty-four-hour period. At least one of these meals shall be a hot meal.

(2) The food service plan shall provide for a single menu for staff and children.

(3) Menus shall be planned at least a week in advance and shall be on a three-week or longer cycle. Records of food purchased and menus shall be retained for one year.

(4) Upon reasonable request, food shall be provided to a child when he/she is admitted to a CRC.

History: Eff 12-11-88; 11-3-04

§ 5139-35-13 Sanitation and hygiene.

The following standards are recommended:

(A) Written policy, procedure and practice shall require that the CRC administrator, in conjunction with the CRC's governing body, develop and implement a system designed to detect building and equipment deterioration, safety hazards and unsanitary conditions and to provide for the proper reporting of needed corrections or modifications. Such policies and procedures shall include a written plan for a daily inspection of the facility. Such inspection shall be recorded. Maintenance records shall be kept and subject to review by authorized personnel.

(B) Children shall be provided the opportunity for daily showers, and showers after strenuous activities.

(C) Written policy, procedure and practice shall provide for the control of vermin and pests by a licensed professional.

(D) Written policy, procedure and practice shall provide that soap, washcloths, towels, toothbrush, toothpaste, deodorant, shampoo, hair and skin products and personal hygiene supplies be provided to the child by the CRC.

(E) Written policy, procedure and practice shall designate the specific duties that the children must assume in the care and upkeep of their own sleeping and living quarters. Each juvenile shall be provided a bed, mattress, and a supply of sanitized linens. Used bed linens and mattresses shall be sanitized prior to reissue.

(F) Written policy shall require that under no circumstances shall a child confined in a CRC replace a janitor, maintenance, caretaking staff or other staff normally maintained for operations of the facility.

(G) Written policy, procedure and practice provide that programs comply with all applicable governmental regulations and standards. At a minimum, these policies cover the following:

- (1) Sanitation inspections
- (2) Water supply testing
- (3) Waste disposal
- (4) Housekeeping
- (5) Clothing and building supplies
- (6) Bathing and personal hygiene
- (7) Hair care services

History: Eff 12-11-88; 11-3-04

§ 5139-35-14 Medical and health care services.

(A) The following standards are mandatory:

(1) Written policy and procedure shall require each CRC to have a licensed physician(s) or medical resources such as a hospital or clinic designated for the medical supervision, care and treatment of residents. The CRC shall ensure twenty-four-hour availability of consultation, advice and emergency services response. Such resources shall be located in the same or nearby community.

(2) Written policy and procedure shall require that a medical examination be conducted within fourteen days before or after admission, and updated annually.

(3) Written policy and procedure shall provide for the prompt notification of children's parents/guardians and the responsible agency in case of serious illness, serious surgery, serious injury or death.

(4) Written policy and procedure shall require the security of all drugs and medical records and supplies to be maintained at all times.

(5) Written policy shall prohibit the administration of stimulants, tranquilizers, or psychotropic drugs, solely for behavior management, unless it is a part of an on-going therapeutic medical treatment procedure prescribed by the responsible health care authority.

(6) Written policy and procedure require that, following the admission of a child, the CRC shall attempt to verify prescribed medications and the proper dosages of these medications are administered at the time interval prescribed by the appropriate medical authority.

(7) Written policy and procedure shall require that each staff person who is responsible, in whole or in part, for administering medication to a child be provided with a written schedule of the child's medication. In addition, a copy of this schedule shall be maintained in each child's record and shall, at a minimum, include the following instructions and information:

- (a) The name of the child.
- (b) The name of each medication to be administered.
- (c) The proper dosage of each medication to be administered.
- (d) The timetable for administration.
- (e) All unique instructions regarding administration.
- (f) Information provided by qualified health care personnel concerning possible side effects of each medication.

(8) Written policy and procedure shall require that a medical record be maintained on each child which shall include pertinent information concerning illnesses, communicable diseases, physical abnormalities, allergies and the administration of treatment.

(9) Written policy and procedure shall require a written plan for the staff's response to children who are identified as potentially suicidal.

(10) Written policy and procedure shall require that first-aid kits are available and have been approved by the "American Red Cross" or other qualified health care personnel.

(11) Written policy and procedure shall require that all administrative personnel and child-care staff be certified and maintain certification in first aid and CPR.

(12) The CRC shall have written policy and procedure governing the development, and subsequent updating, of a facility formulary or drug list for pharmaceuticals stocked by the facility.

(13) Written policy and procedure shall require that children be informed of the procedures for gaining access to medical services.

(14) Written policy and procedure shall provide for informing appropriate staff of special medical and mental health problems of children.

(B) The following standards are recommended:

(1) All written policies and procedures are approved by the responsible health care authority.

(2) Written policy and procedure shall require that in consultation with the child's physician, each facility shall periodically review each child's current regimen of medication and, as authorized by the physician, make adjustments to that regimen as appropriate. In no event shall a facility begin, alter or suspend a child's medication without the approval of a physician.

(3) Written policy and procedure shall be developed and implemented for medical isolation under the direction of qualified health care personnel.

(4) Written policy and procedure shall require that the responsibility for arranging emergency treatment of dental needs be that of the facility.

(5) Written policy and procedure shall require that poison control numbers and other emergency numbers be clearly posted and readily accessible to staff.

(6) Written policy and procedure shall specify that emergency mental health services for children be provided by qualified mental health professionals.

(7) Written policy and procedure shall provide that at the time of admission, each child shall be screened for symptoms of illness or injury by a licensed physician, registered nurse, licensed practical nurse, physician's assistant, or by a staff person who has received training in health screening techniques. All findings are recorded on an approved screening form.

(8) Written policy and procedure shall provide that when a child requires medical attention in a potentially health-threatening emergency and such treatment conflicts with the religious tenets or practices of the child's custodial parent, the CRC shall immediately transport the child to a medical facility and refer the matter, as appropriate, to a juvenile judge in committing county, the department, the county children services board or county department of human services. The CRC shall further notify the person or agency who placed the child.

(9) All staff shall be certified in first aid and CPR.

History: Eff 12-11-88

§ 5139-35-15 Admissions and discharge.

The following standards are recommended:

(A) A CRC shall have written admission criteria specifying the types of children accepted and detailing grounds for automatic rejection of a referral.

(B) A CRC shall not accept into care any child for whom the services provided by the CRC are not appropriate or sufficient.

(C) A CRC shall maintain an admissions log which shall include the name of each youth admitted, the date of admission, the date of birth, and the date of discharge.

(D) The acceptance of children for emergency shelter care must be stated in the written purpose of the CRC and the admission policy.

(E) At the time of emergency shelter care placement of a youth, the CRC shall obtain at least the following information: name, birth date if available, physical description of the child, any available medication information, date and time of the admission, name and authority of person bringing the child to CRC, and reason for placement.

(F) Upon admission, a CRC shall assign a child-care staff member to orient the child to life at the CRC, CRC rules and consequences for violations of rules. This orientation is documented by child and staff signatures.

(G) A CRC shall have a handbook for residents and their families. This handbook shall summarize the information covered by the CRC's statement of purpose and program. In addition the handbook shall contain:

(1) Regulations for residents and consequences assigned for violations of regulations.

(2) Visiting hours and policies.

(3) The role and responsibility of the family in the care and treatment of the child.

(4) A complaint procedure for the resident and family.

(H) A CRC shall provide the handbook to parents or guardians of a resident and to any resident, unless the age or functioning level of the resident would clearly not permit the resident to read and understand the handbook. The handbook shall be given to the child and given or mailed to parents or guardians within the first seventy-two hours following admission.

(I) Where a language or literacy problem exists that can lead to a child's misunderstanding of agency rules and regulations, assistance is provided to the child either by staff or another qualified individual under the supervision of a staff member.

(J) A CRC shall have a written policy which describes the conditions under which, and the procedures by which, a child will be discharged, including any criteria for emergency discharges and discharges not in accordance with the child's service plan.

(K) When a child is discharged, the CRC shall prepare, within thirty days following the date of discharge, a written discharge summary. A copy of the discharge summary shall be maintained within the record and a copy shall be provided to the placing agency, parent, or guardian.

(L) At least thirty days prior to any planned discharge, each CRC shall, in consultation with the placing agency, parent, or guardian, familiarize the child with the plans for his/her discharge.

(M) When a child is discharged, all of the following shall be documented in the child's case record.

(1) The reason for discharge.

(2) A brief summary or other documentation of medical and dental services provided while in residence.

(3) The new location of the child.

(4) The name and official title of the person to whom the child was released.

(N) For an unplanned discharge, there shall be a brief summary or other documentation of the circumstances surrounding the discharge.

History: Eff 12-11-88

§ 5139-35-16 Program.

(A) The following standards are mandatory:

(1) Children are not permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor.

(2) All academic teachers are certified by the Ohio department of education.

(3) Children's attendance at religious services and functions shall be voluntary.

(B) The following standards are recommended:

(1) A CRC shall have a written description of the programs available to residents.

(2) The CRC shall have a list of community resources and consultants which will provide services to children.

(3) Vocational supervisors and instructors are licensed or accredited by the state or jurisdiction in which a CRC is located.

(4) All current written policies of the CRC shall be made available to all staff of the CRC.

(5) A CRC statement of purpose and program shall be routinely provided to any agency placing a child at the CRC and shall be made available to the public on request.

(6) A CRC shall ensure that all reasonable efforts are made by CRC staff to implement all current written policies of the CRC and that all activities and programs occur in accordance with such policies.

(7) The CRC shall provide individual counseling to each resident at least one time each week.

(8) Recreation supplies and equipment such as a pool table, ping pong table, etc., shall be available within the CRC.

(9) For nonsecure CRCs, six varied recreation and/or cultural activities outside of the CRC shall be provided each month to all children.

(10) Each CRC must work cooperatively with placing agencies and with the department.

(11) Within thirty days of the date of admission of each child, the CRC shall develop and implement a service plan for each child. The agency which placed the child, the child's custodial parent, when possible, and staff members who provide direct care, counseling, group work, recreation, education, and health services shall be involved in developing and implementing the service plan for the child and the family.

(12) The child's service plan shall, at a minimum, contain:

(a) A statement of goals and objectives that the placement is designed to achieve.

(b) A statement of the time frame projected for meeting the placement goals and objectives.

(c) Specification of the activities, such as education, counseling, recreation, vocational, medical diagnosis, visitation with parents/guardians, medical services, food services, psychiatric and psychological counseling and religious programming that will be provided to the child by the CRC.

(d) Specification of any specialized services that will be provided or arranged.

(e) Specification of progress reports which are to be provided monthly to the agency which place the child.

(13) A designated staff member involved in the development and implementation of the child's service plan shall periodically, but in no event less often than every thirty days, review the service plan and recommend any amendments thereto to the person or agency who placed the child. Such reviews shall include a record of the current adjustment of each child and an evaluation to determine whether he/she should remain in the CRC.

(14) Any change in a service plan is reviewed and discussed with the child. This review is dated and documented by staff and child signatures.

(15) Written policy and procedure require that the CRC shall provide reasonable access to religious programming. No negative consequences shall accrue from a child's refusal to participate in a religious service or religious function. All religions shall be afforded equal status and protection, subject to the limitations necessary to maintain order and security.

(16) Written policy and procedure require that library services be made available to all children. Written policy outlines specific criteria for utilizing, selecting and maintaining appropriate materials.

(17) Written policy and procedure provide that work assignments shall not conflict with minimum education programs.

History: Eff 12-11-88

§ 5139-35-17 Visiting and communications.

The following standards are recommended:

(A) A CRC shall have a written policy concerning visits and communications between a child and family and friends. The information in this policy shall be included in written materials routinely provided to parents or legal custodians of the child and to the child.

(B) A CRC shall ensure that arrangements for visitation between the child and family or friends are not in conflict with the service plan. Visits shall be supervised in accordance with the service plan.

(C) A CRC shall, in accordance with the service plan, allow a child access to a telephone which will permit the child to make and receive calls.

(D) A CRC shall, in accordance with the service plan, provide reasonable conditions of privacy for visits and telephone contacts.

(E) No correspondence to or from residents shall be censored. No correspondence to or from a resident shall be read by staff unless the CRC administrator has reasonable cause to believe the content of the correspondence may incite to endanger the CRC's order or security. If correspondence is read, the child must be informed.

(F) The CRC shall provide each resident with at least two first class stamps per week.

(G) All incoming and outgoing mail is forwarded within twenty-four hours, excluding weekends and holidays.

History: Eff 12-11-88

§ 5139-35-18 Juvenile rights.

The following standards are recommended:

(A) No CRC or employee of a CRC shall in any way violate any child's civil rights.

(B) A CRC shall have a written policy to ensure that CRC staff and the CRC program protect the following rights of children:

(1) The right to a reasonable amount of privacy.

(2) The right to have his or her opinions heard and be included, to the greatest extent possible, when any decisions are being made which affect his/her life.

(3) The right to receive appropriate and reasonable adult guidance, support, and supervision.

(4) The right to receive adequate and appropriate food, clothing, and housing.

(5) The right to his/her own money and personal property in accordance with the child's service plan.

(6) The right to participate in an appropriate educational and/or vocational program.

(C) If the CRC enforces any restrictions upon the child's rights, the CRC shall:

(1) Inform the child of the conditions of and reasons for restriction or termination of his/her rights;

(2) Place a written report summarizing the conditions of and reasons for restriction or termination of the child's rights in that child's case record;

(3) When a restriction of a child's rights affects another individual, inform the individual of the conditions of and reasons for the actions;

(4) Review this decision at least monthly.

History: Eff 12-11-88

§ 5139-35-19 Control and treatment of children.

(A) The following standards are mandatory:

(1) The discipline policies of the CRC shall embrace the philosophy that discipline is to be both constructive and educational in nature. The CRC's discipline policies shall prohibit all punishments including, but not limited to:

(a) Any type of physical punishment inflicted in any manner upon the body such as spanking, punching, paddling, shaking, biting, or roughly handling a child.

(b) The assignment of physically strenuous harsh work or exercises, when used solely as a means of punishment.

(c) Requiring or forcing a child to maintain an uncomfortable position, such as squatting or bending, or requiring a child to continuously repeat physical movements when used solely as a means of punishment.

(2) The use of psychotropic medication as a punishment is prohibited.

(B) The following standards are recommended:

(1) A CRC shall develop and implement, a written set of policies and procedures regarding discipline, control, and treatment of children. These policies and procedures shall be explained to each child, all staff, and a copy provided to persons or agencies who desire to place a child at the CRC.

(2) A CRC shall not discriminate in providing care and supervision to children on the basis of religion or cultural heritage.

(3) All children shall be treated with kindness, consistency, and respect.

(4) The following acts are prohibited:

(a) Group punishments for the behavior of an individual, except in accordance with a recognized therapeutic modality and as described by written CRC policy.

(b) Verbal abuse or derogatory remarks.

(c) Excessive or prolonged denial of social or recreational activities.

(d) The denial of social or casework services, medical treatment, or educational services.

(e) The deprivation of meals, although scheduled meals may be provided individually.

(f) The denial of sleep.

(g) The denial of shelter, clothing, bedding, or rest-room facilities.

(h) Excessive, inappropriate or intentionally painful physical restraint.

(i) Organized social ostracization, such as codes of silence.

(j) The use of chemical restraints, except by order of a physician.

(k) The use of mechanical restraints.

(5) Discipline shall be delegated only to persons who are employees of the CRC. Children shall not discipline other children except as part of an organized self-government program that is conducted in accordance with written policy and directly supervised by designated staff of the CRC.

(6) A CRC shall use an isolation room only in accordance with written CRC policy which has the prior approval of the department.

(a) A child shall be maintained in isolation only as long as the child's behavior continues to warrant isolation.

(b) A CRC shall ensure that the use of an isolation room is not for disciplinary purposes, but for the behavior management of a child who is out of control. Children identified as suicidal shall not be placed in an isolation room.

(c) Any room used for isolation shall be lighted, well-ventilated, and maintained at a comfortable temperature. The room shall be at least fifty-six square feet in size, and shall have a ceiling height of at least seven feet, six inches.

(d) When a child is placed in an unlocked isolation room, the following procedures shall be followed:

(i) Staff shall be in auditory contact with an isolated child at all times.

(ii) Staff should observe the child directly at intervals no longer than fifteen minutes during waking hours and thirty minutes during sleeping hours.

(iii) The log entry shall state the child's name, the time of placement in isolation, the name of the staff member authorizing placement, the reason for placement and the time of removal.

(iv) No child shall be isolated longer than thirty minutes without written approval from supervisory personnel.

(v) A child shall not be isolated longer than one hour without approval from the CRC administrator or longer than eight hours in a twenty-four-hour period.

(e) When a child is placed in a locked isolation room, the following procedures shall be followed:

(i) Staff members shall ensure that a child who is placed in a locked isolation room is not in possession of any object or material which might be used to inflict self-injury.

(ii) A staff member with no other assigned duty shall be in visual contact with an isolated youth at all times, and shall record his/her observations in a log.

(iii) The log entry shall state the child's name, the time of placement in isolation, the name of the staff member authorizing placement, the reason for placement and the time of removal.

(iv) The child shall not be isolated longer than thirty minutes without written approval from supervisory personnel.

(v) No child shall be held in a locked isolation room longer than eight hours without approval of the CRC administrator and no longer than forty-eight continuous hours.

(7) A CRC shall ensure that any disciplinary or behavior management response of staff do not result in the abuse or neglect of children.

History: Eff 12-11-88

§ 5139-35-20 Evaluation and data collection.

(A) A CRC shall have written policies, procedures and practices to ensure the following:

(1) All juveniles that receive program services must be entered into a management information system authorized by the department of youth services (DYS).

(2) Intake/termination forms shall be completed and entered into the management information system (MIS) within fourteen days unless a written waiver is granted from the bureau of community based programs.

(3) Case file information will be accurate when compared by DYS management information system.

(4) Each program shall designate a staff position or person for data entry and/or coordination.

(B) The facility or parent agency collaborates with juvenile justice and service agencies in information gathering, exchange, and standardization.

History: Eff 2-3-04

Chapter 5139-36

Community Corrections Facility

Section

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§ 5139-36-01 Definitions.

(A) "Absconder" means a juvenile under the authority of the court who fails to remain within the limits of confinement or who fails to return to a facility as directed. An absconder is considered to be whereabouts unknown.

(B) "Admissions process" means the point of entry into a program, when the juvenile receives an orientation to the goals of the program and program rules and regulations. Assignment to living quarters and to appropriate staff members is also completed at this time.

(C) "Approved facility" a CCF approved by the division of parole and community services, through the bureau of community based programs, to operate and supervise juveniles placed by the court.

(D) "Annual average daily population" means the number arrived at by adding up the official resident count taken at an appointed time each day, consistently for a full fiscal year and dividing that figure by the total number of days in the year.

(E) "Audit sheet" means a form provided by the department of youth services to conduct quarterly monitoring of juvenile records, selected randomly. This form will be reviewed by the inspection team as the documentation for compliance with rule 5139-36-07 of the Administrative Code.

(F) "Bureau of community based programs" means that bureau in the division of parole and community services, under the direction of the chief, that includes oversight and funding of community correctional facilities, detention facilities and OJJDP compliance.

(G) "Bureau of criminal identification and investigation (BCII)" means BCII may assist in the investigation of all criminal violations and specializes in cases involving organized crime, narcotics, racketeering, public corruption, computer and financial frauds. BCII maintains

computerized criminal records submitted by law enforcement agencies through the automated fingerprint identification system. Millions of sets of fingerprints are classified and on file.

(H) "Case management plan" means a series of written statements that specify the particular course of therapy and the roles of medical and non-medical personnel in carrying out the current course of therapy. A case management plan is individualized and based on assessment of the individual's needs and includes a statement of the short and long term goals and the methods by which the goals will be pursued. When clinically indicated, the treatment plan provides residents with access to a range of supportive and rehabilitative services, e.g., individual or group counseling and/or self-help groups.

(I) "Chemical agent" means an active substance, such as tear gas, used to deter activities that might cause personal injury or property damage.

(J) "Code of ethics" means a set of rules describing acceptable standards of conduct for all employees.

(K) "Community corrections facility" means a facility, referred to hereafter as "CCF", in which juveniles are committed by the court to participate in programs and services for a set period of time, established by the court, while under the secure care and supervision twenty-four hours a day.

(L) "Community resources" means those social and welfare agencies, service clubs, citizen interest groups and citizen volunteers who have the potential to assist children. These various resources, which may be public or private, national or local, have the potential for help ranging from material and financial assistance, to guidance, counseling, and supportive services.

(M) "Confidentiality of records" means taking reasonable care to preclude unauthorized distribution of client and personnel information including the observance of federal privacy of information guidelines.

(N) "Conflict of interest" means any employee action that adversely affects the interest of the agency. Outside concerns may bring undue pressure upon the employee in his/her effort to make decisions concerning official duties.

(O) "Contraband" means any item possessed by children or found within the facility that is illegal by law or that is expressly prohibited by those legally charged with the responsibility for administration and operation of the facility or program.

(P) "Contractual arrangement" means an agreement between parties to provide services to children for remuneration.

(Q) "Department" means the Ohio department of youth services.

(R) "Direct-care staff member" means for the purpose of staff/child ratio, one whose duty is primarily the supervision of children or the immediate supervisor of child supervision staff. This would not include teachers, cooks, tradesmen, etc., whose child supervision duties are incidental to their primary responsibility.

(S) "Director" means the director of the Ohio department of youth services.

(T) "Emergency" means any significant disruption of normal facility or agency procedure, policy, or activity caused by riot, escape, fire, natural disaster, employee action, or other serious incident.

(U) "Emergency care" means care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall

be provided to the juvenile population by the medical director, physician, other staff, local ambulance services and/or outside hospital emergency rooms.

(V) "Emergency plans" means written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a fire, flood, riot or other major disruption.

(W) "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area, whether or not enclosing a building or a set of buildings, which is used for the lawful custody and treatment of juveniles.

(X) "Facility administrator/director" means any official, regardless of local title (e.g., director, administrator, superintendent), who has the responsibility for day-to-day management of the facility.

(Y) "First aid" means care for a condition that requires immediate assistance from a person trained in first aid and care and the use of the facility's first-aid kits.

(Z) "Grievance" means a circumstance or action considered to be unjust and grounds for complaint.

(AA) "Health care" means the sum of all action taken, preventive and therapeutic, to provide for the physical and mental well being of the population of a facility. Health care includes medical and dental services, and environmental conditions.

(BB) "Health care personnel" means individuals whose primary duties are to provide health services to residents in keeping with their respective levels of health care training or experience. (See qualified health personnel).

(CC) "Health trained personnel/medically trained personnel" means child-care and administrative personnel who are trained and appropriately supervised to carry out certain specific duties with regard to the administration of health care.

(DD) "Hearing" means a proceeding to determine a course of action, such as the placement of a child, or to determine guilt or innocence in a disciplinary matter. Argument, witnesses, or evidence are heard by a judicial officer or administrative body in making the determination.

(EE) "Isolation" means isolation is the physical separation of the child from the normal group activities either for disciplinary or medical reasons.

(FF) "Least restrictive response to resistance" means the least amount of direct physical contact required on the part of a staff member to prevent a child from harming him/herself or others, or for the protection of property.

(GG) "Living unit" means an area of a detention center which is comprised of the room(s) in which residents sleep, a day room and sanitation facilities. The day room and the sanitation facilities may be adjacent to the sleeping area.

(HH) "Medical screening" means a system of structured observation/initial health assessment to identify newly arrived children who pose a health or safety threat to themselves or others.

(II) "Orientation" means the orientation period includes interviews, testing, and other admissions-related activities, including distribution of information about programs, services, rules, and regulations.

(JJ) "Physical punishment" means any act of inflicting punishment directly on the body, causing pain or injury.

(KK) "Placing agency" means the court or agency which refers the child for out-of-home placement.

(LL) "Policy" means a course or line of action adopted and pursued by an agency that guides and determines

present and future decisions and actions. Policies indicate the general course of direction of an organization within which the activities of the personnel and units must operate.

(MM) "Procedure" means the detailed and sequential actions that must be executed to ensure that a policy is fully implemented. It is the method of performing an operation, or a manner of proceeding on a course of action. It differs from a policy in that it directs action in a particular situation to perform a specific task within the guidelines of policy.

(NN) "Program" means the plan or system through which a correctional agency works to meet its goals.

(OO) "Qualified health care personnel" means physicians, dentists and other professional and technical workers who by state law engage in activities that support, complement or supplement the functions of physicians and/or dentists and who are licensed, registered or certified as appropriate to their qualification or registration.

(PP) "Rated capacity" means the number of juveniles which a facility was originally designed to house, or currently has the capacity to house as a result of later, planned modifications, exclusive or extraordinary arrangements to accommodate overcrowded conditions.

(QQ) "Records" means information concerning the individual's personal, delinquent or criminal and medical history, behavior, and activities while in custody, including, but not limited to: commitment papers, court orders, detainers, personal property receipts, visitors' lists, photographs, fingerprints, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence.

(RR) "Referral" means the process by which a child is introduced to an agency or service where the assistance needed can be obtained.

(SS) "Renovation" means a significant structural or design change in the physical plant of a facility.

(TT) "Responsible health care authority" means the individual or medical resource, such as a hospital or clinic, to whom has been delegated the responsibility for the facility's health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services provided to children.

(UU) "Response to resistance" means any violence, compulsion or constraint physically exerted upon or against a person's body by any means, including the use of firearms, chemical agents, clubs or direct bodily contact.

(VV) "Restraining device" means any mechanical object designed to physically control or incapacitate a person. These include wrist manacles, ankle manacles, "straight jackets," "leg irons," restraining straps and other such devices.

(WW) "Restraint" means the extraordinary restriction of a child's freedom or freedom of movement.

(XX) "Safety equipment" means firefighting equipment, i.e., chemical extinguisher, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first-aid kits, stretchers, and emergency alarms.

(YY) "Search" means an examination falling into one of the following three categories:

(1) "Frisk search" means a search of a resident's clothes, head cavities, and a thorough "pat down."

(2) "Strip search" means a visual search of a resident's naked body and a search of the resident's clothing while they are not being worn.

(3) "Cavity search" means a probe of a resident's lower body cavity (ies) to be conducted by trained medical personnel only.

(ZZ) "Security perimeter" means a secure boundary which encloses the entire portion of the facility in which residents are confined. Passage through this boundary must be strictly controlled.

(AAA) "Security devices" means locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers used to confine and control detained persons. Also included are electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain facility security.

(BBB) "Serious incident" means a situation in which injury serious enough to warrant professional medical attention occurs involving a resident, employee, or visitor on the grounds of the institution. Also, a situation containing an imminent threat to the security of the institution and/or to the safety of residents, employees, or visitors on the grounds of the institution.

(CCC) "Training" means formal classroom instruction: required readings; on-the-job training under the direction of an instructor; training meetings or conferences that include a formal agenda and instruction by a teacher, manager, or official; physical training or other instructional programs that include a trainer/trainee relationship. Training programs usually include requirements for completion, attendance recording, and a system for recognition of completion.

(DDD) "Volunteers" means persons who donate their time and effort to enhance the activities of the program. They are selected on the basis of their skills or personal qualities to provide services in areas such as recreation, counseling, education, or religious activities.

History: Eff 2-3-04

§ 5139-36-02 Administration and management.

(A) The community corrections facility (CCF) is a facility sanctioned to operate under the standards established by the Ohio department of youth services (ODYS) and complies with all applicable licensing requirements of the jurisdiction in which it is located.

(B) The CCF shall have a policy and procedure manual that is approved by the governing authority and made available to all staff. The policy and procedure manual shall include the philosophy, goals and purpose and service of the facility and approved methods of implementation. The policy and procedure manual shall be reviewed annually and updated as necessary.

(C) The CCF shall have an organizational chart that accurately reflects its structure of authority, the responsibility and the accountability of the organization.

(D) Written policy, procedure, and practice provide that the CCF and its programs are managed by a single administrator to whom all employees or units of management are responsible and who shall:

(1) Implement policies, procedures and practices of the governing authority.

(2) Control, manage, operate and have general charge of the facility and program.

(3) Have custody of CCF property, files and records.

(E) The CCF administrator shall ensure that there will be a minimum of quarterly meetings with management staff and department heads, who meet monthly with their

key staff members. Documentation of these meetings (e.g. minutes) shall be kept for one year and be available for review.

(F) The CCF shall have a written policy, procedure, and practice providing that there exists a community advisory committee which is representative of the community and that serves as a link between the program and the community. This committee shall meet, at least, bi-annually.

(G) The CCF shall document efforts to conduct a continuing planned program of public information and education.

(H) The CCF shall clarify its relationship to all funding and regulatory agencies and document its relationship through written contracts or letters of mutual agreement.

(I) The CCF shall have a written policy, which ensures there will be no abuse of juveniles, conforming to governmental statutes and regulations.

(J) The CCF shall have a written policy and procedures to guard against conflicts of interest. This policy shall be contained within a code of ethics to be adopted by the CCF. This code shall include, but not be limited to the following.

(1) The CCF staff shall not display favoritism or preferential treatment to one juvenile, or group of juveniles, over another.

(2) No employee of a CCF may deal with any juvenile except in a professional manner that will support the approved goals of the CCF. Specifically, staff members must never accept for themselves, without approval of the director/designee, any member of their family, or others, any personal (tangible or intangible) gift, favor or service from a juvenile or from a juvenile's family or close associate, no matter how trivial the gift or service may seem. All staff are required to report to the CCF director any violation or attempted violation of these restrictions. In addition, no staff shall give any gifts, favors, or services to juveniles, their families or close associates.

(3) No CCF employee shall enter into any business relationship with juveniles or their families (e.g., selling, buying, or trading personal property).

(4) No CCF employee shall have an outside contract (other than incidental contact) with a juvenile, ex-juvenile under supervision, his family or close associates, except for those activities which are an approved, integral part of the center program and a part of the employee's job description.

(5) CCF employees may not engage in any conduct which is criminal in nature or which would bring discredit upon the facility and program. The CCF shall ensure that the conduct of all employees is consistent with the terms, conditions, and spirit of the grant. All employees shall avoid misconduct, and the appearance of misconduct.

(6) Disciplinary action imposed by the CCF for any violation or attempted violation of the standards for employee conduct shall be reported, within two business days, telephonically and in writing to the bureau of community based program's (BCBP) bureau chief.

(K) The CCF facility shall notify its employees of the standards of employee conduct and document this notification.

(L) The CCF shall prepare a report of its legal activities, at least annually, and make it available to appropriate persons, the approving agency, and, upon request, to the public.

(1) The CCF facility shall meet the legal requirements of the governmental jurisdiction in which the licensed

facility is located. The documentation for this standard shall include copies of all local licensing and inspection certificates indicating conformance to all local fire, health, building, and zoning regulations.

(2) The CCF shall comply, when applicable, with the Americans with Disabilities Act of 1990 and all guidelines and policies issued by the department.

(M) The CCF facility shall develop annual goals and objectives and submit these goals and objectives upon request to the chief of the bureau of community based programs.

(N) The CCF facility shall display the approval certificate awarded by the department of youth services.

(O) The community corrections facility shall be administered by the governing board.

(1) If the community correction facility is a multi-county facility, established under section 307.15 of the Revised Code, a governing board shall be created. The governing board shall consist of the juvenile judges of each participating county. Each juvenile judge may appoint a temporary replacement to serve as his or her representative at a scheduled governing board meeting. The juvenile judges shall perform their duties on the board in their official capacity.

(2) The governing board shall appoint and fix the compensation of the director of the facility and program and other professional, technical, and clerical employees who are necessary to properly maintain and operate the facility and program. The director, under the supervision of the executive board and subject to the Ohio department of youth services grant agreement and administrative rules, shall control, manage, operate, and have general charge of the facility and program, and shall have the custody of its property, files and records.

(3) The governing board shall review and approve policies and procedures to be set forth in a policy and procedure manual for the facility.

(4) The governing board shall review and approve the criteria used to admit youth to the facility.

(5) The governing board shall decide appeals of participating counties as to "refusal to admit" a youth to the facility. Said appeals will be decided by a majority vote of the governing board members at a scheduled meeting.

(6) The governing board shall review and approve the operating budget of the facility, and of any applications to the Ohio department of youth services for funding.

History: Eff 2-3-04

§ 5139-36-03 Fiscal management.

(A) The CCF shall have a fiscal system that accounts for all income and expenditures on an ongoing basis.

(B) The CCF administrator shall prepare a written, annual budget of anticipated expenditures for approval by the governing jurisdiction.

(C) The CCF shall have written policies and procedures adopted by the governing authority including at a minimum: internal controls, petty cash, bonding, signature control on checks, juvenile funds and employee expense reimbursement.

(D) The CCF shall implement a procedure that provides for the requisition and purchase of supplies, equipment, inventory and control.

(E) The CCF shall provide insurance coverage that includes, at a minimum, property and comprehensive, general liability insurance.

(F) When a CCF has a canteen available for use by residents, its fiscal operations are strictly controlled by standard accounting procedures

(G) The CCF shall have a written policy, procedure, and practice that prohibits financial transactions between juveniles, juveniles and staff, or juveniles and volunteers.

(H) The CCF shall maintain at least a ninety percent occupancy rate on monthly basis. Upon receipt of the quarterly invoice from the CCF, the department of youth services will adjust the quarterly funding payment, if after reviewing the facility's monthly average daily population, the facility fell below the ninety percent occupancy rate. If the Grantee falls below the allowable rate of occupancy for failing to accept referrals who meet the CCF admission criteria as set forth in rule 5139-61-06 of the Administrative Code, then the department may immediately take appropriate action, including but not limited to, the placement of youth under DYS custody and or budget modifications to adjust for unfilled beds.

History: Eff 2-3-04

§ 5139-36-04 Personnel.

(A) Each CCF shall have a personnel manual that complies with state and federal law. Employees are required to sign statements acknowledging access to and awareness of personnel policies and regulations. The personnel manual shall be available to employees, and the general public. It shall cover, at a minimum, the following areas:

- (1) Organizational chart
- (2) Staff development
- (3) Recruitment and selection
- (4) Promotion
- (5) Job qualifications and job descriptions
- (6) Affirmative action
- (7) Sexual harassment
- (8) Grievance and appeal procedures
- (9) Orientation
- (10) Employee evaluation
- (11) Personnel records
- (12) Benefits
- (13) Holidays
- (14) Leave
- (15) Hours of work
- (16) Probationary period
- (17) Compensation
- (18) Travel
- (19) Disciplinary procedures
- (20) Termination
- (21) Resignation
- (22) Code of ethics
- (23) Conflict of interest

(B) The CCF hiring policies, procedures and practices shall be in accordance with sections 2151.86, and 109.572 of the Revised Code.

(C) There are written job descriptions and job qualifications for all positions. Each job description includes, at a minimum: job title, position responsibilities, required minimum experience, and education.

(D) Each prospective employee at the time of initial application, shall be informed that as a precondition to employment, he/she shall complete a BCII prescribed record check form and provide a set of fingerprint impressions.

(1) The prospective employee's failure to report criminal convictions or moving traffic violations shall be

considered cause for progressive discipline, including separation from employment.

(2) The CCF shall require that prospective employees, who will have direct contact with the juvenile population, receive a physical examination.

(E) The CCF shall make provisions for subsequent record checks to be done annually, for at least ten percent of all employees.

(F) The CCF shall have a written policy, procedure, and practice that provide for a current, accurate, and confidential personnel record for each employee. Any confidential medical/psychological information obtained by the CCF that is confidential shall be maintained and kept separate from personnel records, and only the director and other authorized personnel may access the record.

(G) A written procedure exists whereby employees may challenge information in his/her personnel file and have it corrected or removed if proved inaccurate.

(H) There is a written employee grievance procedure that is available to all employees.

(I) The staffing requirement for personnel is determined to ensure juveniles have access to staff twenty-four hours a day and to programs and services. When juveniles are present during waking hours:

(1) There shall be at least one staff member for every fifteen juveniles.

(2) Gender appropriate staff supervision shall be on duty at all times when female and male juveniles are present.

(3) A ratio of twenty-five juveniles to one staff member shall be required for sleeping hours.

(4) Staffing patterns shall also reflect additional staff for appropriate security and control during times of special need (e.g., suicide watches, court transports, emergency transports, or emergency medical situations). In these types of occurrences, minimum staff-to-juvenile supervision ratios must be maintained.

(J) The CCF shall have a written policy and procedure providing for provisional appointment to ensure the availability of personnel for short-term, full-time, or part-time work in an emergency situation.

(K) The CCF shall ensure that all employees or contract personnel required by law to possess professional licensure or certification are so licensed or certified.

(L) All CCF programs shall be in compliance with all state and federal regulations for the prevention and control of infectious and communicable diseases.

(M) All employees of the CCF shall be tested for TB and shall receive annual retesting for TB.

(N) There is a written policy and procedure that specifies support for a drug free workplace for all employees. This policy, which is reviewed annually, includes, at a minimum, the following:

- (1) Prohibition of the use of illegal drugs
- (2) Prohibition of possession of any legal drug, except in the performance of official duties.
- (3) Procedures to be used to ensure compliance.
- (4) Opportunities available for treatment and/or counseling for drug abuse.
- (5) Penalties for violation of the policy.

History: Eff 2-3-04

§ 5139-36-05 Training and staff development.

(A) The CCF shall implement written policies, procedures and practices for the training of all personnel.

(B) The training plan shall be reviewed and updated based on an annual assessment that identifies current job-related training needs.

(C) The CCF shall provide an initial eighty hours of orientation training for all new full-time, direct care staff before assuming independent responsibility for a particular job. All part-time staff employees, volunteers, and contract personnel shall receive a formal orientation appropriate to their assignment and shall receive additional training as needed.

(D) All direct care staff shall receive at least forty hours of training on an annual basis exclusive of their eighty hours of orientation training. Training shall include, at a minimum;

- (1) Supervision of juveniles
- (2) Juvenile rules and regulations
- (3) Rights and responsibilities of juveniles
- (4) Fire and emergency procedures
- (5) Emergency medical procedures
- (6) Blood-borne pathogens
- (7) First aid/cardiopulmonary resuscitation (CPR)
- (8) Safety and security procedures
- (9) Report writing
- (10) Safe method of response to resistance
- (11) Interpersonal relations
- (12) Cultural awareness
- (13) Social/culture life style of the juvenile population
- (14) Child growth and development
- (15) Communications skills
- (16) Suicide assessment and prevention

(E) All full-time support employees who have minimal or no contact with juveniles shall receive forty hours of orientation training and at least sixteen hours of training on an annual basis.

(F) All administrative, managerial, and professional staff shall receive twenty hours of training annually exclusive of the forty hours of training required the first year of employment. Training shall be appropriate to assigned duties and responsibilities.

(G) The training plan is developed, evaluated, and updated by the CCF's training committee or training coordinator, based on an annual assessment that identifies current job related needs. Quarterly evaluation reports shall be documented for DYS review.

(H) Documentation of staff training shall include the following: date and location of training, specific subject matter, trainer's name, hours of training provided, and the name(s) and position of the staff trained.

(I) All CCF personnel are trained in the implementation of written emergency plans during the employee's initial orientation period and thereafter, annually.

History: Eff 2-3-04

§ 5139-36-06 Citizen and volunteer involvement.

(A) A CCF shall have a written policy regarding the use of volunteers.

(B) If volunteers are used, the CCF shall:

(1) Have written procedures for securing citizen-involvement programming, including roles as advisors, liaison between the program and the public, direct service roles, and cooperative endeavors with the residents.

(2) Have a system for selection, training, term of service, and definition of tasks, responsibilities and authority for volunteers.

(3) Recruit volunteers from all cultural backgrounds and socioeconomic levels of the community.

(4) Provide orientation and training before they participate in their assignments.

(5) Permit volunteers to perform professional services, only when certified or licensed to do so.

(6) Have a CCF staff member supervise volunteer services.

(7) Provide for liability claims in the form of insurance, signed waivers or other legal provision, valid in the jurisdiction in which the program is located.

History: Eff 2-3-04

§ 5139-36-07 Records.

(A) The CCF shall have a written procedure governing case record management which is reviewed annually. The procedure shall include at a minimum:

(1) Establishment, maintenance, use, and content of case records

(2) Right to privacy

(3) Secure placement and preservation of records

(4) Appropriate safeguard exits to minimize the possibility of theft, loss or destruction of case records

(B) The CCF shall have a written policy and procedure which provides for case record auditing by facility staff and, as requested, by the department, to ensure that each case record is current, complete and accurate.

(C) The CCF shall implement written policies, procedures, and practice for maintaining a case file on each juvenile admitted to the program in which all significant decisions and events are recorded. Case files shall include at a minimum, the following information:

(1) Initial intake information form

(2) Documented legal authority to accept juvenile

(3) Referral source

(4) Pre-sentence investigation

(5) Medical consent forms

(6) Non-diagnostic medical information

(7) Case history/social history

(8) Individual case management plan

(9) Progress reports

(10) Signed release of information forms when required

(11) Rules of residency and disciplinary policy, signed by juvenile

History: Eff 2-3-04

§ 5139-36-08 Physical plant.

(A) The CCF conforms to all applicable zoning ordinances.

(B) The CCF conforms to all applicable state and local building fire codes. The authority having jurisdiction documents annual compliance. All deficiencies contained within an inspection report shall be corrected within the time frame as specified.

(C) There is documentation by a qualified source that the interior finishing materials in juvenile living areas, exit areas, and places of public assembly are in accordance with recognized codes.

(D) The CCF shall have written fire prevention procedures specifying practices to ensure the safety of staff, juveniles and visitors. These include, but are not limited to:

(1) Provision for an adequate fire protection service.

(2) A system of fire inspections and testing of equipment at least quarterly.

(3) An annual inspection by local or state fire officials or other qualified person(s).

(4) Availability of fire protection equipment at appropriate locations throughout the CCF. Staff shall be trained accordingly.

(5) A fire alarm system and an automatic detection system which is approved by the authority having jurisdiction. All system elements are tested on a quarterly basis; a state fire official or other qualified authority approves the adequacy and operation of the systems annually.

(6) The CCF, in the event of an emergency, shall provide an alternative power source which includes provision for heating, lighting and food service.

(E) The CCF shall have posted in all areas, emergency exit plans that are properly positioned, clear, distinct and permanently marked in order to ensure the timely evacuation of juveniles, staff and visitors in the event of fire or other emergencies. Posted exit signs shall include location of fire extinguishers, first aid kits, and other available, essential life-safety equipment.

(F) The CCF shall have a written policy and procedure which provide that the CCF complies with all applicable governmental regulations and standards. At a minimum, these policies cover the following:

- (1) Sanitation inspection
- (2) Water supply testing
- (3) Waste disposal
- (4) Housekeeping
- (5) Clothing and building supplies
- (6) Hair care services

(G) The CCF is within reasonable distance of public transportation or other means of transportation is available.

(H) Each living unit is designed so that individual rooms, day rooms, and program areas are in close proximity to staff offices for the purposes of communication and interaction.

(I) The number of juveniles does not exceed the rated capacity, which includes living units of the facility, as established by the original design plus beds added with coded and approved additions or renovations. Holding and isolation rooms shall not be included in the CCF's rated capacity.

(J) Each of the living units is designed for single occupancy sleeping rooms. All sleeping rooms in the CCF shall have, at a minimum, access to, but not necessarily within the sleeping room:

- (1) Sanitation facilities:
 - (a) Toilet above floor level available for use twenty-four hours a day
 - (b) Wash basin and drinking water
 - (c) Hot and cold running water
- (2) Sleeping rooms without plumbing facilities shall have an established communication linkage to staff with documentation of response.
- (3) A bed above floor level and storage space.
- (4) Lighting of at least twenty foot candles at desk level and in the personal grooming area.
- (5) Provisions for natural lighting and seating space.
- (6) A minimum of sixty square feet of unencumbered floor space per juvenile.

(K) The CCF shall have a written policy, procedure, and practice providing that male and female juveniles do not occupy the same sleeping rooms or living units.

(L) The CCF shall have a written policy, procedure and practice providing that juveniles and adults do not share sleeping rooms.

(M) Each juvenile is provided a bed, mattress, and a supply of sanitized linen. Used bed linens and towels shall be laundered weekly. Bedding and mattresses shall be sanitized prior to reissue.

(N) Within reasonable limits, the juveniles shall be permitted to decorate their living and sleeping quarters with personal possessions, pictures and posters.

(O) The CCF has, at a minimum, one operable toilet for every six juveniles. Toilet areas shall have a door; toilets shall be separated by partitions to provide individual privacy while ensuring reasonable security and supervision. Urinals in male units may be substituted for up to one-half of the toilets in female/male facilities. All housing units with five or more juveniles shall have a minimum of two toilets.

(P) The CCF has, at a minimum, one operable washbasin with hot and cold running water for every six juveniles.

(Q) The CCF has one operable washer and one operable dryer for every sixteen juveniles or equivalent laundry capacity is available within one mile of the CCF.

(R) The CCF shall provide spaces for:

(1) Counseling or interview space in or near the living unit

(2) Space to accommodate group meetings

(3) Space for religious services

(4) Visiting area

(S) Dayrooms with space for varied juvenile activities are situated immediately adjacent to the juvenile sleeping areas, but are separated from them by a floor-to-ceiling wall. Dayrooms provide a minimum of thirty-five square feet of space per juvenile (exclusive of lavatories, showers, and toilets) for the maximum number expected to use the dayroom at one time.

(T) Dayrooms provide sufficient seating and writing surfaces for every juvenile using the dayroom at one time. Dayroom furnishing are consistent with the security needs of the juveniles assigned.

(U) There are at least fifteen square feet of floor space per juvenile for those occupying the dining room or dining area.

(V) When the CCF provides food service, the kitchen is a separate and distinct area with ten square feet per juvenile or two hundred square feet, whichever is less.

(W) When medical services are provided in-house, the CCF shall have a secure medical room with private medical examination facilities available.

(X) Confinement rooms shall be in close proximity to the living unit and shall provide for washing, drinking, toilet and safety needs of the confined juvenile.

(Y) With the exception of the auditorium/gymnasium, the CCF shall contain air conditioning and a back-up ventilation system. Temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones.

(Z) The total indoor activity area provides space for at least one hundred square feet per juvenile based on the annual average daily population.

(AA) Each CCF shall have an outdoor recreation area that is well-maintained and adequately designed to accommodate regularly scheduled recreation and group athletic activities.

(BB) The CCF shall provide adequate storage space for the following:

- (1) Operational and administrative supplies
- (2) Storage of juveniles property and personal belongings
- (3) Adequate areas for clothing, bedding, and CCF supplies

(4) Closets for storage of cleaning supplies and equipment are located in each principal area and are well ventilated

(CC) The CCF shall have a written policy, procedure, and practice that shall designate the specific duties that juveniles must assume in the care and upkeep of their own sleeping and living quarters.

(DD) If the CCF is on the grounds of any type of adult correctional facility or juvenile detention facility, it is self contained and separated by sight and sound.

(EE) The CCF shall have a written policy and procedure requiring that the CCF administrator, in conjunction with the CCF's governing body, develop and implement a system designed to detect internal and external areas of the building with equipment deterioration, safety hazards and unsanitary conditions and to provide for the proper reporting of needed corrections or modifications.

History: Eff 2-3-04

§ 5139-36-09 Special procedures.

(A) The CCF has written fire, storm, evacuation and other emergency plans, which are posted and communicated to all employees and juveniles and reviewed and updated at least annually.

(B) The CCF shall disseminate written emergency plans to appropriate local authorities. Directions to, and the location of exits, fire extinguishers, first-aid equipment, and other emergency equipment are posted in the CCF.

(C) The CCF shall conduct monthly emergency evacuation fire drills and quarterly storm drills under varied conditions and times, and on all shifts when a majority of juveniles are present in the CCF. These are to be documented and retained for at least one year.

(D) The CCF shall have a written evacuation plan prepared in the event of fire or major emergency that is certified by an independent, outside inspector trained in the application of national fire safety codes. The plan is reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The plan includes the following:

- (1) Location of building/room floor plan
- (2) Use of exit signs and directional arrows for traffic flow
- (3) Location of public posted plan
- (4) Monthly drills in all facility locations are scheduled on a rotating basis for all shifts.

(E) Absconders

(1) Prevention

(a) A movement sheet shall be utilized to account for juveniles in the facility and for those in authorized programs and on activity leave from the facility. This sheet shall include time "in" and "out" of the facility and, when applicable, the juveniles destination. Movement outside the facility shall be documented through the use of an itinerary for all juveniles confined at the facility.

(b) CCF staff on duty shall conduct regular population counts of juveniles in the facility in accordance with facility policies and procedures. The time at which the count is taken should be verified and documented.

(c) The CCF shall have provisions for random verification of juveniles on authorized leave from the facility.

(d) No juvenile(s) shall be unaccounted for while in or out of the CCF. The method for verification shall be outlined thoroughly in an agency policy and procedure statement.

(2) Detection

(a) Should any verification process indicate a juvenile's absence, the CCF staff on duty shall immediately attempt to locate the individual by searching the facility and calling parents, guardians, friends, employer and the last destination signed on an itinerary sheet.

(b) In the event contact is made with the juvenile within an hour of the expected time of return, the juvenile shall be instructed to return to the CCF immediately. An agreed upon deadline shall be established for the juvenile's return, not to exceed one hour.

(c) A juvenile who fails to return, or where indication exists that the juvenile will not return, will be declared an absconder.

History: Eff 2-3-04

§ 5139-36-10 Security and control.

(A) The CCF shall have written policy and procedure, practice restricting the use of "response to resistance" to instances of justifiable self defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority. In no event are responses to resistance justifiable as punishment. A written report is prepared following all "response to resistance" and is submitted to administrative staff for review.

(B) The use of "response to resistance" shall be documented and include, but not be limited to:

- (1) Who was involved
- (2) The response to resistance that was used
- (3) Justification for the use of response to resistance

(C) The CCF shall have a written policy, procedure, and practice provide for and documents the examination and/or treatment by CCF medical personnel or outside emergency medical services of juveniles and/or staff involved in any response to resistance, when:

- (1) A person involved has suffered physical injury
- (2) A person involved complains of an injury or requests medical assistance

(D) The CCF shall have written policies and procedures require reporting of suspected or alleged juvenile abuse or neglect incidents to the public children services agency or law enforcement agency of appropriate jurisdiction and the court which has placed the juvenile.

(E) The CCF shall cooperate with the public children services agency or law enforcement agency during an investigation of suspected or alleged juvenile abuse or neglect. Cooperation shall include, but not limited to, permitting access to:

- (1) The alleged juvenile victim
- (2) The alleged perpetrator
- (3) Witnesses
- (4) Staff
- (5) Incident report or logs
- (a) Medical and dental records
- (b) Personnel records
- (c) Training records
- (d) Procedural records
- (e) Photographs, video documentation
- (f) Other records, which relate to the investigation of alleged juvenile abuse or neglect.

(6) There exist written policies and procedures concerning security and control, which are available to all personnel. Their policies and procedures are reviewed annually and updated as necessary.

(7) The use of chemical agents and related restraining devices is discouraged.

Written policy and procedure govern the availability, control and use of chemical agents and related security devices. Control agents and related security devices are used only in accordance with the written policy and procedure. A written report is prepared following all uses of "response to resistance" and restraints, and is submitted to the CCF administrator.

(8) The CCF shall have a written policy and procedure require that all security perimeter entrances, exterior doors and all doors the CCF director determines should be locked are kept locked, except when used for admission or exit of employees, detained juveniles or visitors, and in emergencies.

(9) The CCF shall have a written policy and procedure require that staff maintain a permanent log that records routine information and emergency situations, and unusual incidents.

(10) The policy regarding searches for the control of contraband is published, made available to staff and juveniles and reviewed at least annually and updated if necessary. Personal jewelry is discouraged and should be considered as contraband.

(11) The CCF shall have a written policy and procedure provide for the least intrusive method of search consistent with the safety and security of the CCF. Frisk searches and/or strip searches are conducted without specific authorization only upon entry to the CCF and at all other times are based upon a reasonable belief that the juvenile is carrying contraband. Manual or instrument inspection of the juvenile's lower body cavity or cavities is conducted only when there is reason to do so and when authorized by the CCF director or designee.

(12) All strip searches and body cavity searches will be conducted in privacy. Manual or instrument inspection of lower body cavity or cavities should only be done by medical staff. All strip searches and body cavity searches of female juveniles may be conducted only by female staff. Such searches of male residents may be conducted only by male staff. However, a physician or nurse may conduct searches of juveniles of either sex. Strip searches may not be conducted in the presence of the opposite sex.

(13) Firearms are not permitted in the CCF except in emergency situations. Staff are prohibited from bringing in and/or possessing any weapon, chemical agent, or any object which presents the potential of being used as a weapon.

(14) The CCF shall have a written policy, procedure govern the availability, control and use of chemical agents and related security devices. A written report is prepared following any use of any control device, chemical agency or other security device.

(15) The CCF shall have locked storage (e.g., weapons locker/cabinet) for the temporary securing of weapons when police and other authorized persons enter the security perimeter.

(16) The CCF shall have a written policy, procedure, and practice governing the control and use of keys/keycards to include, but not limited to the following:

(a) A key control center which is secured and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys/key cards.

(c) A procedure for the immediate reporting and repairing of any broken or malfunctioning key/key card or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place, which is readily accessible during emergencies.

(e) Keys operating locks to outside doors and/or gates shall be secured and not readily accessible to unauthorized persons within the security perimeter.

(f) Emergency keys and keys to control security areas are clearly marked and issued in accordance with written procedures established by the CCF administrator.

(g) Precautions taken to ensure the security of all non-key operated locking devices (e.g., electrical switches, levers).

(17) The CCF shall have a written policy and procedure governing the control and use of tools, medical and culinary equipment.

(18) The use of restraining devices, including four and five point restraints, is discouraged. CCF written policy and procedure provide that instruments of restraint are never applied as punishment and are applied only in accordance with written policy and procedure.

(19) The CCF shall have written policy and procedures governing safety and security precautions for agency vehicles.

(20) The CCF shall have a written policy, procedure, and practice requiring at least a weekly inspection and maintenance of all security devices, and corrective action is initiated when necessary.

History: Eff 2-3-04

§ 5139-36-11 Food service.

(A) The CCF shall have a written policy, procedure and practice requiring that all juveniles shall be provided, three meals and a snack, daily. Menus shall be reviewed annually by a licensed dietician or the responsible health care authority to ensure nationally recommended food allowances.

(B) The CCF shall have a written policy and procedure requiring that any CCF juvenile in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided as ordered by the responsible health care authority or a licensed dietician.

(C) The CCF shall have a written policy, procedure, and practice providing for special diets for juveniles whose religious beliefs require the adherence to religious dietary laws.

(D) The CCF shall have a written policy that prohibits meals being used in any punitive manner as a consequence of behavior.

(E) The CCF shall have a written policy and procedure that specifies that food service shall be properly supervised and shall comply with the applicable sanitation and health codes as promulgated by, state and local authorities.

(F) The CCF shall have a written policy, procedure, and practice providing for the following:

(1) Weekly inspection of all food service areas, including dining and food preparation areas and equipment

(2) Sanitary, temperature-controlled storage facilities for all foods

(3) Daily checks of refrigerator and water temperatures

(G) The CCF shall have a written policy and procedure specifying that juveniles shall be encouraged to eat a variety of food served, but no juvenile shall be subjected to coercion, including forced feeding for refusing to eat, unless for medical or treatment-related reasons.

(H) The CCF shall have a written policy, procedure, and practice specifying food service budgeting, purchasing, and accounting practices, including but not limited to the following systems:

(1) Food expenditure cost accounting, designed to determine cost per meal per juvenile

(2) Estimation of food service requirements

(3) Determination of and responsiveness to juvenile eating preferences

(4) Refrigeration of food, with specific storage periods

(5) The CCF facility shall comply with using the food service daily checklist.

(I) The CCF shall have a written policy and procedure providing that there not be more than fourteen hours between meal and breakfast, and at least three meals and a snack shall be made available at regular times during each twenty-four hour period. At least two of these meals shall be a hot meal. Provided basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

(J) The food service plan shall provide for a single menu for staff and juveniles.

(K) Menus shall be planned at least a week in advance and shall be on a three week or longer cycle.

(L) The facility's potable water source and supply, whether self-owned or operated by the public water department, is approved by an independent, outside source to be in compliance with jurisdictional laws and regulations.

(M) The facility shall comply with conducting daily food service inspections, using the food service daily checklist provided by the department of youth services.

History: Eff 2-3-04

§ 5139-36-12 Admissions and discharge.

(A) A CCF shall have written admission criteria that is reviewed by the department's bureau of community based programs (BCBP), specifying the types of juveniles accepted and detailing grounds for rejection of a referral.

(B) The CCF shall not admit any juvenile who is a resident of another state or country unless the CCF documents in the juveniles case record that the party making the placement has the legal authority to make the placement. All such placements shall be made in conformity with the terms of the interstate compact on juveniles or the interstate compact on the placement of children. Section 2151.56 of the Revised Code.

(C) A CCF shall not accept into care any juvenile for whom the services provided by the CCF are not appropriate.

(D) An admittance record is completed for every juvenile admitted to the CCF and contains at least the following information:

(1) Date and time of admission

(2) Name and also known as (AKA)

(3) Last known address

(4) Legal custody status

(5) Offenses

(6) Gender

(7) Date of birth

(8) Race or nationality

(9) Education and school attended

(10) Employment, if any

(11) Religion

(12) Health status

(13) Name, relationship, address and telephone of parent(s)/person(s) the child resided with prior to the time of admission

(14) Driver's license number, social security and medicaid number, if applicable

(15) A physical description

(16) A recent photograph

(17) Emergency contact

(18) Placing agency and contact.

(E) The CCF shall complete a preliminary health-screening record for all new admissions including, but not limited to:

(1) Current illnesses and health problems, including venereal disease and other infectious diseases, and diseases specific to females, if applicable.

(2) Medications taken and special health requirements.

(3) Screening of other health problems designated by the responsible physician.

(4) Behavioral observation including state of consciousness and mental status, appearance, conduct, tremor, and sweating.

(5) History of substance abuse (alcohol and other drugs).

(6) Notation of body deformities.

(7) Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations, and needle marks or other indications of drug abuse.

(8) Document referral of juveniles to qualified medical personnel for emergency treatment.

(9) Notation of personal physician and any medical needs.

(10) Special medical problems or needs

(F) The CCF shall have a written policy and procedure providing that at the time of admission, each juvenile shall be screened for symptoms of illness or injury by a licensed physician, registered nurse, licensed practical nurse, physician's assistant, or by a staff person who has received training in health screening techniques. All findings are recorded on an approved screening form.

(G) Upon admission, a CCF shall assign a staff member to orient the juvenile to the CCF, to CCF rules, and consequences for violations of rules. This orientation is documented by juvenile and staff signatures.

(H) Where a language or literacy problem exists that can lead to a juvenile's misunderstanding of agency rules and regulations, assistance is provided to the juvenile either by staff or another qualified individual under the supervision of a staff member.

(I) The CCF shall have a handbook for juveniles and for the parent or guardian of each juvenile. This handbook shall summarize the information covered by the CCF's statement of purpose and program. In addition, the handbook shall contain:

(1) Regulations for juveniles and consequences assigned for violations of regulations.

(2) Visiting hours and policies

(3) The role and responsibility of the family in the care and treatment of the juvenile.

(4) A complaint procedure for the juvenile and family.

(J) The CCF shall provide a handbook to parents or guardians of each juvenile, and to each juvenile, within seventy-two hours following admittance.

(K) The CCF shall have a written policy which describes the conditions under which, and the procedures by which, a juvenile will be discharged, including any criteria for emergency discharges and discharges not in accordance with the juvenile's case management plan.

(L) When a juvenile is discharged, the CCF shall prepare, within seven business days following the date of discharge, a written discharge summary. A copy of the discharge summary shall be maintained within the record and a copy shall be provided to the court.

(M) At least twenty-one days prior to any planned discharge, each CCF shall, in consultation with the court or custodial agent, familiarize the juvenile with the plans for his/her continued care following discharge.

(N) When a juvenile is discharged, all of the following shall be documented in the juvenile's case record:

(1) Record of time and date of discharge from the CCF, the authority by which released and into whose custody the juvenile is released

(2) The reason for discharge

(3) When appropriate make recommendations for continued care and follow-up procedures

(4) A brief summary or other documentation of medical and dental services provided while in residence

(5) The new location of the juvenile

(6) The name and official title of the person to whom the juvenile was released

(7) Criteria for emergency discharge and discharges not in accordance with juvenile individual case plans.

History: Eff 2-3-04

§ 5139-36-13 Medical and health care services.

(A) The CCF shall have a written policy and procedure requiring each CCF to have a licensed physician(s) or medical resource such as a hospital or clinic designated for the medical supervision, care and treatment of juveniles. When the health care authority is other than a physician, final medical judgments rest with a single designated physician. The CCF shall ensure twenty-four hour availability of consultation, advice and emergency service response. Such resources shall be located in the same or nearby community.

(B) The CCF shall have a written policy and procedure requiring that a medical examination be conducted within fourteen days before or after admission, and updated annually.

(C) The CCF shall have a written policy and procedure providing for the prompt notification of juvenile's parents/guardians and responsible agency in case of serious illness, serious surgery, serious injury or death.

(D) The CCF shall have a written policy and procedure requiring that, following the admission of a juvenile, CCF staff shall attempt to verify prescribed medications and that the proper dosages of these medications are administered at the time interval prescribed by the appropriate medical authority.

(E) The CCF shall have a written policy, procedure, and practice providing for the proper management of pharmaceuticals and shall address the following subjects:

(1) A formulary specifically developed for the facility prescription practices that requires

(a) prescription practices including requirements that psychotropic medications are prescribed only when clinically indicated as one facet of a program of therapy,

(b) "stop order" time periods for all medications, and

(c) the prescribing provider reevaluates a prescription prior to its renewal.

(2) Procedures for medication receipt, storage, dispensing, and administration or distribution.

(3) Maximum security storage and periodic inventory of all controlled substances, syringes, and needles.

(4) Dispensing of medicine in conformance with appropriate federal and state laws.

(5) Administration of medication by persons properly trained and under the supervision of the health authority and facility administrator or designee.

(6) Accountability for administering or distributing medications in a timely manner and according to physician's orders.

(F) The CCF shall have a written policy and procedure requiring that a medical record be maintained on each juvenile which shall include pertinent information concerning illnesses, communicable diseases, physical abnormalities, allergies and the administration of treatment.

(G) The CCF shall have a written policy and procedure requiring a written plan for the staff's response to juveniles who are identified as potentially suicidal.

(H) The CCF shall have a written policy and procedure requiring that first-aid kits are available, and have been approved by the "American Red Cross" or other qualified health care personnel.

(I) The CCF shall have a written policy and procedure requiring that all staff, on all shifts be certified, and maintain certification in first aid and CPR.

(J) The CCF shall have a written policy and procedure governing the development, and subsequent updating, of a facility formulary or drug list for pharmaceuticals stocked by the facility.

(K) The CCF shall have a written policy and procedure requiring that juveniles be informed of the procedures for gaining access to medical services.

(L) The CCF shall have a written policy and procedure that provides for informing appropriate staff of special medical and mental health problems of juveniles.

(M) All written policies and procedures are approved annually by the responsible health care authority.

(N) The CCF shall have a written policy and procedure requiring that in consultation with the juvenile's physician, each facility shall periodically review each juvenile's current regimen of medication and, as authorized by the physician, make adjustments to that regimen as appropriate. In no event shall a facility begin, alter or suspend a juvenile's medication without the approval of a physician.

(O) Written policy and procedure shall be developed and implemented for medical isolation under the directions of qualified health care personnel.

(P) The CCF shall have a written policy and procedure requiring that the responsibility for arranging emergency treatment of dental needs be that of the facility.

(Q) The CCF shall have a written policy and procedure requiring that poison control numbers and other emergency numbers be readily accessible to staff and clearly posted throughout the facility.

(R) Written policy and procedure shall specify that emergency mental health services for juveniles be provided by qualified mental health professionals.

(S) Written policy and procedure shall provide that when a juvenile requires medical attention in a potentially health-threatening emergency and such treatment conflicts with the religious tenets or practices of the juvenile's custodial parent, the CCF shall immediately transport the juvenile to a medical facility and refer the

matter, as appropriate, to a juvenile judge in the committing county, the department of youth services, public children's services agency (PCSA) or county department of human services.

(T) Juveniles shall be provided the opportunity for daily showers, and showers after strenuous exercise.

(U) The CCF shall have a written policy and procedure and practice that provides soap, washcloths, towels, toothbrush, toothpaste, deodorant, shampoo, combs and personal hygiene supplies to the juvenile. The CCF should also make provisions for routine hair care services.

(V) When there is a medical isolation room separate from the living unit, such room shall be equipped to provide for washing, drinking, toilet use and safety needs of the confined juvenile with facilities for visual and audio monitoring.

History: Eff 2-3-04

§ 5139-36-14 Program.

(A) The CCF shall identify each juvenile's needs, then provide or make referrals as appropriate, which include, but are not limited to psychological, academic, vocational, and personal services.

(B) The CCF shall have provisions for quality assurance practices to include, but not be limited to systematic and periodic review of juvenile's services and needs.

(C) A CCF shall have a written description of the programs and services which shall be offered to each juvenile at the time of admission.

(D) The CCF shall develop and use community resources either through referrals or by contractual agreement to provide juveniles available services.

(E) The CCF shall maintain a periodic inventory and assessment of community agencies.

(F) The CCF shall maintain and document working relationships with community health agencies assisting juveniles in meeting their chemical dependency and other specialized treatment needs.

(G) The CCF shall create a mission statement of purpose and a program overview that shall be made available to staff, juveniles and the public upon request.

(H) The CCF shall provide individual treatment to each juvenile at a minimum of one time per week and this must be documented.

(I) Written policy, procedure, and practice provide for a social services program that makes available a range of resources appropriate to the needs of juveniles, including individual, group, and family counseling; drug and alcohol treatment; family planning; HIV and AIDS education; and special offender treatment.

(J) A CCF shall provide recreational supplies and equipment as well as the opportunity to participate in planned constructive leisure time activity throughout the week, and one hour of large-muscle recreational activity per day.

(K) The CCF shall employ acceptable case and juvenile-offender management techniques to ensure a uniform approach to juvenile supervision and treatment.

(L) Within thirty days of the date of admission of each youth, the CCF shall develop and implement an individual case management plan for each juvenile. All key staff members shall be involved in developing and implementing the case plan for the juvenile and his/her family.

(M) The juvenile's case plan shall include, but not be limited to:

(1) Presenting problem(s) and anything which may prohibit a juvenile's success in their adjustment to the community once released from the facility.

(2) A statement of needs.

(3) Behavioral goals and objectives which can be measured.

(4) A statement of the time frame projected for attaining the goals and objectives.

(5) Specification of the activities, such as education, counseling, recreation, vocational, visitation with parents/guardians, medical services, food services, psychiatric and psychological counseling and religious programming that will be provided to the juvenile by the CCF.

(6) Specification of any specialized services that will be provided or arranged.

(N) A staff member involved in the development and implementation of the juvenile's case plan shall review and document the plan every thirty days. Any change in a case plan when reviewed, shall be discussed with the juvenile. The review is dated and documented by staff and juvenile signatures and forwarded to the court on a bi-monthly basis.

(O) The CCF shall have provisions for juveniles to voluntarily participate in religious services and functions, within the facility and or the community.

(P) The CCF shall have a written policy and procedure requiring that the CCF shall provide reasonable access to religious programming. No negative consequences shall accrue from a juvenile's refusal to participate in a religious service or function. All religions shall be accorded equal status and protection, subject to the limitations necessary to maintain order and security.

(Q) The CCF shall have a written policy and procedure requiring that library services are made available to all juveniles. Written policy outlines specific criteria for utilizing, selecting and maintaining appropriate reading materials.

(R) The CCF shall have a policy and procedure requiring academic teachers to be certified by the Ohio department of education.

(S) The CCF shall have a written policy and procedure providing that work assignments shall not conflict with minimum education programs.

(T) The CCF shall have a written policy and procedure providing that youth with IEP's for entitlement programs (e.g. SBH, LD, and DH) receive the prescribed services at the cost of the home school.

(U) Provision is made to meet the educational and vocational needs of juveniles who require special placement because of physical, mental or emotional handicaps or learning disabilities.

(V) The CCF shall have a written policy, procedure, and practice indicating compliance with laws pertaining to individual, special education plans prior to placement of juveniles into or out of special education programs.

(W) The CCF shall have a written policy, procedure, and practice providing that educational, vocational, work and treatment programs, credits, certificates, or diplomas are accepted by community agencies.

(X) The CCF shall have a written policy, procedure, and practice providing that juveniles who complete the GED receive educational and/or vocational programs that will provide instruction to develop basic literacy and job skills. Juveniles who have attained basic literacy skills should be required to attend remedial education classes on a daily basis during regular school day hours.

(Y) Educational and vocational counseling are provided so that juveniles are placed in that phase of an educational or vocational program most suited to their needs and abilities.

(Z) When there are vocational supervisors and instructors, they must be licensed or accredited by the state or jurisdiction in which the CCF is located.

(AA) The CCF shall provide or make arrangements to provide juveniles with appropriate employment development resources.

(BB) The CCF shall make provisions, which prohibits juveniles performing any work prohibited by state and federal regulations and statutes pertaining to child labor.

(CC) The CCF shall have a written policy, procedure, and practice providing that juveniles employed outside the program, either full-time or part-time, comply with all legal and regulatory requirements.

(DD) The CCF shall have provisions to conduct exit interviews, when practical. Copies shall be retained in the juvenile's inactive file. The exit interview shall be recorded on forms created by the facility.

(EE) There shall be a written policy and procedure for juvenile grievances, which shall included provision for:

- (1) Notification of grievance process
- (2) Method of obtaining forms to file a grievance
- (3) Retention of all grievances and
- (4) Timelines for processing grievances.

History: Eff 2-3-04

§ 5139-36-15 Visiting and communications.

(A) A CCF shall have a written policy, procedure, and practice concerning visits and communications between a juvenile and family and friends, which is reviewed annually and updated as needed. The procedures which are provided to parent(s) and juvenile shall include, but not be limited to the following:

- (1) Designated visiting area
- (2) Designated visiting hours to include weekends and evening hours
- (3) Provisions for special visits (e.g., attorney, clergy, persons who have traveled long distances)

(B) A CCF shall ensure that arrangements for visitation between the juvenile and family or friends are not in conflict with the individual case plan. Visits shall be supervised in accordance with the case plan.

(C) A CCF shall, in accordance with the individual case plan, allow a juvenile access to a telephone which will permit the juvenile to make and receive telephone calls.

(D) A CCF shall, in accordance with the individual case plan, provide reasonable conditions of privacy for visits and telephone contacts.

(E) A CCF shall, have a written policy, procedure, and practice governing juvenile correspondence that is made available to staff and juveniles which includes:

(1) No limitation shall be placed on the amount of incoming or outgoing first-class correspondence to juveniles.

(2) Incoming correspondence from the courts, an attorney of record, or a public official may be opened and inspected for contraband in the presence of the juvenile.

(3) Each CCF shall provide to all juveniles the necessary writing materials, envelopes and at least two first-class stamps per week.

(F) The CCF shall have a written policy, procedure, and practice which provides that juvenile mail, both

incoming and outgoing, may be opened and inspected for contraband.

(1) Mail may be read or rejected when based on legitimate CCF interests of order and security.

(2) The juvenile is notified when incoming mail is returned or outgoing mail is with held.

(G) All incoming and outgoing mail is forwarded within twenty-four hours, excluding weekends and holidays.

(H) The CCF shall have a written policy, procedure, and practice providing for the forwarding of first-class letters and packages after transfer or release of juveniles.

History: Eff 2-3-04

§ 5139-36-16 Juvenile rights, control and treatment.

(A) The CCF shall have a written policy and procedure which prohibits facility employees from violating any civil rights of juveniles.

(B) The CCF shall have a written policy to ensure that CCF staff and the CCF program protect the following rights of juveniles:

- (1) The right to a reasonable amount of privacy.
- (2) The right to have his/her opinions heard and be included, to the greatest extent possible, when any decisions are being made which affect his/her life.
- (3) The right to receive adequate and appropriate food, clothing, and housing.

(4) The right to his/her own money and personal property in accordance with the juvenile's case plan.

(5) The right to participate in an appropriate educational and/or vocational program.

(C) The CCF shall have a written policy, procedure, and practice to ensure the right of juveniles to have access to courts.

(D) The CCF shall have written policy and procedure when enforcing any restrictions upon the juvenile's rights.

(1) Inform the juvenile of the conditions of and reasons for restriction or termination of his/her rights.

(2) Place a written report summarizing the conditions of and reasons for restriction or termination of the juvenile's rights in that juvenile's case record.

(3) Review this decision at least monthly.

(E) When a restriction of a juvenile's rights affects another individual, the CCF shall have provisions for informing the individual of the conditions of, and reasons for the actions.

(F) The CCF shall have a written policy, procedure and practice when allowing freedom in personal grooming and dress except when a valid interest justifies otherwise.

(G) The CCF shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of juveniles in their custody which require that:

(1) The written consent of a juvenile and the juvenile's parent(s) or guardian be obtained before the juvenile is photographed for fund raising or program publicity purposes.

(2) All photographs and recordings are used in a manner which respects the dignity and confidentiality of the juvenile.

(H) The CCF shall have written policies protecting juveniles from being used as human subjects and regarding the participation of juveniles in research projects.

(I) A CCF shall develop and implement, a written set of policies and procedures regarding discipline, control and treatment of juveniles. These policies and procedures

shall be explained to each juvenile, all staff, and a copy provided to persons or agencies who desire to place a juvenile at the CCF.

(J) The discipline policies and procedures of the CCF shall incorporate the philosophy that discipline is to be both constructive and educational in nature. The CCF's discipline policies and procedures shall prohibit all acts of punishments including, but not limited to:

(1) Any type of physical punishment inflicted in any manner upon the body such as spanking, punching, paddling, shaking, biting, or roughly handling a juvenile.

(2) The assignment of physically strenuous harsh work or exercises, when used solely as a means of punishment

(3) Requiring or forcing a juvenile to maintain an uncomfortable position, such as squatting or bending, or requiring a juvenile to continuously repeat physical movements when used solely as a means of punishment.

(4) Group punishments for the behavior of an individual, except in accordance with a recognized therapeutic modality and as described by written CCF policy.

(5) Verbal abuse or derogatory remarks.

(6) Denial of planned and required recreational activity.

(7) The denial of social or casework services, medical treatment, or educational services.

(8) The deprivation of meals, although scheduled meals may be provided individually.

(9) The denial of sleep.

(10) The denial of shelter, clothing, bedding, or restroom facilities.

(11) Inappropriate or intentionally painful physical restraint.

(12) Organized social ostracism, such as codes of silence.

(13) The use of chemical restraints, except by order of a physician.

(14) The use of mechanical restraints with approval by the department of youth services.

(K) CCF shall develop and implement, a written set of policies and procedures regarding discipline, control, and treatment of juveniles. These policies and procedures shall be explained to each juvenile, all staff, and a copy provided to persons or agencies who desire to place a juvenile at the CCF.

(L) Discipline shall be delegated only to persons who are employees of the CCF. Juveniles shall not discipline other juveniles except as part of an organized self-government program that is conducted in accordance with written policy and directly supervised by designated staff of the CCF.

(M) Written policy, procedure and practice provide that the facility does not discriminate on the basis of race, religion, national origin, gender, or disability.

(N) A CCF shall use an isolation room only in accordance with written CCF policy, which has the prior approval of the department, and if revised resubmitted for approval.

History: Eff 2-3-04

§ 5139-36-17 Evaluation and data collection.

(A) A CCF shall have written policies procedures and practices to ensure the following:

(1) All juveniles that receive program services must be entered into a management information system authorized by the department of youth services.

(2) Intake/termination forms shall be completed and entered into the MIS within fourteen days unless a written waiver is granted from the bureau of community based programs (BCBP).

(3) Case file information will be accurate when compared to DYS management information system.

(4) Each program shall designate a staff position or person for data entry and/or coordination.

(B) The facility or parent agency collaborates with juvenile justice and service agencies in information gathering, exchange, and standardization.

History: Eff 2-3-04

Chapter 5139-37

Detention Centers

Section

- 5139-37-02 Approval process.
- 5139-37-03 Administration, organization and management.
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- 5139-37-06 Training and staff development.
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- 5139-37-13 Sanitation and hygiene.
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- 5139-37-15 Juvenile rights.
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- 5139-37-17 Admission and release procedures.
- 5139-37-18 Program.
- 5139-37-19 Visitation and communications.

§ 5139-37-02 Approval process.

(A) Application

(1) Any detention center which believes that it meets the requirements of Chapter 5139-37 of the Administrative Code, may apply for approval and financial assistance on forms provided by the department.

(2) A new applicant may apply to the department at any time. However, a period of sixty days may be required to process the application.

(3) Renewal applicants should submit, on an annual basis, a formal application on forms provided by the department, sixty days prior to the expiration of their current approval.

(4) All information requested on the application and supporting schedules shall be completed by the applicant. Information requested on the application and supporting schedules, which does not apply to the applicant, shall be indicated as "not applicable."

(5) The application must be signed by the appropriate authority and forwarded to the department.

(6) A budget worksheet will be provided by the department with the application form and will be used to determine the eligibility of funding sources and operating expenses. Information is to be furnished for the proposed fiscal budget and the prior completed fiscal year of operation.

(a) Funding sources — All sources of funding are to be reported on the budget worksheet in order that eligibility for funding by the department may be determined.

(i) Nongeneral revenue funds — For purposes of subsidy allocation determination, the following are considered to be nongeneral revenue funds:

- (a) Federal grants;
- (b) State of Ohio grants;
- (c) Support payments by the guardian of the committed child;
- (d) Per diem charges received;
- (e) All other funding sources, except county general revenue.

(ii) Eligible funds — The determination of eligibility shall be funds generated through the county general revenue fund. This also includes appropriated funds to be used as matching and in-kind funds for various federal and state subsidies and rotaries designed to fund the detention center.

(b) Operating expenses — All anticipated expenditures for the proposed fiscal year shall be reported in the budget worksheet in the categories indicated. A chart of accounts will be provided by the department with the application form and shall be used to determine what category various expenses are to be reported under.

(B) Procedure for approval

(1) As part of the application process, staff of the department will make an on-site visit to the facility and review supporting materials to determine the agency's compliance with the standards as set forth in Chapter 5139-37 of the Administrative Code.

(2) The department shall make a decision on the application and send one of the following to the applicant:

(a) A notice of approval if the applicant meets standards set forth in Chapter 5139-37 of the Administrative Code. The approval is effective on the date of the signature of the director.

(b) A provisional approval if the applicant is temporarily unable to comply with one or more standards. The provisional approval will have a plan approved by the department to correct the areas of noncompliance in a stated time period. The provisional approval shall be issued for no more than six months and is not renewable.

(c) A notice of nonapproval if the applicant has not demonstrated its compliance with the standards set forth in Chapter 5139-37 of the Administrative Code. The notice of nonapproval shall cite the standard(s) which has/have not been met and shall be sent by certified mail.

(3) A notice of nonapproval is effective in thirty days unless appealed to the director of the department. Such appeal shall include the right to have a peer review under the provisions of paragraph (D)(1) of this rule.

(4) Within thirty days following the receipt of the appeal, the director shall render a decision in writing by certified mail to the detention center or order that a hearing be conducted to consider legal or factual issues of the appeal.

(5) If a hearing is conducted, the director shall render a decision in writing by certified mail to the detention center within thirty days of the hearing. The decision of the director shall be final.

(C) Duration of approval

(1) All approvals will automatically expire one year from the date of issuance, unless revoked sooner or unless an application for reapproval has been timely received and has not been finally acted upon.

(2) The department shall be advised, in writing, of any proposed operational change of the detention center so that the department can determine whether the change is

in conformance with Chapter 5139-37 of the Administrative Code.

(D) Revocation of approval

(1) If the department believes that a detention center is in violation of provisions of Chapter 5139-37 of the Administrative Code, it will inform the detention center of its intention to issue a letter of revocation under provisions of paragraph (D)(2) of this rule. The detention center will be informed of its right to request a peer review. The department shall establish policy and procedure which govern: (a) the decision to grant a peer review; and (b) the peer review process.

(2) The failure of a detention center to maintain compliance with the provisions of Chapter 5139-37 of the Administrative Code may result in the revocation of approval of the detention center. Such revocation shall be in writing, specifying the provision(s) of Chapter 5139-37 of the Administrative Code which has/have been violated.

(3) A revocation is effective in thirty days unless appealed to the director of the department.

(4) Within thirty days following the receipt of the appeal, the director shall render a decision in writing by certified mail to the detention center or order that a hearing be conducted to consider legal or factual issues of the appeal.

(5) If a hearing is conducted, the director shall render a decision in writing by certified mail to the detention center within thirty days of the hearing. The decision of the director shall be final.

History: Eff 12-11-88; 10-31-00

§ 5139-37-03 Administration, organization and management.

(A) The following standard is mandatory:

The facility has a policy manual that is made available to staff.

(B) The following standards are recommended:

(1) There exists, a written statement that describes the philosophy, goals or purposes of the facility, which is reviewed at least annually and updated if necessary and in which the facility administrator participates in the formulation of specific facility goals and objectives.

(2) Written policy and procedure require that the judge and/or other staff with release authority shall be notified in writing of children being held for dependency, neglect, abuse or status offenses at the end of the fifth court day.

(3) Written policy prohibits the confinement of any offender in the detention center unless the confinement is in accordance with rule seven of the "Ohio Rules of Juvenile Procedure."

(4) Written policy and procedure provide for a communication system within the facility that requires, at a minimum, that the facility administrator meet at least quarterly with the supervisory staff, and all department heads meet monthly with their key staff members.

(5) There is an operations manual that delineates written policy and procedure for operating and maintaining the facility. The manual is explained and made available to all employees at the time of their employment. There is an organizational chart for the facility staff that accurately reflects the structure of authority, responsibility and accountability within the facility.

(6) The facility and its programs are managed by a single administrative officer to whom all employees or units of management are responsible.

(7) The facility meets all applicable licensing requirements of the jurisdiction in which it is located.

History: Eff 12-11-88

§ 5139-37-04 Fiscal management.

The following standards are recommended:

(A) All monies collected at the facility shall be tabulated and secured daily in an officially designated and secure place.

(B) Children's personal funds held by the facility shall be controlled by generally accepted accounting procedures.

History: Eff 12-11-88

§ 5139-37-05 Personnel.

(A) The following standards are mandatory:

(1) Policy and procedure shall require that a constant ratio of twelve children to one child-care worker be maintained and that a female child-care worker be on duty at all times when female residents are detained. A ratio of twenty-five children to one child-care staff member shall be required for sleeping hours.

(2) An agency shall request the bureau of criminal identification and investigation (BCII) to conduct a criminal records check with respect to any prospective employee who has applied to the agency for appointment or employment.

(3) The agency shall inform each prospective employee at the time of initial application, that as a precondition to being approved for that position:

(a) The person is required to complete the BCII prescribed criminal records check form and provide a set of fingerprint impressions; and

(b) A criminal records check is required to be conducted by BCII and, except as provided in paragraph (A)(19) of this rule, satisfactorily completed if the prospective employee comes under final consideration for appointment or employment.

(4) The agency shall provide each person listed in paragraph (A)(2) of this rule with a copy of the BCII prescribed criminal records check form and a BCII standard impression sheet to obtain fingerprint impressions.

(5) Any person listed in paragraph (A)(2) of this rule who receives a copy of the BCII prescribed criminal records check form and a BCII standard impression sheet and who is requested by the agency to complete the form and provide a set of fingerprints impressions shall:

(a) Complete the form or provide all the information necessary to complete the form;

(b) Provide the impression sheet with the impressions of the person's fingerprints; and

(c) Submit the completed form and the impression sheet to the agency.

(6) If a prospective employee seeking appointment or employment by an agency fails to provide the information necessary to complete the form or fails to provide fingerprint impressions, the prospective employee shall not be employed by the agency.

(7) The agency shall obtain the completed form and fingerprint impression sheet from each person listed in paragraph (A)(2) of this rule and forward the form and fingerprint impression sheet to BCII at the time the agency requests a criminal records check.

(8) The agency shall request that BCII obtain information from the federal bureau of investigation (FBI) as a part of the criminal records check for the person if:

(a) The person does not present proof of residency in Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested; or

(b) The person does not provide evidence that within that five-year period, BCII has requested information about the person from the FBI in a criminal records check.

(9) The agency may request that BCII include information from the FBI in the criminal records check if the person presents proof of residency in Ohio for that five-year period.

(10) The agency shall pay to BCII the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted.

(11) The agency may charge a prospective employee a fee for the costs incurred in obtaining a criminal records check. A fee charged by the agency shall not exceed the fee paid by the agency to BCII. If a fee is charged, the agency shall notify the person at the time of initial application of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment.

(12) The report of any criminal records check conducted by BCII in accordance with section 109.572 of the Revised Code and pursuant to a request made by the agency is not a public record. The report shall be made available only to the following persons:

(a) The person who is the subject of the criminal records check or the person's representative.

(b) The agency requesting the criminal records check or its representative.

(c) Any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, approval or certification to the person.

(d) ODYS employees as required for approval, inspection or monitoring purposes.

(13) Reports from BCII or any other local, state, or federal agency regarding a person's criminal record are valid for a period of one year from the date of the report.

(14) An agency shall document that any person hired after October 29, 1993 as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home care shall not have been convicted of or pleaded guilty to any of the offenses listed in paragraph (A)(15)(a) of this rule except as provided in paragraph (A)(16) of this rule.

(15) Except as provided in paragraph (A)(16) of this rule, an agency shall not, as of October 29, 1993, hire a prospective employee as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home-care if the person has been convicted of or pleaded guilty to any of the following offenses:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to

July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state that is substantially equivalent to any of the offenses listed in paragraph (A)(15)(a) of this rule.

(16) A prospective employee convicted of or who has pleaded guilty to an offense listed in paragraph (A)(15)(a) of this rule may be hired by an agency as an administrator, child care staff or caseworker, or in any other position responsible for a child's care in out-of-home care only if the following conditions have been met:

(a) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the prospective employee was fully discharged from any imprisonment or probation arising from the conviction. A prospective employee who has had a misdemeanor record of conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.

(b) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.

(c) The victim of the offense was not one of the following:

(1) A person under the age of eighteen.
(2) A functionally impaired person as defined in division (A) of section 2901.10 of the Revised Code.

(3) A mentally retarded person as defined in division (K) of section 5123.01 of the Revised Code.

(4) A developmentally disabled person as defined in division (Q) of section 5123.01 of the Revised Code.

(5) A person with a mental illness as defined in division (A) of section 5122.01 of the Revised Code.

(6) A person sixty years of age or older.

(d) Hiring the prospective employee will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining whether to hire the prospective employee:

(1) The person's age at the time of the offense.
(2) The nature and seriousness of the offense.
(3) The circumstances under which the offense was committed.

(4) The degree to which the person participated in the offense.

(5) The time elapsed since the person was fully discharged from imprisonment or probation.

(6) The likelihood that the circumstances leading to the offense will recur.

(7) Whether the person is a repeat offender.

(8) The person's employment record.

(9) The person's efforts at rehabilitation and the results of those efforts.

(10) Whether any criminal proceedings are pending against the person.

(11) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph (A)(15)(a) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled.

(12) Any others factors the PCSA, PCPA, PNA considers relevant.

(17) It is the prospective employee's duty to provide written verification that the conditions specified in paragraph (A)(16) of this rule are met. If the prospective employee fails to provide such proof or if the agency determines that the proof offered by the prospective employee is inconclusive or insufficient, the person shall not be hired. Any doubt shall be resolved in favor of protecting the children the agency serves.

(18) To determine whether a prospective employee is qualified to be hired pursuant to paragraph (A)(15)(a) of this rule, a criminal records check shall be conducted pursuant to this rule.

(19) An agency may conditionally hire a prospective employee until the criminal records check required by this rule is completed and the agency receives the results of the criminal record check, if the prospective employee submits to the agency a signed statement attesting that the prospective employee has not been convicted of or pleaded guilty to any offense listed in paragraph (A)(15)(a) of this rule. If the results of the criminal record check indicate that the person does not qualify for employment, the agency shall release the person from employment.

(20) The provisions of paragraph (A)(16) of this rule must be considered for any prospective employee who has been convicted of, or pleaded guilty to, one or more of the offenses listed in paragraph (A)(15)(a) of this rule even if the person's record has been sealed by a court pursuant to section 2953.32 of the Revised Code because the information contained in the sealed record bears a direct and substantial relationship to the care of children who may be entrusted to the person's care.

(21) A conviction of, or plea of guilty to, an offense listed in paragraph (A)(15)(a) of this rule shall not prevent a prospective employee's hire if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(22) Current employees suspected of involvement in any of the offenses listed in paragraph (A)(15)(a) of this rule shall be terminated, suspended or removed from contact with residents until the public children services agency or law enforcement agency has completed its investigation and has made applicable recommendations.

(23) An agency shall assure that all staff hired or who are under any personal service contract who are required by law to possess any professional licensure or certification are so licensed or certified.

(B) The following standards are recommended:

(1) Each detention facility shall have written policies and procedures concerning personnel matters. The policies and procedures shall be approved by the parent agency and be available to all employees.

(2) Written policy and procedure provide for provisional appointment to ensure the availability of personnel for short-term, full-time or part-time work in an emergency situation.

(3) Written policy and procedure provide for a written annual performance evaluation of all employees, which is based on defined criteria and is reviewed and discussed with the employee.

(4) Written policy and procedure provide for a current, accurate, and confidential personnel record for each employee; confidentiality is ensured by restricting its availability to only the employee who is the subject of the record and to other agency employees who have a need for the record in the performance of their duties. A written procedure exists whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

(5) There is a written employee grievance procedure which is available to all employees.

History: Eff 12-11-88; 10-31-00

§ 5139-37-06 Training and staff development.

(A) The following standard is mandatory:

(1) Written policy and procedure provide all new child-care staff receive twenty-four hours of orientation training before assuming independent responsibility for a particular job. This orientation training is to include, at a minimum, orientation to the purpose, goal, policies and procedures of the institution and parent agencies, working conditions and regulations, responsibilities and rights of employees, an overview of the juvenile justice and correctional field and some preparatory instruction related to the particular job.

(2) Written policy and procedure provide that all child-care staff receive an additional thirty-two hours of training annually. This training may cover the following and other closely related subjects: security procedures, supervision of juveniles, use of force regulations, report writing, juvenile rules and regulations, rights and responsibilities of juveniles, fire and emergency procedures, key control, inter-personal relations, social/cultural life style of the juvenile population, child growth and development, communication skills, first aid, suicide prevention and assessment.

(B) The following standards are recommended:

(1) Written policies and procedures require that all employees, other than child-care staff, receive at least sixteen hours minimum orientation training and, minimally, an additional sixteen hours annually, appropriate to their work assignment.

(2) Written policy and procedure provide that all managerial staff receive forty hours training during their first year of employment and twenty hours of training each subsequent year of employment. This training covers the following areas and other related subjects: general management and related subjects; labor laws; employee-management relations; the interactions of elements of the criminal justice systems; and relationships with other agencies.

History: Eff 12-11-88

§ 5139-37-07 Juvenile records.

The following standards are recommended:

(A) An admittance detention record is completed for every child admitted to the facility and contains at least the following information:

Court case number (if any) and detention facility admission number;

Date and time of admission and release;

Name and "also known as (AKA)";

Last known address;

Legal status (authority for detention);

Name, title;

Specific charge(s);

Sex;

Date of birth;

Place of birth;

Race or nationality;

Education and school attended;

Employment, if any;

Religion;

Health status;

Medical consent forms;

Name, relationship, address and telephone of parent(s)/person(s) the juvenile resided with at the time of admission;

Driver's license number, social security and medicaid number, if applicable;

Date of complaint;

Inventory of property;

Emergency contact;

Physical description.

(B) The record maintained on each child is kept in a secure place within the facility and includes, at a minimum, the following information:

Initial intake information form;

Documented legal authority to accept juveniles;

A record of cash and valuables held;

Notations of temporary absences from the facility, if any;

Visitor's names and dates of visits, if any;

Complaint and disciplinary record, if any;

Final discharge or transfer report;

Complaints initiated by facility personnel;

Record of medical examination and

Assessment, including medical history

While detained.

Name of child's attorney, if any.

(C) There is a single master file identifying all children detained in the facility.

(D) The contents of records are identified and separated according to an established format.

(E) Policy and procedure require records be safeguarded from inappropriate disclosure.

History: Eff 12-11-88

§ 5139-37-08 Physical plant.

(A) The following standards are mandatory:

(1) The facility shall have exits that are properly positioned, clear, and distinctly and permanently marked in order to ensure the timely evacuation of children and staff in the event of fire or other emergency.

(2) Male and female children do not occupy the same sleeping rooms.

(3) All sleeping rooms in detention facilities shall have, at a minimum, access to, but not necessarily within the sleeping room, the following sanitation facilities: toilet above floor level available for use twenty-four hours a day; wash basin and drinking water; hot and cold running water. A bed above floor level, storage space and natural light shall be provided.

(4) The facility conforms to all applicable zoning ordinances or, through legal means, is attempting to comply with or change such laws, codes or zoning ordinances.

(5) The facility conforms to all applicable state and local building codes.

(B) The following standards are mandatory for new plants, and recommended for others:

(1) With the exception of the auditorium/gymnasium, the facility shall contain air conditioning and a back-up ventilation system.

(2) Water for showers is temperature-controlled to provide an appropriate mix of hot and cold water.

(3) The hallway in detention living unit shall be no less than eight feet wide.

(4) Places of assembly for fifty or more persons and all housing units shall have two exits.

(C) The following standards are mandatory for additions and new plants, and recommended for existing:

(1) Living units are designed for single occupancy sleeping rooms.

(2) Single sleeping rooms have at least seventy square feet of floor space with minimum eight-foot ceiling.

(D) The following standards are recommended:

(1) If the facility is on the grounds of any other type of correctional facility, it is a separate self-contained unit.

(2) The average daily population for any given month does not exceed the rated capacity of the facility.

(3) The facility is designed and constructed so that children can be grouped in accordance with a classification plan.

(4) When seriously ill, mentally disordered, injured or nonambulatory children are held in the facility, there is at least one single occupancy cell or room for them that provides for staff viewing.

(5) The facility perimeter is secured in such a way that children remain within the perimeter and that access by the general public is denied without proper authorization.

(6) The facility operates with living units of no more than twenty-five children each, based on the annual average daily population.

(7) All housing areas provide for a minimum of:

Lighting as determined by the tasks to be performed;
One toilet and one wash basin for every five children;
Showers accessible to children;

A heating, ventilation and acoustical system to ensure healthful and comfortable living and working conditions for juveniles and staff;

Access to a drinking fountain.

(8) At least thirty-five square feet of floor space per child as determined by the annual average daily population is provided in the day room off each living unit. The day room has access to natural light.

(9) All sleeping rooms in detention facilities shall have access to natural light.

(10) Space is provided for the secure storage of chemical agents and of security equipment. The equipment is located in an area that is readily accessible to authorized persons only.

(11) The total indoor activity area provides space for at least one hundred square feet per child based on the annual average daily population.

(12) There are at least fifteen square feet of floor space per person for those occupying the dining room or dining area.

(13) When the facility provides food service, the kitchen is a separate and distinct area with ten square feet per child or two hundred square feet, whichever is less.

(14) School classrooms are designed in conformity with local and state educational requirements.

(15) There is a visiting area that allows for privacy during visits.

(16) There is an outdoor recreation area well-maintained and adequately designed to accommodate regularly scheduled recreation and group athletic activities.

(17) Space is available for religious services.

(18) The facility has a medical room with medical examination facilities available when medical services are provided in-house.

(19) When there is an isolation room separate from the living unit, such room shall be equipped to provide for the washing, drinking, toilet use, and safety needs of confined children.

(20) There is interview space available in or near the living unit.

(21) There is secure storage space provided for storage of child's property and personal belongings.

(22) There are storage rooms for clothing, bedding, and facility supplies.

(23) Closets for storage or cleaning supplies and equipment are located in each principal area and are well-ventilated.

(24) Separate and adequate space is provided for mechanical equipment.

History: Eff 12-11-88

§ 5139-37-09 New plant.

(A) The following standard is mandatory for renovation, additions and new plants, and recommended for existing:

The facility is constructed to provide for physically handicapped persons.

(B) The following standard is mandatory for new plants and additions:

Each living unit is designed so that individual rooms, day rooms, and program staff offices are in close proximity to children for purpose of communication and interaction.

(C) The following standards are recommended for new plants:

(1) Written policy and procedure provide that the new detention facility is built or that the existing facility expanded only after a needs evaluation study has been prepared in conjunction with appropriate local and state bodies.

(2) The facility site location is determined with participation from the community in which it is to be located.

(3) The facility is geographically accessible to juvenile justice agencies (law enforcement, prosecutors, court), community agencies, child's lawyers and family and friends.

(4) A written program philosophy is developed for the new facility which includes but is not limited to:

Description of the facility, including statutory authority and services to be provided;

Analysis of projected work load, staffing, programs and operating and capital Budgets;

Assessment of the impact of the facility on overall operation of the parent agency;

Justification for the facility;

Analysis of alternative means for achieving the same goals;

Description of space requirements;

Outline of budget and time restrictions;

Study of alternate ways of satisfying space requirements, including leasing; and

Renovation and new construction.

(5) Handicapped children are housed in a manner that provides for their safety and security. Cells or housing units used by them are designed for their use, and provide the maximum possible integration with the general population. Appropriate institutional programs and activities are accessible to handicapped children confined in the facility.

(6) There is a day room for each housing unit. The room is separate and distinct from sleeping area, which is immediately adjacent and accessible.

History: Eff 12-11-88

§ 5139-37-10 Safety and emergency procedures.

(A) The following standards are mandatory:

(1) The facility complies with applicable federal, state and local sanitation, safety and health codes and is inspected at least annually for compliance.

(2) The facility is equipped with noncombustible receptacles for smoking materials and separate containers for other combustible refuse at readily accessible locations in the living quarters and other locations throughout the facility. Special containers are provided for flammable liquids and for materials used with flammable liquids.

(3) Written policy and procedure provide for a qualified fire and safety officer to perform a comprehensive and thorough annual inspection of the facility for compliance with safety and fire prevention standards and for annual review of this policy and procedure. There is a monthly fire and safety inspection of the facility by a supervisor or other qualified staff member. There are quarterly evacuation drills.

(4) Written policy and procedure specify the facility's fire prevention regulations and practices to ensure the safety of staff, children and visitors. These include, but are not limited to: provisions for an adequate fire protection service, a system of fire inspection and testing of equipment at least annually, an annual inspection by local or state fire officials or other qualified person(s), and availability of fire hoses or extinguishers at appropriate locations throughout the facility.

(5) There are written plans that specify procedures to be followed in emergency situations, e.g., fire, disturbance, taking of hostages, natural disasters, strikes, bomb threats, work stoppage or other job action. These plans are made available to all applicable personnel and they are reviewed and updated annually.

(6) Written policy and procedure specify the means for the prompt release of children from locked areas in case of emergency, and provide for a secondary release system.

(7) All facility personnel are trained in the implementation of written emergency plans.

(8) Written policy and procedure govern the control and use of all flammable, toxic and caustic materials.

(9) The facility has a fire alarm system and an automatic detection system that is approved by the authority having jurisdiction. Whenever possible, all system elements are tested on a quarterly basis; the adequacy and operation of the system are approved by the state fire official or other authority annually.

(B) The following standards are recommended:

(1) The facility has available to it the services of a qualified fire and safety officer who reviews all policies and procedures related to safety and fire prevention.

(2) The facility has access to an alternate power source to maintain essential services in an emergency.

(3) Within ninety days after the effective date of this rule, specifications for the selection and approval of new furnishings indicate the fire safety performance requirements of the materials selected. Such materials are subject to careful fire safety evaluation before purchase or use. Neoprene or cotton mattresses treated with boric acid are recommended. Polyurethane is not to be used in any living area.

History: Eff 12-11-88

§ 5139-37-11 Security and control.

(A) The following standards are mandatory:

(1) Written policy and procedure limit the use of physical force to instances of self-protection, protection of the child or others, prevention of property damage, prevention of escapes and in accordance with appropriate statutory authority. In no event is physical force justifiable as punishment.

(2) Children involved in incidents of physical force must receive an appropriate evaluation to determine the need for medical treatment. The evaluation may not be conducted by an employee involved in the incident.

(3) A written report is prepared following all uses of physical force and is submitted to the facility administrator.

(B) The following standards are mandatory for new plants:

(1) The facility maintains a control center.

(2) Power generators are tested at least every two weeks and other emergency equipment and systems are tested at least monthly for effectiveness and repaired or replaced as necessary.

(C) The following standards are recommended:

(1) There is a manual containing the facility's policies and procedures for security and control, which includes detailed instructions for implementing these procedures; the manual is made available to all personnel and is reviewed annually and updated as necessary.

(2) The use of chemical agents and related restraining devices is discouraged. Written policy and procedure govern the availability, control and use of chemical agents and related security devices. Chemical agents and related security devices are used only in accordance with the written policy and procedure. A written report is prepared following all uses of force incidents and is submitted to the facility administrator.

(3) Written policy and procedure require that all security perimeter entrances, exterior doors and all doors the facility administrator determines should be locked are kept locked, except when used for admission or exit of employees, detained children or visitors, and in emergencies.

(4) The facility has a system to physically count children that includes strict accountability for children assigned to work and educational release, furloughs and other approved temporary absences.

(5) Facility staff maintains a daily report of juvenile population movement.

(6) Written policy and procedure require that supervisory staff maintain a permanent log and prepare shift reports that record routine and emergency situations.

(7) Written policy and procedure provide for notifying appropriate staff of increases and decreases in the population on a shift-by-shift basis.

(8) Written policy and procedure provide for weekly inspection and maintenance of security devices; corrective action is initiated when necessary.

(9) Written policy and procedure require that first line supervisory staff inspect every area of the facility daily and submit a written report to an administrative official for review whenever deficiencies are noted.

(10) Written policy and procedure require that the facility administrator or designee and other department heads view and communicate with children in living and activity areas.

(11) The written plan for searches of the facility and children to control contraband has been reviewed by legal counsel to ascertain the legality of the plan.

(12) The policy regarding searches for the control of contraband is published, made available to staff and children, and reviewed at least annually and updated if necessary.

(13) Written policy and procedure provide for the least-intrusive method of search consistent with the safety and security of the facility.

(a) Youth who are entering or who have entered a detention center may be searched by; the use of a magnetometer or similar device; by a pat down of the youth conducted by a person of the same sex as the youth; and by an examination of any personal effects within the detention center. Such searches must be done uniformly or by automatic random selection in order to prevent discriminatory or arbitrary searches.

(b) Upon entering a facility, any youth being integrated into the general population, may be visually observed while changing into clothing that is required to be worn within the facility.

(14) Strip searches or body cavity searches of youth may be conducted with the approval of the superintendent of each center if the following standards are met:

(a) There is a reasonable suspicion that the youth intends to convey or has conveyed an illegal object or substance into the detention center. This reasonable suspicion must be based upon:

- (1) Specific objective facts;
- (2) Reasonable inferences drawn from those facts;
- (3) Specific factors in the youth's background that support the necessity of such search in light of reasonable cause.

(b) Strip searches or body cavity searches are to be conducted in privacy and by staff who are of the same sex as the youth being searched. Staff members of the opposite sex should only be present if needed for security purposes.

(c) Body cavity searches are to be conducted only by medical personnel.

(15) Written policy and procedure provide that staff regulate the movement of children.

(16) Written policy and procedure require children in the general population be observed at least every hour while in sleeping rooms. The verification of the contact shall be documented.

(17) All special incidents, including but not limited to, the taking of hostages, use of restraint equipment or the use of physical force are reported in writing, dated and signed by the staff person reporting the incident. The report is placed in the child's case record and reviewed by the facility administrator and/or the parent agency.

(18) Except in emergency situations, firearms are not permitted in the facility beyond what the facility administrator has defined as the security perimeter of the detention center.

(19) Written policy and procedure govern the control and use of keys.

(20) Written policy and procedure govern the control and use of tools, medical and culinary equipment.

(21) There are written operational shift assignments or post orders that state the duties and responsibilities for each assigned position in the facility. These shift assignments are reviewed at least annually and updated if necessary.

(22) There are written procedures for handling escapes, runaways and unauthorized absences. These are reviewed at least annually and updated as necessary.

(23) Written policy and procedure provide that all adults injured in an incident receive an appropriate evaluation to determine the need for medical treatment.

(24) Written plans govern space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the juvenile detention facility; these plans are reviewed annually and updated if necessary.

(25) Written policy and procedure provide for a communications system within the facility, and between the facility and the community, in the event of an emergency.

(26) Written policy and procedure provide that the facility maintain a written record of routine and emergency distribution and use of restraining devices.

(27) The use of restraining devices is discouraged. Written policy and procedure provide that instruments of restraint are never applied as punishment and are applied only in accordance with written policy and procedure.

(28) Written policy and procedure govern safety and security precautions pertaining to facility and staff vehicles.

(29) Transportation is available for use in emergencies.

(30) Written policy and procedure govern the detention center's transportation of children outside the facility and from one jurisdiction to another.

History: Eff 12-11-88; 9-6-94

§ 5139-37-12 Food service.

(A) The following standards are mandatory:

(1) Written policy and procedure and practice provide that an adequate diet including snacks, when provided, incorporating the four basic food groups based on the most recent dietary allowance is provided to all children. Menus are reviewed annually by the responsible health care authority or a licensed dietitian.

(2) Written policy and procedure shall provide that any facility housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided as ordered by the responsible health care authority. The facility administrator shall certify the administration of the meals as ordered.

(3) Written policy prohibits meals and/or snacks being used in any punitive manner as a consequence of behavior.

(4) Written policy and procedure specify that food service shall be properly supervised and shall comply with the applicable sanitation and health code as promulgated by federal, state and local authorities.

(B) The following standards are recommended:

(1) Written policy and procedure and practice provide that there shall not be more than fourteen hours between meals and at least three meals and a snack shall be made available at regular times during each twenty-four-hour period. At least one of these meals shall be a hot meal.

(2) Written policy and procedure shall designate that each facility shall have a person on staff responsible for

the overall preparation and distribution of all meals assuring the utilization of acceptable food handling practices.

(3) The food service plan provides for a single menu for staff and children.

(4) Menus shall be planned at least a week in advance. Records of food purchased and menus shall be filed for one year.

(5) Upon reasonable request, food shall be provided to a child when admitted to a facility.

History: Eff 12-11-88; 11-3-04

§ 5139-37-13 Sanitation and hygiene.

The following standards are recommended:

(A) Written policy and procedure and practice require that the facility administrator, in conjunction with the facility's governing body, shall develop and implement a system designed to detect building and equipment deterioration, safety hazards and unsanitary conditions, and to provide the proper reporting of needed correction or modification. Such policies and procedures shall include a written plan for a daily inspection of the facility. Such inspection shall be recorded. Maintenance records shall be kept and subject to review by authorized personnel.

(B) Children shall be provided the opportunity for daily showers and showers after strenuous activities.

(C) Written policy, procedure and practice provide for the control of vermin and pests by a licensed professional.

(D) Written policy, procedure and practice provide that soap, washcloths, towels, toothbrush, toothpaste, deodorant, shampoo, hair and skin products and personal hygiene supplies shall be provided to the child by the center.

(E) Written policy, procedure and practice shall designate the specific duties that the children must assume in the care and upkeep of their own sleeping and living quarters. Each juvenile shall be provided a bed, mattress, and a supply of sanitized linens. Used bed linens and mattresses shall be sanitized prior to reissue.

(F) Written policy shall require that under no circumstances shall a child confined in a detention center replace a janitor, maintenance, caretaking staff or other staff normally maintained for operations of the facility.

(G) Written policy, procedure and practice provide that programs comply with all applicable governmental regulations and standards. At a minimum, these policies cover the following:

- (1) Sanitation inspections
- (2) Water supply testing
- (3) Waste disposal
- (4) Housekeeping
- (5) Clothing and building supplies
- (6) Bathing and personal hygiene
- (7) Hair care services

History: Eff 12-11-88; 11-3-04

§ 5139-37-14 Medical and health care services.

(A) The following standards are mandatory:

(1) Written policy and procedure require each facility to have a licensed physician(s) or medical resources, such as a hospital or clinic, designated for the medical supervision, care and treatment of residents. The facility shall ensure twenty-four-hour availability of consultation, ad-

vice and emergency services response. Such resources shall be located in the same or nearby community.

(2) Written health care policies and procedures shall be approved and signed by the responsible health care authority.

(3) Policy and procedure require that within seven days before or after an admission an assessment shall be performed and recorded by a physician and/or qualified health personnel to determine the apparent health of the child. Medical arrangements for community follow-up shall be implemented when required.

(4) Written policy and procedure provide for the prompt notification of parents/guardians of the child as well as the responsible agency in case of serious illness, serious surgery, serious injury and death.

(5) Written policy and procedure require the security of all drugs and medical records and supplies to be maintained at all times. This includes a drug enforcement administration number of all pharmaceutical compounds at that facility.

(6) Written policy and procedure require that a medical record be maintained on each child which shall include pertinent information concerning illnesses, communicable diseases, physical abnormalities, allergies and the administration of treatment.

(7) Written policy and procedure require a written plan for the staff's response to children who are identified as potentially suicidal.

(8) Written policy and procedure require that first-aid kits are available. The responsible health care authority approves the contents, number, location and procedure for periodic inspection of the kits.

(9) Written policy prohibits the administration of stimulants, tranquilizers, or psychotropic drugs, solely for behavior management.

(B) The following standards are recommended:

(1) Written policy and procedure require that the administration of all medicines be authorized by the appropriate health care authority.

(2) Written policy and procedure require initial health screening of all children, including intra-system transfers, upon arrival at the facility. The screening shall be performed by qualified health care personnel or by other personnel trained in health screening techniques. All findings are recorded on a printed screening form approved by the responsible health care authority.

(3) Written policy and procedure shall be developed and implemented for medical isolation under the direction of qualified health care personnel.

(4) Written policy and procedure require that the ultimate responsibility for arranging emergency treatment of dental needs be that of the center.

(5) Written policy and procedure provide that necessary medical services, which cannot be provided within the facility, be provided at a nearby hospital or other medical facility.

(6) Written policy and procedure provide that child-care staff and other personnel are provided with a training program that is established by the responsible health care authority in cooperation with the facility administrator and includes the following:

- (a) Recognition of signs and symptoms, and knowledge of action required in potential emergency situations;
- (b) Administration of first aid and cardiopulmonary resuscitation (CPR);
- (c) Methods of obtaining assistance;

(d) Signs and symptoms of mental illness and retardation, chemical dependency, venereal disease, and parasitic infestation;

(e) Procedures for patient transfer to appropriate medical facilities or health care providers.

(7) An adequate and proper supply of antidotes and other emergency drugs, and related information, is readily available to staff to meet the needs of the facility. Such antidotes and emergency drugs are administered only as prescribed by a qualified health care authority.

(8) The facility has written policy and procedure governing the development, and subsequent updating, of a facility formulary or drug list for pharmaceuticals stocked by the facility.

(9) Written policy and procedure require that children be informed of the procedures for gaining access to medical services.

(10) Written policy and procedure specify that emergency mental health services for children be provided by qualified mental health professionals.

(11) Written policy and procedure provide for informing appropriate staff of special medical and mental health problems of children.

History: Eff 12-11-88

§ 5139-37-15 Juvenile rights.

(A) The following standard is mandatory:

Written policy provides that children are not subjected to corporal punishment.

(B) The following standards are recommended:

(1) Written policy and procedure provide that children are not subjected to humiliation, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping.

(2) In order to assure a minimum quality of life, children while housed in a detention center have the right to a nurturing, safe environment, including, but not limited to:

(a) Adequate nutrition, clothing, hygiene supplies, housing and medical care;

(b) Participation in an educational/training program;

(c) Be treated with respect and dignity;

(d) Interpretation of all rules and regulations, consistent with the child's level of comprehension;

(e) Reasonable communication and visits to be limited only by the necessity to maintain order and security;

(f) Assurance of freedom from discrimination based upon race, national origin, color, creed, sex, or handicaps.

History: Eff 12-11-88

§ 5139-37-16 Discipline, control and management of children.

The following standards are recommended:

(A) Written policy and procedure require that written rules of juvenile conduct specify all acts that are prohibited within the facility. When a literacy or language problem prevents a child from understanding the rules, a staff member or translator will assist the child in understanding the rules. The written rules are reviewed annually and updated, if necessary.

(B) Written policy and procedure require that within a reasonable length of time, depending on child's attitude and behavior, the child has the cause for any disciplinary

action explained to him/her and has an opportunity to explain the behavior leading to disciplinary action.

(C) Written policy and procedure require that children who are in disciplinary isolation be observed at least every fifteen minutes and that verification of contact shall be documented.

(D) Written policy and procedure shall require the employees prepare a disciplinary report when a child has committed a major violation of facility rules.

(E) Written policy and procedure require that when a child has been charged with a major rule violation requiring isolation for the safety of the juvenile or staff or other juveniles, or to ensure the security of the facility, such confinement is reviewed by each shift. After twenty-four hours, the facility administrator or his/her designee shall review the incident of isolation. Each juvenile placed in isolation shall be talked with by the superintendent or his/her designee at least once each morning and once each evening to determine continued isolation. The superintendent or his/her designee will record observations after assessing the child's general condition and attitude.

(F) Written policy and procedure provide for review of all disciplinary reports and dispositions by the facility administrator or his/her designee to assure conformity with policy and regulations.

(G) Written policy and procedure ensure that a child shall have a right to a review of disciplinary actions by a supervisory or administrative staff member who has not been a party to the disciplinary action.

History: Eff 12-11-88

§ 5139-37-17 Admission and release procedures.

(A) The following standard is mandatory:

Admission to detention and release shall be in accordance with the applicable "Ohio Rules Of Juvenile Procedure" and with the sections of the Ohio Revised Code which relate to detention and shelter care.

(B) The following standards are recommended:

(1) Written policy and procedure require that all admitted children, except those excluded for security or safety reasons, join a living unit not later than three hours after admission.

(2) Written policy and procedure for admission to detention shall be developed by the appropriate authority. Such statement shall include but not be limited to:

(a) Criteria for determining whether to release or to detain juveniles; and who will make this decision.

(b) procedure and descriptions of alternatives to detention.

(c) One employee shall be designated on duty in-house and empowered with hold/release authority.

(3) Written policy and procedure shall require that a designated employee be responsible for notification to parents, guardians, custodians (individual or agency) of the children being detained in their center.

(4) Written policy and procedure shall require that after the admission of a child, the detention center shall attempt to verify prescribed medications and the proper dosages of these medications. Staff shall ensure that the medications are administered at the time intervals prescribed by the appropriate medical authority.

(5) Written policy and procedure require that each child be afforded the opportunity to shower and be provided clean clothing upon admission.

(6) Written policy and procedure shall require that upon admission, each child shall be provided written orientation material which explains relevant court procedures, behavior expectations, privileges, and responsibilities while a resident of the center.

(7) All releases shall be approved by the court of competent jurisdiction or other appropriate authority.

History: Eff 12-11-88

§ 5139-37-18 Program.

(A) The following standards are mandatory:

(1) Children are not permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor.

(2) All academic teachers are certified by the Ohio department of education.

(3) Children's attendance at religious services and functions shall be voluntary.

(B) The following standards are recommended:

(1) Written policy and procedure require at least twelve hours of programming inclusive of school educational programs shall be provided for each child during weekdays and ten hours on weekends and holidays.

(2) Academic programs in detention facilities are designed to assist detained children in keeping current with their studies and are available at a minimum of two and one-half hours per school calendar day following detention hearings. Restriction of educational programs can be approved only by facility administrator or designee.

(3) Vocational supervisors and instructors are licensed or accredited by the state or jurisdiction in which the facility is located.

(4) The facility provides or makes available the following minimum services and programs to all children admitted:

Diagnosis;

Education program;

Visiting with parents/guardians;

Communication with visitors and staff;

Crisis counselling;

Medical services;

Food services;

Recreation and exercise;

Psychiatric and psychological counselling (for preadjudicated children these services are provided only in crises);

Religious programming.

(5) Written policy and procedure require that applicable programs are initiated for children upon entry to the facility.

(6) Written policy and procedure provide a recreational and leisure-time plan that includes, at a minimum, at least one hour per day of organized group large-muscle activity, and one hour of structured leisure-time activity.

(7) Written policy and procedure require that the facility have staff who coordinate and supervise the recreational program.

(8) Written policy and procedure require that library services be made available to all detained children. Written policy outlines specific criteria for utilizing, selecting and maintaining appropriate materials.

(9) Written policy and procedure require that the center shall provide reasonable access to religious programming. No negative consequences shall accrue from a child's refusal to participate in a religious service or religious function. All religions shall be afforded equal

status and protection, subject to the limitations necessary to maintain order and security.

(10) Written policy and procedure provide that work assignments shall not conflict with minimum education programs.

History: Eff 12-11-88

§ 5139-37-19 Visitation and communications.

The following standards are recommended:

(A) Visitation. Each facility shall have a written visitation plan and shall include the following:

(1) A minimum of three assigned visitation periods per week for parents, legal guardian, or custodian, at least one of which must be scheduled in the evening or on the weekend.

(2) Provisions in the plan shall allow for exceptions to the regularly scheduled hours to accommodate for parents' work schedules, illnesses or other reasonable requests.

(3) Provisions shall be made for the residents to visit with their attorney of record at any time. Attorney visits will not be monitored, but will be recorded.

(4) The child may be visited at reasonable times by adult family members, clergy and teachers.

(5) Visitations should be conducted in an area which provides as much privacy as possible and subject only to the limitations necessary to maintain order and security.

(6) Written policy and procedure specify that visitors register upon entry into the facility and specify the circumstances under which visitors are searched.

(7) A visitation may be denied if there exists reasonable grounds to believe that the visit might endanger the security of the facility. Reasons for denial of a visit shall be in writing and placed in the resident's detention record.

(8) Visitation rules must be in writing and shall be made readily available to all children, parents, legal guardians, custodians, and attorneys.

(9) Children have the privilege of refusing to see any particular visitor. These refusals shall be documented and placed in the child's record.

(B) Correspondence. Each facility shall have a written plan for handling of residents' mail.

(1) Except where a court order exists to the contrary, residents shall be allowed the freedom to correspond. The detention center shall provide each resident with at least two first class stamps per week.

(2) No correspondence to or from residents shall be censored. No correspondence to or from a resident shall be read by staff unless the facility administrator has reasonable cause to believe the content of the correspondence may incite to endanger the facility order or security. If correspondence is read, the child must be informed.

(3) All incoming and outgoing mail is forwarded within twenty-four hours, excluding weekends and holidays.

(4) Incoming mail may be checked for contraband. Contraband shall consist of any object or substance, the possession of which would constitute a crime under the laws of the state of Ohio, or any object or substance which would pose a danger to facility order and security.

(5) The facility will provide postage, above and beyond the provision of paragraph (B)(1) of this Rule, for residents to correspond with their attorney of record.

(C) Telephone communication. Each facility shall have a written policy which provides residents with access to telephone communications.

(1) A child must be informed of the right to telephone parents and attorney immediately after being admitted and at reasonable times thereafter.

(2) Children will be permitted reasonable access to telephone communication with community agency professionals and parents, subject only to those limitations necessary to maintain facility order and security.

History: Eff 12-11-88

Chapter 5139-61

Community Juvenile Corrections Facilities

Section

- 5139-61-03 Administration of community juvenile corrections facilities: responsibilities of the department.
- 5139-61-04 Administration of community juvenile corrections facilities: responsibilities of the grantee.
- 5139-61-07 Application requirements.
- 5139-61-09 Approval process.
- 5139-61-10 Appeal process.

§ 5139-61-03 Administration of community juvenile corrections facilities: responsibilities of the department.

The department shall establish, administer, and monitor a program of financial and technical assistance to grantees for the operation of facilities to serve eligible youth. The administration of the program includes, but is not limited to:

(A) Apportioning available funds to those grantees with designated community juvenile corrections facilities constructed in accordance with Amended H.B. 812 of the 117th General Assembly;

(B) Establishing procedures and time frames for submitting applications to the department for grant funds;

(C) Reviewing each grant application to ensure that the application is in compliance with all applicable administrative rules;

(D) Monitoring facilities to ensure compliance with the program design as stated in the application, and applicable standards;

(E) Providing technical assistance regarding the development of training, including culturally competent training;

(F) Developing reporting requirements to determine the participating grantees progress toward reducing commitments to the department;

(G) Establishing a review process to evaluate the effectiveness of the facility in meeting its goals and objectives. This shall be done in cooperation with the grantee.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-61-04 Administration of community juvenile corrections facilities: responsibilities of the grantee.

The grantee representing a facility is eligible to receive grant funds by following these procedures:

(A) Maintaining compliance with standards established under Chapter 5139-36 of the Administrative Code.

(B) Applying for grant funds and completing an application which describes:

(1) The standardized screening process to ensure that all eligible youth are considered for admission to the facility, including the notification process between the courts and the facility.

(2) The plan to reduce commitments to the department, including measurable goals and objectives.

(3) Programs and services offered by the facility.

(4) The method to be utilized to monitor and evaluate the programs and services available to youth in the facility; and,

(5) The plan to ensure access to the facility and its services by minority juveniles.

(C) Participating in all monitoring and evaluation procedures required by the department.

(1) The division of parole and community services, through the bureau of community based programs (BCBP), shall be charged with the inspection, supervision and approval of community correctional facilities (CCF).

(2) The bureau shall make annual on-site inspections of CCF's funded by the Ohio department of youth services. Such inspections shall be scheduled in advance with written notice to the person in charge of the CCF.

(3) The bureau's field representatives shall have full access to all areas of the CCF during an inspection, and to all records (including juvenile files), relating to the operation of the facility.

(4) The bureau's field representatives shall ascertain compliance with the department of youth services standards contained in rules 5139-36-01 to 5139-36-17 of the Administrative Code and the department of youth services grant agreement and all other applicable guidelines:

(a) Within thirty days after an inspection the bureau's field representatives shall prepare a written report of its inspection. The report shall include any findings of non-compliance and shall be sent to the person in charge of the CCF.

(b) The bureau shall require the facility to correct all deficiencies within thirty days from notification or to submit an acceptable plan and timetable to remedy these areas.

(c) The department may withhold funding for failure to comply with such notices, at the end of this thirty day period.

(5) For CCF's to be approved and receive grant funds they must comply with Chapter 5139-36 of the Administrative Code.

(6) Administrators of operating programs shall be notified of prearranged inspection dates. Such notification shall be made thirty to sixty days prior to the approval expiration date.

(7) For new facilities, notification shall be made after a preliminary self-reporting form has been received and evaluated.

(8) Notification shall be by telephone and will be followed by written notification. The notification will include the date, time, and the names of individuals comprising the inspection team.

(9) Once at the facility, the inspection team will meet with the CCF administrator and key facility staff to explain and criteria that will be used in the inspection, the reason(s) for the inspection and any other relevant matters.

(10) The bureau may conduct unannounced inspections anytime after formal approval has been granted. Should the bureau conduct unannounced inspections, the

notification requirement in paragraph (C)(8) of this rule does not apply.

(11) The CCF administrator shall make himself/herself, and key facility staff, available in the event the inspection team has questions or needs additional information.

(12) The CCF administrator shall prepare for the on-site inspection visit in accordance with the bureau's guideline and instruction manual distributed prior to the beginning of each fiscal year.

(13) A waiver for non-applicability of a standard shall be requested in writing at least thirty days in advance of the annual on-site scheduled visit. This request will be reviewed by the bureau chief of community based programs. The decision by the chief is final and may not be appealed.

(D) Ensuring that all standardized information and report forms required by the department are completed and submitted by designated deadlines;

(E) Submitting an annual report by August thirty-first of each year that describes the progress made toward achieving the goals and objectives as described in the application, program overview and statistical data programs, outcomes and youth demographic information.

(F) Appointing a community corrections facility advisory committee.

(G) Developing a substance abuse policy. The policy must be reviewed and approved by the department.

(H) Following the procedures and the admission criteria outlined in rule 5139-61-06 of the Administrative Code.

(I) Grantees that choose to participate in joint programs shall follow these procedures:

(1) Joint applications shall be completed in the same way as single grantee applications, with the required information combined from all participating grantees.

(2) An agreement between the counties shall designate the grantee which will be responsible for the application, and implementation of the program.

(3) The administrative duties set forth in this chapter shall be exercised by the facility administrator.

History: Eff 3-30-92 (Emer.); 6-25-92; 10-25-02; 2-3-04

§ 5139-61-07 Application requirements.

Each initial application for a grant shall include:

(A) The overall facility program plan, which includes:

(1) The problem statement;

(2) A description of existing community programs and services for eligible youth;

(3) The mission and goals of the facility;

(4) The diversion plan which describes the plan to reduce commitments to the department. The plan shall include:

(a) The number of youth previously committed to the department for each participating county during the previous fiscal year;

(b) The number of youth previously recommitted or revoked from each participating county during the previous fiscal year;

(c) The estimated number of youth who will be diverted from a commitment to the department by being admitted to the facility during the fiscal year;

(d) The estimated number of youth who will be diverted in lieu of a recommitment or revocation by being admitted to the facility during the fiscal year;

(e) The total number of youth to be served by the facility during the fiscal year;

(f) The distribution of beds for each participating county;

(g) The length of time that youth are expected to remain in the facility; and,

(h) The eligibility criteria.

(5) The admission procedure;

(6) A description of programs and services available to youth, which shall include at a minimum:

(a) Basic living programs;

(b) Recreation programs;

(c) Educational programs;

(d) Job training and job readiness programs;

(e) Counseling/treatment services, including specialized services;

(f) Medical services;

(g) Religious services;

(h) Mental health services; and,

(i) Substance abuse services.

(7) The community resources to be used by the facility;

(8) The sanctions to be imposed on youth who violate rules of the facility;

(9) A description of the methods utilized to monitor and evaluate the facility's programs and services;

(10) The plan for aftercare services;

(11) A table of organization for the facility;

(12) A list of all personnel titles and their job descriptions, and a staffing pattern/schedule for a thirty day period;

(13) The plan for obtaining accreditation from the American Correctional Association for the facility;

(14) The substance abuse policy for the facility;

(15) A list of the community corrections advisory committee members; and,

(16) All policies and procedures of the facility.

All subsequent applications shall include paragraphs (A)(4) and (A)(5) contained in this rule, and only the other areas which have changed since the initial application. All fiscal requirements stated in Chapter 5139-63 of the Administrative Code shall be included in each application.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-61-09 Approval process.

(A) By January fifteenth of each year, the department shall forward an application for grant funds to eligible facilities. Facilities participating in the community juvenile corrections facility grant for the first time must complete the entire application. Facilities that are renewing applications are required to complete any fiscal requirements in section 5139.63 of the Revised Code, only paragraph (A) of rule 5139-61-07 of the Administrative Code, and any other items that have been modified since the initial approved application.

(B) Applications shall be submitted to the department no later than March first.

(C) On or before April thirtieth, the facility shall be notified of the approval or non-approval of its application.

(D) A notice of non-approval shall be sent by certified mail. The notice shall state the reason for which non-approval is based.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-61-10 Appeal process.

(A) The facility administrator may initiate an appeal in writing within thirty calendar days of the receipt of the

notice of non-approval. A request for appeal must be sent by certified mail to the director of the department, responding specifically to each of the reasons(s) for non-approval.

(B) Within thirty days following the receipt of the appeal, the director or designee shall conduct a hearing to consider merits of the appeal. A decision shall be rendered within thirty days of the hearing and be sent by certified mail to the facility administrator.

(C) The decision of the director is final and may not be appealed. An appeal under Chapter 119. of the Revised Code shall not be granted.

History: Eff 3-30-92 (Emer.); 6-25-92

Chapter 5139-63

Fiscal Rules for Community Juvenile Corrections Facilities

Section

5139-63-03	Budgetary requirements.
5139-63-04	Allowable expenses.
5139-63-05	Non-allowable expenses.
5139-63-07	Audit scope requirements.
5139-63-08	Audit exception process.
5139-63-09	Financial and budget control reports.
5139-63-10	Record retention, preservation and accessibility.

§ 5139-63-03 Budgetary requirements.

This rule identifies the major elements of which the county(s) must be aware to correctly complete required budgetary reports.

(A) Financial reports. The financial reports required by this chapter are designed to enable the department to monitor the various schedules of the approved grant.

(B) Grant budgets. The grant budgets shall be annual, based on the state fiscal year. The grant budgets shall include budget schedules and narratives.

The facility shall follow the chart of accounts provided by the department in establishing a budget for projected expenditures of funds. All obligations must be incurred, pursuant to Chapter 5139-63 of the Administrative Code, within the grant period and liquidated by September thirtieth of following fiscal year, only exceptions are unemployment and worker's compensation, which will be recognized as an expense in the year that they are paid.

(C) Nonsupplanting rule. Funds provided to a county facility shall not be used to supplant county expenditures.

(D) Over-expenditures within approved grant. Expenditures may not exceed an approved grant schedule by more than ten percent. If the transfer of funds within the approved budget would alter the nature of the grant, such transfer may be made only with an approved budget revision.

(E) Equipment purchases. Equipment purchases are limited to the items approved in the budget plan and can only be used for the grant. Before any purchases are made for additional equipment items, a budget revision must be submitted and approved by the department.

Equipment purchased will remain the property of department for a period of five years from the date of acquisition. After the five-year period, the equipment items purchased will become the property of the facility.

Use of grant equipment by other programs must be approved in advanced by the department.

Minor equipment is listed in the chart of accounts under supplies and material.

If an emergency situation should occur, which would require a budget revision to repair/replace the equipment, the facility should contact the administrator, subsidy unit for approval. The facility should follow-up their request in writing and a written approval should follow from the administrator, subsidy unit.

(F) Total expenditures submitted to the department shall not exceed the grant for the fiscal year. If the county determines or demonstrates due, to an emergency situation or unexpected occurrence that projected expenditures will exceed the grant-, a written request must be submitted to the department no later than April fifteenth, unless waived by the director. Requests will be evaluated based on the nature of the request and availability of state funds.

(G) Commingling of funds. Revenue from sources other than grant funds received from the department (i.e., donations, federal grants, etc.) will not be deposited or commingled with grant funds. Grant funds from the department should be readily identifiable and able to be audited independently.

(H) Food. Funds from other sources which are not used to expand existing services (i.e., reimbursement from food sold to staff and visitors, refunds, rebates, etc.) will be reported as a reduction in expenditures. Food cost will be based on a cycle menu reviewed and approved by department's food service unit. The facility shall work with the department to develop any possible resources and revenues which would expand the funding base of the facility (i.e., NSLA funds and other resources).

(I) Routine medical. Expenses incurred for the examination and appropriate routine medical care and treatment of youth residing in the facility.

(J) Major medical. In the event of hospitalization, or other extraordinary type of medical treatment, the facility is to file a request with the administrator, office of business management pursuant to established procedures reflected in the budget forms and instructions. This form is to be submitted prior to scheduling non-emergency major medical procedures or within ten days of any medical emergency.

This request will be approved based upon paragraph (F) of rule 5139-63-03 of the Administrative Code.

(K) Accrued vacation/sick leave. The department will recognize this expense when paid. This expense category is classified as an accrued liability. Transfer of surplus funds from this line item will be restricted to the excess of the established liability. The department will only allow this liability for leave time earned by the employee while employed at the facility.

(L) Other resources. Funds received from other sources will be reported as a reduction in expenditures for the respective line item(s) (i.e., national school lunch act, food).

History: Eff 3-30-92 (Emer.); 6-25-92; 10-25-02

§ 5139-63-04 Allowable expenses.

The categories of allowable expenses are to be used to implement the grant as specified in Chapter 5139-63 of the Administrative Code.

(A) Capital repairs. Capital repairs expenditures must be made in accordance with state, federal, and local laws for such facilities which substantially provide direct service for eligible youth.

(B) Equipment. Expenditures for equipment may be approved only if the equipment is used in the direct performance of services to youth or support staff within the facility.

(C) Personnel. This category includes salaries and fringe benefits for staff funded by the grant.

(D) Travel/staff development. This category is limited to youth residing in the facility and the staff funded by the grant.

This includes the costs incurred for staff attending conferences, seminars, registration fees, and in-service training. Staff training must be job related.

Out of state travel/registration must have prior approval of the director of the department.

(E) Contractual services. This category shall not exceed the unit cost established by department's chart of accounts. If a modification is required, a request shall be submitted in writing and approved in advance.

A written agreement with the contractor is required and must be on file for audit purposes. Examples of these are: professional fees, consultant fees, temporary services, and security fees.

(F) Food. This category is limited to the youth residing in the facility. Meal cost reimbursement by staff and visitors is required and shall be recorded.

(G) Medical. This category is limited to the youth residing in the facility in need of medical assistance. Examples are physicians, dental, and psychologists.

(H) Supplies and materials. This category is for supplies and materials needed for the day to day operations of the facility as defined in the chart of accounts including minor equipment.

(I) Motor vehicle. This category includes expenditures for maintenance/repairs of operating vehicles for the facility. This expense includes gas, oil, leasing, repairs, insurance, and licenses/permits.

(J) Communications. This category includes expenditures for operating facility. Examples are telephone, postage, postage meter, and shipping.

(K) Fuels and utilities. This category includes expenditures for maintaining the facility. Examples are gas, water, and electric.

(L) Maintenance and repairs. This category includes costs required to maintain and repair equipment used by the facility. Examples are maintenance contracts and heating and cooling equipment.

(M) Rentals. This category includes rentals expenses needed for maintaining facility. Example is copier equipment.

(N) Printing, binding and advertising. This category includes expenditures for printing, advertising, and subscription/publications.

(O) Indirect cost. This category includes services and other administrative functions provided to the facility by the county. These charges shall not exceed five percent of the grant and a detailed documentation shall be submitted.

(P) Petty cash account. This category is for the sole purpose of paying small incidental expenses. The expenses must be in keeping with and adhering to the state and county guidelines.

Upon request the department shall establish a spending ceiling based on cash flow analysis prepared by the internal audit section of the office of business management.

(Q) Fair market value. This category is that all expenditures are allowable only to the extent that they meet the test of "fair market value".

(R) Competitive bidding. This category is that all expenditures are allowable only to the extent that they meet the test of "competitive bidding".

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-63-05 Non-allowable expenses.

The following expenditures are non-allowable:

(A) All costs incurred in fund-raising activities.

(B) All costs for awards or social functions for staff.

(C) Programs that are intended to generate profits for the county.

(D) Entertainment for staff.

(E) All costs related to licensing, professional fees, or dues for personnel, unless required by job.

(F) College tuition reimbursement for facility employees.

(G) Expenditures which have not been approved by the department related to major dental, major medical, and hospital for youth residing in the facility.

(H) Food cost for staff and visitors.

(I) Any other expense or activity that would be a violation of federal, state or local laws.

(J) Payment of accrued vacation and sick leave prior to employment at the facility.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-63-07 Audit scope requirements.

It shall be the responsibility of the department to perform the following auditing functions:

(A) Pre-audit the applications, budget revisions, and requests for funds to ensure compliance with fiscal guidelines of the department;

(B) Post-audit the fiscal and performance record in accordance with generally accepted auditing standards. The scope of the audit will encompass, but may not be limited to, the following:

(1) An examination of financial transactions, accounts, and reports pertaining to the approved plan; and

(2) An evaluation of compliance with the established rules and plan under Chapters 5139-61 and 5139-63 of the Administrative Code.

(C) Upon the completion of the post-audit examination an audit report shall be issued which shall include a statement regarding:

(1) The expenditures of funds; and

(2) Compliance with applicable regulations and the approved grant plan with approved revisions and amendments.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-63-08 Audit exception process.

(A) Interim exceptions. Within sixty days of the date of the filing of the reports under rules 5139-63-03 and 5139-63-09 of the Administrative Code, the department shall, in writing, notify the facility administrator of its intention to take interim exceptions to any of the actual and projected costs therein reported. The department shall include in this notification a sum certain by which it proposes to either increase or decrease the grant plan and/or expenditures incurred during the fiscal year covered by this report.

(B) Audit and actual exceptions. Within one hundred twenty days of the date the department conducts a

post-audit as required under paragraph (B) of rule 5139-63-07 of the Administrative Code, the department shall, in writing, notify the facility administrator of its intention to take exception to any of the actual costs therein reported.

(C) Appeal of exceptions. If, within forty-five days of the date of any department notification under paragraph (A) or (B) of this rule, the facility administrator does not file with the department a request for appeal, the action proposed in the department notification shall be final and binding.

This request for appeal must be submitted to the director, department of youth services.

History: Eff 3-30-92 (Emer.); 6-25-92

§ 5139-63-09 Financial and budget control reports.

This rule identifies the major elements to correctly complete the required financial reports.

(A) The financial report and request for funds system is based on a quarterly cash advance, with a quarterly and year-to-date report of expenditures, by schedule, with a report of cash balance on hand at the end of the reporting period.

The required financial report shall be submitted according to the annual schedule prepared by the department. If the facility fails to submit the required reports, the department shall withhold any future payments until such reports are submitted.

(B) Forms/schedules. The data required shall be submitted to the department according to instructions and forms/schedules provided by the department.

(C) Request for funds. The appropriate form shall be submitted with the quarterly financial reports.

(D) Final report. The facility shall submit a final report of grant budget expenditures within ninety days after the close of the state fiscal year.

If any cash residue remains it is to be kept in the county's grant account to be carried over into the next fiscal year in the third quarter. The department and facility shall adjust, the current year's allocation by the amount of carry-over from the previous year.

History: Eff 3-30-92 (Emer.); 6-25-92; 10-25-02

§ 5139-63-10 Record retention, preservation and accessibility.

(A) With reasonable advance notice, the department may require the facility to produce records, including any or all documents related to the grant.

(B) The facility must maintain accurate accounting records which indicate all income and expenditures for the grant.

(C) The records must be kept current and legible.

(D) All income and expenditures must be supported with documentation to provide a clear audit trail for every financial transaction.

(E) Cash balances must be reconciled with the county auditor/lead county comptroller records monthly.

(F) Proper inventory schedules must be maintained for all equipment items purchased with grant funds. Inventories must include the following information for all equipment: quantity, description, serial number, identification number, purchase price, date of acquisition, vendor, condition, and location.

(G) County-established guidelines will be used for the salvage of unusable, damaged, and/or unrepairable equipment taken out of the facility. Documentation must be maintained on the disposition of all equipment removed from facility. The department shall be provided the opportunity to review all equipment to be salvaged.

History: Eff 3-30-92 (Emer.); 6-25-92

Chapter 5139-67

Grant Funding for Youth Services and Facilities

Section

5139-67-01	Definitions.
5139-67-02	Responsibilities of the department.
5139-67-03	Responsibilities of the county.
5139-67-04	Responsibilities of the juvenile court.
5139-67-05	Fiscal restrictions and requirements.
5139-67-06	Audit requirements and record retention.
5139-67-07	Reconciliation.
5139-67-08	Internal control.

§ 5139-67-01 Definitions.

For the purpose of implementing Chapter 5139-67 of the Administrative Code, the following terms have the following definitions:

(A) "Administrative costs" means those costs related to the overall administration of the grant.

(B) "Base allocation" means the amount of state subsidy grant (youth services grant) Funds a county will be eligible to receive, based on the formula found in section 5139.34 of the Revised Code.

(C) "Capital construction projects" means the acquisition, construction, reconstruction, rehabilitation, remodeling, renovation, enlargement or improvement of capital facilities as defined in section 154.01 of the Revised Code.

(D) "Chargeable bed days" means the number of bed days in an institution or community corrections facility for which reductions are made in the computation of the court's variable allocation; these do not include bed days which fall under the definition of public safety beds in section 5139.01 of the Revised Code; these do include the first five days of a youth's absence from an institution of the department or a community corrections facility.

(E) "Commitment" means the transfer of the physical and legal custody of a youth who is at least ten years of age but less than eighteen years of age from the court to the department for having committed an act that, if committed by an adult, would be a felony.

(F) "Community corrections facility" means a state funded facility operated for the sole purpose of providing treatment and rehabilitation to juvenile felony delinquents in lieu of a commitment to the department, as defined in section 5139.36 of the Revised Code.

(G) "Department" means the Ohio department of youth services.

(H) "Fair market value" means the cost of equipment, property, or services which would be paid by a prudent buyer in a given community. Prudence is based on comparison shopping and selection. Payment rates should conform closely to the going rate in the community for a given service.

(I) "Felony delinquent" means any child who is adjudicated a delinquent for having committed an act that, if

committed by an adult, would be a felony. This includes any adult who is between the ages of eighteen and twenty-one and who is in the legal custody of the department for having committed an act as a juvenile that, if committed by an adult, would be a felony.

(J) "Felony delinquent care and custody fund (FDCC)" means the fund into which "Reclaim Ohio" (variable allocation) And youth services grant funds (base allocation) Are deposited and from which they are disbursed.

(K) "Fiscal agent" means the county fiscal representative responsible for oversight of department grant funds.

(L) "Fiscal year" means the state fiscal year period of July first through June thirtieth.

(M) "Funding application" means a document completed by a county/juvenile court which reflects projected expenditures according to the established standard program areas in standard budget categories and is used to allocate and disburse funds under section 5139.34 and 5139.43 of the Revised Code.

(N) "Grant" means funds disbursed to the counties in accordance with sections 5139.34 and 5139.43 of the Revised Code.

(O) "Indirect cost" means a fixed charge by the county for handling the grant and providing payroll and other related services;

(P) "Institution" means a state facility created by the general assembly that is under the management and control of the department or a private facility with which the department has contracted for the institutional care and custody of felony delinquents, except for youth placed in accordance with section 5139.38 of the Revised Code.

(Q) "Minority youth" means any youth that is not caucasian.

(R) "Program amendment" means a programmatic or budgetary change in a program.

(S) "Public safety beds" means a county's variable allocation is not adversely affected by bed days for any youth who are committed for a category I or II offense (aggravated murder, attempted aggravated murder, murder, attempted murder, kidnapping, rape, voluntary manslaughter, involuntary manslaughter (F1), felonious sexual penetration, and aggravated arson) As defined in sections 2151.26 and 5139.01 of the Revised Code with the exception of aggravated burglary and aggravated robbery; felony delinquents who are subject to and serving a three year period of commitment pursuant to division s (A) and (B) of section 2152.17 of the Revised Code for an act other than a violation of 2911.11 of the Revised Code that would be a category I or II offense; felony delinquents committed to the department by the juvenile court of a county that has had one-tenth of one percent or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years for which data is available and who are in the custody of an institution or a community corrections facility; youth adjudicated and recommitted for the commission of an offense committed while in a department institution; youth serving disciplinary time as defined in section 5139.01 of the Revised Code; or youth who have violated the terms and conditions of their supervised release, have had that release revoked, and are serving time beyond the initial thirty day period of institutionalization as defined in section 5139.01 of the Revised Code.

(T) "Recommitment" means the commitment for a new period of incarceration in an institution for a youth who is already in the legal custody of the department.

(U) "Revocation" means the legal process through which a juvenile court returns a youth, who has violated the post-release terms and conditions, to the department for institutionalization pursuant to the applicable divisions of section 5139.52 of the Revised Code.

(V) "Standard program area" means the categories established by the department from which programs are developed and data reported.

(W) "Supplanting" means using grant funds to take the place of county money to fund the juvenile court's budget or related programs. Funds must be used to increase or enhance services to youth, and may not be used to pay for services which are already provided with county funds. Local funds for these services may not be decreased as a result of these grant funds.

(X) "Variable allocation" means the "Reclaim Ohio" allocation.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-02 Responsibilities of the department.

In administering the program, the department shall do all of the following:

(A) Establish procedures and time frames for submitting grant agreement and funding applications and other documents as required by this grant;

(B) Determine each juvenile court's base and variable allocations and notify each juvenile court of its allocations;

(C) Review and approve each grant agreement and funding application based on compliance with the Administrative Code and the Revised Code;

(D) Provide technical assistance and training to the juvenile courts relative to all rules and procedures of the grant; and assist in planning, program development, implementation and evaluation of this grant;

(E) Disburse the base allocation to the counties in accordance with the requirements of section 5139.34 of the Revised Code, if all required reports have been received;

(F) Disburse the variable funds to the counties in accordance with section 5139.43 of the Revised Code if all required reports have been received;

(G) Monitor the court's grant funded programs for compliance.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-03 Responsibilities of the county.

Grant funds received by the county:

(A) Shall not be commingled with any other funds;

(B) Shall be tracked in separate base and variable accounts within the felony delinquent care and custody fund;

(C) Shall fund capital construction projects as follows:

(1) The juvenile court may not fund any capital construction with variable funds;

(2) The juvenile court may use up to fifteen per cent of the base allocation for the current fiscal year for capital construction;

(D) Shall be disbursed for use by the juvenile courts as follows:

(1) For use in the provision of programs and services for delinquent, unruly and juvenile traffic offenders;

(2) For use in prevention, early intervention, diversion, treatment and rehabilitation programs that are provided for alleged or adjudicated unruly or delinquent children or children at risk of becoming unruly and delinquent children, and juvenile traffic offenders.

(E) Shall not revert to the county general fund at the end of any fiscal year;

(F) Shall carry over from the end of any fiscal year to the next fiscal year in the felony delinquent care and custody fund;

(G) Shall be in addition to, and not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, juvenile traffic offenders or non-adjudicated youth supported by county moneys;

(H) Shall be in addition to, and not be used to supplant, county funds.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-04 Responsibilities of the juvenile court.

The juvenile court shall:

(A) Submit a signed grant agreement and funding application by a date determined by the department;

(B) Submit financial expenditure reports, other fiscal reports, program reports, statistical reports, and other information on forms and according to the time frame established by the department;

(C) Deposit grant funds into the felony delinquent care and custody fund;

(D) Provide treatment and rehabilitation programs and services for adjudicated felony delinquents that are alternatives to commitments to the department;

(E) Provide early intervention, treatment and rehabilitation programs for youth adjudicated delinquent, unruly, and juvenile traffic offenders;

(F) Provide out of home placement of youth only in detention centers, community rehabilitation centers, or community corrections facilities approved by the department pursuant to standards adopted by the department; licensed by an authorized state agency; or accredited by a national organization, such as the American Correctional Association, and recognized by the department;

(G) Develop effective programs for youth which preserve their rights and dignity. Program activities must be safe, productive, humane, and adequately supervised;

(H) Monitor and evaluate the effectiveness of all programs funded through the grant;

(I) Maintain records as needed to allow the department to conduct program monitoring and evaluation and fiscal audits;

(J) Participate in any program and fiscal monitoring and evaluation conducted by or on behalf of the department;

(K) Be required to have on file for auditing purposes any written agreements with contractors or other service agreements;

(L) Refer to standard program areas as defined by the department when developing programs. If the court wishes to develop a program not found in the standard program areas, they shall contact subsidy staff to request the establishment of a new standard program area;

(M) Ensure equal access of minority youth to the programs funded through this grant;

(N) If the juvenile court fails to submit the required funding application and grant agreement, fiscal reports, statistical reports or other required reports, the department shall not make base or variable allocation payments to the county until the information is received;

(O) In the event that a variable allocation payment is withheld under the conditions of paragraph (N) of this rule or section 5139.43 of the Revised Code, and the juvenile court does not comply with the conditions of paragraph (N) of this rule or section 5139.43 of the Revised Code within one hundred eighty days of the due date established by the department, the payment shall not be made to the county;

(P) Not use grant funds to support programs or services that do not comply with the core requirements of the federal Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5633;

(Q) Not use grant funds to support programs or services that research has shown to be ineffective.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-05 Fiscal restrictions and requirements.

(A) All expenditures must be directly related to approved programs and must be in accordance with the approved funding application;

(B) All obligations must be incurred within the grant period and liquidated by September thirtieth of the following state fiscal year, only excepting unemployment and worker's compensation expenses, which are recognized in the year that they are paid;

(C) If any cash balance remains at the end of the fiscal year, it shall be carried over into the next fiscal year within the felony delinquent care and custody fund and shall not be reverted to the county's general fund;

(D) The county shall maintain separate account tracking for base and variable funds;

(E) All purchases are subject to county purchasing policies and procedures, except that purchases of direct service for youth do not have to be competitively bid pursuant to section 121.37 of the Revised Code. If no county purchasing procedures exist, state purchasing procedures shall be followed;

(F) Cost of equipment, property, services or any other budgeted items must be at fair market value, or that which would be paid by a prudent buyer in a given community. Prudence is based on comparison shopping or selection. Payment rates should conform closely to the going rate in the community for a given service;

(G) Should a county employee be employed and paid by the subsidy grant in addition to his/her full time job, the work must be performed on the employee's own time outside his/her full time job and compensation must be reasonable and consistent with fair market value. Hours worked for both jobs must be clearly documented;

(H) Any overtime premiums paid to court employees must be prorated among the various activities of the employee and not charged exclusively to grant funds unless the employee works full time on the grant. Overtime rates can be paid only if, and in proportion to the time, the employee worked on the grant during the relevant time period;

(I) Funds provided shall be in addition to, and shall not be used to supplant, existing county funding or any usual annual increase in county funding of the juvenile court or any program or service for delinquent children, unruly

children, juvenile traffic offenders or non-adjudicated youth funded by the county;

(J) The department shall suspend funding to a subsidy grant funded program if it finds failure to comply with the administrative rules promulgated by the department;

(K) Administrative or indirect costs charged to a program are limited to those essential to the management of the grant and should be reflected in the "program administration" standard program area;

(L) All costs incurred in fund-raising activities are unallowable within the grant;

(M) All costs for awards and social functions for staff are unallowable within the grant;

(N) Contributions and donations are unallowable within the grant;

(O) All costs related to licensing, professional fees, or dues for personnel, unless required by the job, are unallowable within the grant;

(P) College tuition reimbursement for employees is unallowable within the grant;

(Q) All costs for staff amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodging, rentals, transportation and gratuities are unallowable within the grant;

(R) Reimbursement for travel expenses for training and the costs of training are limited to that related to court services to youth. Records for travel and training expenses which clearly identify the trainees, locations of travel, and breakdown of expenses shall be maintained;

(S) Capital construction projects are not allowable except as noted under section 5139.34 of the Revised Code;

(T) Checking accounts are a non-allowable expense with grant funds in accordance with state auditor sections 307.55 and 319.16 of the Revised Code;

(U) If a court receives a reimbursement from an outside entity for an expense for which costs were shared, the reimbursed funds shall be deposited in to the felony delinquent care and custody fund with a clear audit trail denoting the original expense;

(V) Expenditures shall not exceed an approved line item by twenty per cent or five thousand dollars, whichever is less. A funding application amendment must be submitted for the department's prior approval for any expenses which would exceed these limits or if the expenditure would alter the nature of the program;

(W) Up to one thousand dollars may be moved between or within programs into existing line items of programs in a funding application. In such cases, the juvenile court will submit amended budget forms to the department. Transfers of more than one thousand dollars require that a funding application amendment be submitted to the department for approval prior to the transfer;

(X) At the time of separation from employment, the department will only recognize accrued vacation/sick leave expense liability in proportion to the percentage of the employment period during which the employee was employed in programs funded by the subsidy grant and paid from grant funds, pursuant to statutory and county policy limits;

(Y) In the event that a county's application is not approved by July 1 of the fiscal year, then the county is still approved for allowable expenses and programs that were approved in the previous fiscal year; however, no new programs and expenditures are allowable until the application for the new fiscal year has been approved.

History: Eff 8-1-97; 11-5-98; 10-25-02; 2-17-06

§ 5139-67-06 Audit requirements and record retention.

The department and the county shall adhere to the following:

(A) Each county receiving grant funds shall in writing request the auditor of state, or an accounting firm authorized by the auditor of state, to perform additional procedures as part of the audit performed under section 117.11 of the Revised Code. The cost of performing the additional audit procedures shall be paid from the felony delinquent care and custody fund;

(1) The scope of the additional procedures shall include legal compliance with section 5139.34 and division (C) of section 5139.43 of the Revised Code;

(2) The scope of the additional procedures shall also include examination of revenues and expenses, cash balance, outstanding obligations and internal controls;

(3) The county will provide a copy of applicable sections of the audit report upon request of the department;

(B) It shall be the responsibility of the department to perform the following auditing functions:

(1) Pre-audit the grant applications, program amendments, and requests for funds to ensure that the fiscal forms have been submitted and completed in accordance with fiscal guidelines of the department;

(2) Interim exceptions. Within sixty days of the date of the filing of the reports under rule 5139-67-04 of the Administrative Code, the department shall, in writing, notify the administrative juvenile judge and the board of county commissioners of its intention to take interim exceptions to any of the actual and projected costs therein reported. The department shall include in this notification a sum certain by which it proposed to either increase or decrease the budget and/or expenditures incurred during the fiscal year covered by this report;

(C) The department may perform an audit of the county felony delinquent care and custody fund;

(D) When a county is selected for audit, per the department's audit schedule, the department will perform an audit of the fiscal records in accordance with generally accepted auditing standards, including such tests of the funding records and such auditing procedures considered necessary under the circumstances. The scope of the audit will encompass, but may not be limited to the following:

(1) An examination of financial transactions, funds, and reports pertaining to the approved funding application;

(2) An evaluation of compliance with the established rules;

(E) Upon the completion of the audit examination, an audit report shall be issued which shall include a statement regarding:

(1) The expenditures of funds, and;

(2) Compliance with applicable regulations and the approved funding application, with approved revisions and amendments;

(F) Audit and actual exceptions. Within one hundred twenty days of the date the department conducts an audit as required under paragraph (D) of this rule, the department shall, in writing, notify the administrative juvenile judge and board of county commissioners of its intention to take exception to any of the actual costs therein reported. The county fiscal agent shall be required to refund to the department from the county general revenue fund the amount of the exception to the reported

costs within forty-five days of notification unless an appeal of the exception is filed;

(G) Appeal of exceptions: if within forty-five days of the date of department notification to take exception under paragraph (A) or (B) of this rule, the administrative juvenile judge or the board of county commissioners does not file with the department a request for appeal, the action proposed in the department of youth services notification to take exception shall be final and binding. If an appeal is filed, the director of the department shall notify the court of the decision regarding the appeal within forty-five days. The actions proposed in the department's notification to take exception may be made final and binding before the expiration of the forty-five days within which the county may appeal if the administrative juvenile judge and board of county commissioners waive, in writing, the provisions of this paragraph. If the determination is made that the appeal of the exception is denied, the county fiscal agent shall be required to refund to the department from the county general revenue fund the amount of the exception to the reported costs within thirty days of notification of the appeal decision;

(H) With reasonable advance notice, provide the department access to records, including any or all documents related to the felony delinquent care and custody fund;

(I) Maintain accurate fund records which indicate all income and expenditures for the felony delinquent care and custody fund;

(J) Keep the records current and legible;

(K) Support all income and expenditures with documentation to provide a clear audit trail for every financial transaction;

(L) Proper inventory schedules must be maintained for all equipment items purchased with grant funds. Inventories must include the following information for all equipment: number, purchase price, date of acquisition, vendor, condition and location;

(M) County-established guidelines will be used for the salvage of unusable, damaged, and/or unrepairable equipment taken out of the juvenile court or projects funded by the youth services grant. If no county guidelines exist, state guidelines shall be followed;

(N) The administrative juvenile court judge and board of county commissioners must maintain all records related to this chapter until the department has accepted a final closing expenditures report for the last year for which the record documents or supports a cost or expenditure, or for three years, whichever is longer.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-07 Reconciliation.

(A) If the juvenile court believes there are errors in the calculation of chargeable bed days, the juvenile court shall submit a bed day reconciliation form to the department's bureau of subsidies. No corrective adjustments can be made without this form being received;

(B) If an error is found during the same fiscal year in which the error took place, the adjustment will be made in the current fiscal year's total of chargeable bed days;

(C) If an error is found following the fiscal year in which the error took place and if the error is found prior to May of the following fiscal year, then the adjustment shall be made to the prior fiscal year's total of chargeable bed days.

History: Eff 8-1-97; 10-25-02; 2-17-06

§ 5139-67-08 Internal control.

It shall be the responsibility of the juvenile court to evaluate its systems of internal accounting and administrative controls on an ongoing basis to provide assurance that:

(A) Resources are utilized efficiently, effectively and in compliance with applicable law;

(B) Obligations and costs are in compliance with applicable law;

(C) Funds, property and other assets and resources are safeguarded against waste, loss, unauthorized use and misappropriation;

(D) Revenues, expenditures and transfers of assets, resources, or funds applicable to operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports, and to maintain accountability over the state's resources.

History: Eff 8-1-97; 10-25-02

§ 5139-67-09 Responsibilities of the advisory committee.

The Reclaim advisory committee shall:

(A) Be comprised of the following members:

(1) Two juvenile judges appointed by the Ohio association of juvenile court judges;

(2) The director of the Department of Youth Services, or his designee;

(3) The director of the Office of Budget and Management, or his designee;

(4) A member of the senate committee dealing with finance or criminal justice issues, appointed by the president of the senate;

(5) A member of the house of representatives committee dealing with finance or criminal justice, appointed by the speaker of the house of representatives;

(6) A member of the board of county commissioners, appointed by the county commissioners association of Ohio;

(7) Two juvenile court administrators, appointed by the Ohio association of juvenile court judges;

(B) Meet at least once during each quarter of the calendar year, or more frequently at the call of the chairman, to conduct the business of the committee set forth in sections 5139.41 and 5139.44;

(C) Advise the Department of Youth Services, Office of Budget and Management, and the general assembly on any changes that the committee believes should be made to the Reclaim Ohio program.

History: Eff 2-17-06

Chapter 5139-68 Release and Discharge Procedures

Section

5139-68-01 Definitions.

5139-68-02 Disposition investigation report and transfer of physical custody.

5139-68-03 Release authority procedures.

5139-68-04 Appeals process. [Rescinded]

§ 5139-68-01 Definitions.

For the purpose of implementing Chapter 5139-68 of the Administrative Code, the following terms have the following definitions:

(A) Discharge review is defined as a process whereby the release authority considers whether a termination of the legal custody of the youth to the the Ohio department of youth services is appropriate.

(B) Institutionalization is defined and shall have the same meaning as institution defined in division (A)(4) of section 5139.01 of the Revised Code.

(C) Paper review is defined as a consideration of the youth's case, whether for a periodic or discharge review decision, through reference to appropriate and necessary documentation contained in the youth's the Ohio department of youth services file.

(D) Parent institution is defined as the the Ohio department of youth services facility assigned as the youth's permanent place of incarceration prior to release. Temporary transfers to other facilities may occur for programmatic or administrative purposes.

(E) Periodic review is defined as a process whereby the release authority reviews the youth's case file and considers whether a youth's release from institutionalization on a specified date in the future, the presumptive release date, is appropriate or whether components of the youth's case plan justify an adjustment of the youth's release date.

(F) Presumptive discharge date is defined as the tentative month, day and year upon which the youth is projected to be discharged from the legal custody of the the Ohio department of youth services.

(G) Presumptive release date is defined as the tentative month, day and year upon which a youth is projected to be released from institutionalization.

(H) Youth is defined and shall have the same meaning as child defined in division (B)(1)(a) of section 2151.011 of the Revised Code.

(I) Hearing is defined as a session, conducted by a member of the Release Authority either by telephone, electronic media or in person whereby testimony is taken from witnesses and is used to make a release or discharge decision.

History: Eff 7-1-98; 12-12-03

§ 5139-68-02 Disposition investigation report and transfer of physical custody.

The Ohio department of youth services and the court shall adhere to the following:

(A) The Ohio department of youth services shall develop and furnish to all juvenile courts a standard disposition investigation report which the court will complete and submit to the Ohio department of youth services at the time the court transfers physical custody of the youth to the Ohio department of youth services. The report shall not be modified in anyway and each section must be completed with the most current information.

(1) The report may include but is not limited to sections pertaining to instant offense information, victim information, victim impact statement, prior court referrals, family member information, current level of family functioning, offense history of family member(s), youth's religion, youth's school history, youth's employment, youth's mental retardation, developmental disability and/or mental health issues, youth's medical information, youth's alcohol & drug history, personal/social data, youth's social security number, youth's self-assessment of strengths and weaknesses, youth's assessment of family strengths and weaknesses, summary or impressions, and recommendations for disposition;

(2) Periodically, the Ohio department of youth services may evaluate and modify the standard disposition investigation report if deemed appropriate. The courts will be notified of any changes thirty days in advance of implementation and are required to utilize the modified report as outlined in this rule.

(B) When the court commits a youth to the Ohio department of youth services the court shall, at the time of transfer of physical custody of the youth, provide the following documents:

(1) The youth's medical records;

(2) A copy of the report of any mental examination of the youth ordered by the court;

(3) The section or sections of the Ohio Revised Code violated by the youth and the degree of each violation;

(4) The warrant to convey the youth to the department;

(5) A copy of the court's journal entry ordering the commitment of the youth to the legal custody of the Ohio department of youth services; and

(6) A current copy of the standard disposition investigation report.

(C) The Ohio department of youth services may refuse to accept physical custody of a delinquent youth who is committed to the legal custody of the Ohio department of youth services until the court provides to the Ohio department of youth services the documents specified in paragraph (B) of this rule. No officer or employee of the Ohio department of youth services who refuses to accept physical custody of a delinquent youth committed to the legal custody of the Ohio department of youth services shall be subject to prosecution or contempt of court for refusal to accept a youth if the court fails to provide the documents specified in paragraph (B) of this rule.

History: Eff 7-1-98; 12-12-03

§ 5139-68-03 Release authority procedures.

(A) Within thirty days, if possible, of the transfer of physical custody of a youth to the Ohio department of youth services, a release authority member or hearing officer shall initially establish a presumptive release date for that youth. The presumptive release date shall specify the day, month and year of the youth's expected release from institutionalization.

(B) In establishing a youth's presumptive release date from institutionalization, the release authority shall consider at least the following factors:

(1) The judicially prescribed minimum period of institutionalization based upon felony level or category of offense as stated in the journal entry minus any detention credits;

(2) The risk level of a youth to re-offend;

(3) The youth's treatment needs;

(4) Any harm or injury to the victim(s);

(5) Any aggravating or mitigating factors pursuant to paragraphs (C) and (D) of this rule except any factors which constitute an element of the committing offense or offenses which the committing court considered in determining the disposition of the youth's case shall not be considered by the release authority in setting the youth's presumptive release date; and

(6) Any other relevant information requested by the release authority related to the youth's case.

(C) Aggravating factors which may be considered by the release authority as referenced in paragraph (B)(5) of this rule include:

(1) Production, possession, theft, or use of a weapon or dangerous ordinance;

(2) Documented physical or verbal threats of violence towards victim(s) or witness(es);

(3) The youth knew or had reason to know the victim was particularly vulnerable;

(4) The youth's ability to make reparation and failure to do so, (reparation includes restitution, community service or any other action designed to reduce victim harm or increase offender accountability). This factor applies only to youth having prior or suspended the Ohio department of youth services commitments;

(5) Degree of harm or loss is greater than characteristic for the offense;

(6) There is a single adjudication for an offense involving multiple victims;

(7) Prior adjudication(s) for domestic violence or other assaultive offenses;

(8) Program/treatment requirements;

(9) Judicial minimum term in excess of the presumptive release date established in paragraph (C) of this rule; and

(10) Any prior Ohio department of youth services commitment or revocation.

(D) Mitigating factors which may be considered by the release authority as referenced in paragraph (B)(5) of this rule include:

(1) Effort to make reparation or other evidence of accepting responsibility and/or remorse;

(2) Degree of harm or loss was substantially less than characteristic for offense;

(3) Special efforts on the part of the youth to minimize harm or risk involved in the offense;

(4) Peripheral involvement in the offense (passive accessory);

(5) Written or oral public support for a youth's release from institutionalization;

(6) A period of post-release supervision following institutionalization, after the judicially prescribed minimum sentence has expired, would benefit the youth's rehabilitation over discharging the youth from the Ohio department of youth services legal custody at age twenty-one through release from institutionalization without post-release supervision;

(7) No physical or verbal threats of violence toward victim(s) or witness(ES); and

(8) No prior or suspended the Ohio department of youth services commitments or revocations.

(E) Upon the establishment of a youth's presumptive release date, the release authority shall set a date on or about which the youth's case shall next be considered for review or release. The release authority may review a youth's case through a paper review or a hearing conducted by a hearing panel, or hearing held pursuant to paragraph (H) of this rule, according to the following procedures:

(F) The release authority may periodically review the case of each youth with a presumptive release date greater than or equal to one year. At least thirty days before the presumptive release date, the release authority shall review the youth's case for the purpose of determining whether the youth shall be released from institutionalization on the specified presumptive release date.

(G) The release authority may periodically review the case of each youth with a presumptive release date of less than one year at least thirty days before that presumptive release date for the purpose of determining whether the

youth shall be released from institutionalization on the specified presumptive release date.

(H) In making a release review determination, as appropriate, the release authority shall take into consideration the information provided by any statutorily authorized party including the victim or victim's representative, and may take into consideration at a minimum any of the following additional factors in determining if there are significant barriers to a youth's release as it relates to accountability, competency development and public safety:

(1) Any change in the risk level of the youth to re-offend;

(2) The youth's progress toward case plan objectives and amenability to treatment;

(3) Any recommendations made by the staff of the Ohio department of youth services or any provider with which the Ohio department of youth services has contracted;

(4) Any disciplinary issues concerning the youth's conduct while in the institution, and may reduce any disciplinary time given in order to release a youth;

(5) The youth's completion of any recommended provisions of his or her commitment by the court if the Ohio department of youth services, through the release authority, has made such provision a required case plan objective; and

(6) Any other relevant information requested by the release authority related to the youth's case.

(I) Upon the release authority's periodic review determination, the release authority shall set a date on or about which the youth's case shall next be considered or shall set a final date upon which the youth is projected to be released from institutionalization. The final date of release may be adjusted for any disciplinary time added during the remaining period of institutionalization. Upon a final decision to release a youth from institutionalization, the release authority shall also specify a presumptive discharge date for the youth from the Ohio department of youth services. The final discharge date may be adjusted for any serious issues related to the youth's adjustment to the community during the period of supervised release or based upon the factors set out in paragraph (M) of this rule.

(J) The release authority may conduct hearings pursuant to board policy adopted by a majority of the board for the purpose of deciding for or against the release from institutionalization of a youth committed to the Ohio department of youth services.

(1) At a hearing conducted by the release authority, the release authority or other staff of the Ohio department of youth services shall make all reasonable efforts to ensure the victim, victim's representative and victim support person(s) does not come into visual, sound or physical contact with the youth, if the youth is present at the hearing, or other parties accompanying or representing the youth for support including family members or legal representatives;

(2) Following a hearing by the release authority or a hearing panel, if either the youth and/or victim or victim's representative is present, the recommended decision shall be communicated immediately, subject to an explanation that the full release authority, or a quorum thereof, must approve the recommendation, to the youth and/or victim or victim's representative unless, in the judgment of the hearing body, an undue security risk would thereby be created; and,

(3) A youth does not have a right to be present at a hearing conducted by the release authority. The youth may submit a written statement to the release authority for consideration in making its decision. The youth may additionally have a representative including a family member, adult personal friend, clergy or attorney, attend the hearing. The youth's representative may provide oral and/or written testimony at the hearing, or may submit a written statement to the release authority for consideration in making its decision in lieu of attending the hearing.

(K) At least thirty days before the presumptive discharge date of a youth from the Ohio department of youth services, the release authority shall conduct a discharge review or hearing for the purpose of determining whether the youth shall be discharged from the legal custody of the Ohio department of youth services based upon the youth's performance in complying with the supervised release plan including rules of parole.

(L) In making a discharge review determination the release authority shall take into consideration the information provided by any statutorily authorized party including the victim or victim's representative, and may take into consideration any of the following additional factors in determining if there are significant barriers to a youth's discharge as it relates to accountability, competency development and public safety:

(1) Any change in the risk level of the youth to re-offend;

(2) The youth's progress toward case plan objectives;

(3) The youth's completion of any recommended provision(s) of his or her commitment if the Ohio department of youth services through the release authority has made such provision(s) a required case plan objective;

(4) The youth's age and amenability to treatment; and

(5) Any other relevant information requested by the release authority related the youth's case.

(M) If a youth completes more than one year of supervised release as measured from the date of release from the institution or the youth is on supervised release beyond one year from the date of completion of any minimum period or period of institutionalization in the custody of the Ohio department of youth services as required by law, the youth may request in writing that the release authority conduct a discharge review of his/her case. The youth shall provide a written request for a discharge review to the release authority specifying the youth's name and a statement explaining the reason for the requested discharge review. The release authority shall conduct a discharge review in a timely manner and shall notify the youth of the discharge review decision and the grounds for the decision within five business days after the decision is finalized.

(N) A youth does not have the right to appeal any release or discharge decision made by the release authority. If significant release information should become available or is discovered after a decision has been made, the youth with assistance from his/her representative, institutional or regional personnel, may request in writing that a special review be conducted, explaining the contents of the significant information or newly discovered information. The release authority board member assigned to the case can either approve the request and conduct a review or hearing, or can deny the request without conducting a review or hearing.

History: Eff 7-1-98; 12-12-03

§ 5139-68-04 Appeals process. [Rescinded]

History: Eff 7-1-98; Repealed Eff. 12-12-03

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